

BEFORE THE COMMISSIONER, H.R. & C.E. DEPARTMENT, CHENNAI-34.

Wednesday the 2nd day of May, Two Thousand and Twelve.

Present : Thiru J. Chandrakumar, I.A.S.
Commissioner

A.P. 37 /2011 D2

Between.

A.J. Jayaraman, S/o A.V. Jagadeesan

... Appellant.

And

1. The Executive Officer, Arulmighu Kasi Viswanathar Temple, Tiruchirapalli Town, Taluk and District.
2. The Joint Commissioner, HR & CE Admn.Dept., Tiruchirapalli-6. ... Respondents.

In the matter of Arulmigu Kasi Viswanathar Temple, Sundaradoss Kula Theru, Tiruchirapalli Town, Taluk and District.

Appeal Petition filed under Section 34(A) of the Tamil Nadu HR & CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated 5.1.2011 of the Executive Officer in informing the fair rent fixed.

Order in D.Dis. A.P. 37/2011 D2 dated: 2.5.2012

The above Appeal Petition having come on for final hearing before me on 24.4.2012 in the presence of Thiru P. Ramamoorthy, Counsel for Appellant and Thiru K. Thangaval, Counsel for the 1st Respondent, upon hearing their arguments and after perusing the records, the following order is made.

ORDER

1. The above appeal petition has been filed under Section 34 (A)(3) of the H.R. & C.E. Act, 1959 against the notice dated 5.1.2011 issued by the Executive Officer of Arulmighu Kasiviswanathar Tempe, Sundaradas Tank Street, Trichy-2, fixing the

monthly Fair rent for the premises in Door No. 235 situate in T.S.No. 16, Big Bazaar Street, Trichy owned by the temple, at the rate of Rs. 2405/- p.m. with effect from 1.11.2001 subject to enhancement at the rate of 15 %. once in every successive three years. As such the fair rent is Rs. 2765/- as on 30.6.2007 and Rs. 3180/- as on 30.6.2010. The appellant states that the premises in question was let out to his father A.V. Jagadeesan long back for a monthly rent of Rs. 75/- p.m. . The rent was increased from time to time. When the appellant's father died he was paying a rent of Rs. 225/- p.m. After the appellant became a tenant he paid Rs. 350/- p.m. In 2004 the rent was increased to Rs. 750/- p.m. The appellant challenged the enhancement of rent by filing a writ petition before the Hon'ble High Court in W.P.No. 8912/2005. An order of interim injunction was passed on 17.03.2005, restraining the Executive Officer from interfering with the appellant's possession and enjoyment of the shop let out to him, with a condition that the appellant should pay the rent as demanded by the Executive Officer.

2. Accordingly the appellant has been paying the rent at the rate of Rs. 750/- p.m. upto September, 2010. Thereafter, the Executive Officer has refused to receive the rent and cheques issued by the appellant returned to him by the Executive Officer. In the meantime, the Executive Officer has issued the impugned notice. The appellant has contended that the Executive Officer has no authority to fix the rent for the building. It is the Joint Commissioner who is the competent authority to pass orders fixing the fair rent, after hearing the appellant. There was no notice and no enquiry by the authorities before fixing the Fair Rent. Therefore, the enhancement of rent at the rate of Rs. 2450/- with effect from 1.11.2001 is arbitrary, against the principles of natural justice and is unsustainable in law and on fact. The Fair Rent has been fixed in contravention of the order issued by the Government in G.O.No. 456, and circulars containing guidelines issued by the Commissioner in Rc. No.40651/2008 M3 dated: 18.07.2008. The appellant would therefore contend that the impugned order is liable to be set aside.

3. Thiru P.Ramamoorthy, Counsel appeared for the appellant and filed his written arguments along with a copy of the guidelines issued by the Commissioner in the Circular instructions dated 18.07.2008. Thiru K. Thangavel , Counsel appeared for the

Executive Officer/1st Respondent and filed his counter affidavit. The appellant in his written argument has contended that according to the circular instructions issued by the Commissioner only the Fair Rent Committee constituted under Section 34 A of the Act has to fix the Fair Rent. The Executive Officer is not competent to fix the Fair Rent. There is absolute no basis for fixing the Fair Rent exorbitantly at the rate of Rs. 2405/- p.m. Fixing the fair Rent without prior notice to the tenant is arbitrary, invalid and unsustainable.

4. The 1st Respondent has contended that the appellant's father A.V. Jagadeesan was the original tenant. After his demise his son A.J. Jayaraman, the Appellant herein was inducted as a tenant, who had accepted to pay the monthly rent at the rate of Rs. 225/- p.m. fixed tentatively by the Trustee by executing a Lease Deed on 09.08.1982. But the appellant was not regular in paying the rent as agreed by him. He also tried to modify the building without prior permission from the authorities. He tried to change the nature of business already carried on by him and tried to transfer the tenancy to a third party for consideration of a huge sum of money. The 1st Respondent filed a Civil Suit before the District Munsif Court, Tiruchirapalli. Thereafter, the rent was enhanced at Rs. 750/- p.m. considering the nature of building and the prevailing market value of the building situated in the main locality of the City. When it was challenged by the appellant before the High Court, in W.P.No. 8912/2005, the High Court directed the appellant to pay the rent of Rs. 750/- p.m.

4. Then, the Fair Rent Committee constituted for the purpose, after inspecting the building fixed the Fair Rent as per guidelines, with effect from 1.11.2001. A copy of the calculation and working sheet showing the basis on which the Fair Rent was arrived at Rs. 2405/- pm. by the Fair Rent Fixation Committee was approved by the Joint Commissioner and communicated to the Executive Officer with directions to collect the rent as per the Fair Rent fixed. Hence, the contentions of the appellant that the Fair Rent was fixed by the Executive Officer and the impugned notice was passed by the Executive Officer enhancing the rent are not correct as they are not based on facts. In the circular issued by the Commissioner, the Executive Officer was directed to communicate

the enhancement of rent after the Fair Rent was fixed by the Rent Fixation Committee. The Executive Officer has accordingly complied with the order of the Joint Commissioner and the circular instructions issued by the Commissioner. Hence, there is no irregularity in fixing the Fair Rent.

5. No notice and no enquiry is contemplated under section 34 (A) of the Act and the rules made thereunder, prior to fixation of Fair Rent. The notifications issued by the Government in the Government Orders are deemed to be sufficient notice. I am, therefore, of the considered view that the Fair Rent has been fixed only after duly following the procedures prescribed and there is nothing to interfere with the impugned notice/order issued by the 1st Respondent/Executive Officer to the appellant. The impugned notice /order is confirmed. The appeal petition be and is hereby dismissed.

/ typed to dictation/

Sd. J. Chandrakumar,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Appellants through Thiru.P. Ramamoorthy, Advocate, D44, 10th Cross , FWE, Thillai Nagar, Trichy 620 018.
2. The Executive Officer through K. Thangavel, Advocate, 2/5, West Minnappan Street, Woriyur, Trichy 620 003.

Copy to:

3. The Joint Commissioner, HR & CE Admn.Dept., Tiruchy.
4. The Assistant Commissioner, HR & CE Admn.Dept., Trichy.
5. The Inspector, HR & CE Admn.Dept., Trichy (East), Trichy.
6. Extra.