

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

Friday the 23rd day of November, Two thousand and twelve.

Present : Thiru P. Dhanapal, M.A.,B.L.,
Commissioner.

A.P.38/2011/ D2

Between.

FOMRA ELECTRICALS

A Partnership firm

Represented by its Partner Sri Kumar Fomra

No.380, Mint Street,

Chennai-600 079

... Appellant.

And

The Executive Officer,

Arulmigu Arunachaleeswarar and Varadaraja Perumal

Thirukkoil,

No.24, Palliappan Street, Chennai-600 079.

... Respondent.

In the matter of Arulmigu Arunachaleeswarar and Varadaraja Perumal Thirukkoil, No.24, Palliappan Street, Chennai-600 079.

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: 27.11.2010 of the Executive Officer, fixing fair rent.

Order in R.Dis. A.P.38/2011 (D2) dated: 23.11.2012.

The above Appeal Petition having come on for final hearing before me on 06.11.2012 in the presence of M/s B.T. Seshadri, Counsel for the Appellant and Thiru S.D. Ramalingam, Counsel for the Respondent, upon hearing their arguments and after perusing the records the following order is made:-

ORDER.

The above appeal petition has been filed under Section 34 (A) of the Tamil Nadu H.R.& C.E. Act against the notice dated 27.11.2010 of the Executive Officer informing the fixation of fair rent and arrears due thereon to the building belonging to the temple under question.

2. The contention of the appellant is that the appellant herein took on lease the vacant site measuring about 7281 sq.ft together with the Vasantha Mandapam built therein belonging to the temple in or about the year 1959. In the year 1999, rent was fixed by the temple at Rs.4,500/- p.m which was paid even now. The respondent herein filed O.S.No.5015 of 1999 on the file of the Assistant City Civil Court, Chennai for delivery of possession and for damages for use and occupation of the property at Rs.41,850/-p.m. and the said suit was dismissed on 29.09.2006. The appeal preferred thereon by the respondent in A.S.No.287 of 2007 Addl. City Civil Court, Chennai was also dismissed on 04.06.2008. Suddenly, a notice dated 27.11.2010 was received from the Respondent stating that fair rent has been fixed from 01.11.2001 to the property by the fair rent committee. No notice was given before fixation of the fair rent by the fair rent committee. Section 34-A of the Hindu Religious and Charitable Endowments Act, 1959 was introduced which came into force with effect from 10.05.2003. As per Sub-Section 1 of Section 34A, a Committee consisting of Joint Commissioner, Executive Officer of the temple and or any of the Trustees shall fix the lease rent taking into account the prevailing market rental value and the guidelines. The State Government has issued a circular dated 2.2.2009 giving instructions to the authorities to give opportunity to the tenant before the fair rent is finally fixed. No such opportunity was given to the Appellant and the Respondent has unilaterally fixed the fair rent. There is nothing in the notice to show as to when the Committee was constituted and what were the materials available before the Committee for arriving at the sum of Rs. 61,665/- from 01.11.2001. The Respondent ought to have given particulars and made available the details to enable the Appellant to challenge the same with other materials. Inasmuch as the Respondent had breached the circular dated 2.2.2009 issued by the State Government and inasmuch as no opportunity was given to the Appellant before arriving at the fair rent, the impugned notice is liable to be set aside.

3. Per contra, the Respondent-Executive Officer of the above Temple who filed counter affidavit has stated that the property bearing No.380, Mint Street, Chennai 79 with the Vasantha Mandapam and the vacant place in all measuring about 7,281/- sq.ft belonging to the Temple, was let out by the earlier Trustees on a monthly Rent of Rs. 4,500/-. The appellant is using the property for storing heavy cables. The tenancy of the appellant was terminated and the suit in O.S.No. 5015 of 1999 was filed. The said suit was dismissed on the ground that the appellant firm consists of several partners and all the partners have not been served with termination notice even though one of the

partners Sri Kumar Fomra has received the notice. Aggrieved by the Judgment and decree, the temple filed appeal in A.S.No.287/2007 and the same was dismissed. Against the same, the temple has now filed Second Appeal in SA SR No.2932 of 2009 on 09.01.2009 and the same is pending to be numbered in the High Court. The market rent in Mint Street is more than Rs.20/- per sq.ft and it is very difficult to get an area of 7281 sq.ft of land with building in Mint Street. If the same is let out in public auction, it will fetch more than Rs.30/- per sq.ft. Considering this, the rent was revised by the Fair Rent Committee as per the Government orders and fixed at Rs. 61,665/- and the same was communicated to the Appellant. The fair rent now fixed is itself a very low one. The Engineer of the Department has inspected the property and has given the statement as to how the fair rent fixed, was examined, cross examined as P.W.2 in the suit O.S. 5051 of 1999 and the document has been marked as Ex.A7. Hence, the appellant is well aware of the details of fixing the fair rent during the time of the trial and the suit itself and the Engineer was also cross examined at length by the Appellant. It has been held by the Hon'ble High Court that the fair rent can be fixed either under Section 34-A, or as per the Government Orders. The choice has been left with the temple. As stated earlier, the prevailing market rent in and around the locality is much more than the rent now fixed and communicated. The appellant has not filed any document to show that the market rent is less than the rent fixed by the temple. No notice to the tenant is necessary as per the Government Orders. The fair rent now fixed is in consonance with the market rent in Mint Street and particularly the other properties situated near the property leased to the Appellants. The adjacent property bearing Door No.381, Mint Street measuring about 3419 sq.ft belonging to the temple which is in occupation by the brother of the appellant Thiru Kalidoss Fomra who has been paying the Rent of Rs. 41,390/- to the Temple. The property now in occupation of the Appellant is 7281/- sq.ft and hence the fair rent fixed is a reasonable one.

4. I have heard M/s B.T. Seshadri, Counsel for the appellant and Thiru S.D. Ramalingam, Counsel for the Respondent. The main contention of the appellant is that no opportunity was given to the appellant as per Circular dated 2.2.2009 of the Committee before fixing the rent and further there is nothing in the notice to show as to when the Committee was constituted and what was the materials available before the Committee for fixing the rent. The contention of the appellant is not acceptable. As per Section 34 (A), there is no need to inform the appellant about the constitution of Fair Rent Fixation Committee. That nothing specified in the Section to afford opportunity of

being heard the tenant. However, in O.S. 5015/1999 on the file of the Asst. City Civil Court, Chennai, the Engineer of the Department who has inspected the property and given statement as to how fair rent fixed was examined and cross examined as P.W.2 and the document was marked as Ex.A7. Hence, the appellant is well aware of the details of fixing the fair rent during time of the trial of the suit itself.

It is held by the Hon'ble Division Bench of the Madras High Court in W.A. No. 8/2008 and W.P.No. 1611/2008 reported in 2009 (3) LW 728 that;

“It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub-section 2 of Section 34 A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive Officer or trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to sub-Section 1 of Section 34 A of the Act also makes it clear that what is meant by ‘prevailing market value’. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter, that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009.”

In the Circular dated 2.2.2009 issued by the department regarding fixation of fair rent, it is stated as follows: “ கணக்கீட்டுத்தாளில் நிர்ணயிக்கப்பட்டுள்ள வாடகை, இடத்தின் பரப்பளவு, கட்டிடத்தின் பரப்பளவு, நில மதிப்பு, குடியிருப்பு/வணிகத்தன்மை, வாடகை சதவீதம், புதிய வாடகை ஆகியவை குறித்து ஆட்சேபணைகள் ஏதுமிருப்பின் அதனை மெய்ப்பிக்கும் ஆவணங்களுடன் தங்களது ஆட்சேபணைகள் ஒரு வார காலத்திற்குள் தெரிவிக்கலாம்.” Therefore, it was left open to the appellant to file any objection in the

fixation of Fair Rent before the Executive Officer of the temple to be placed before the Fair Rent Committee. But the appellant has not availed that opportunity, but contested the suit. Even in the present proceedings the appellant neither disputes the extent of the property leased out nor its value. No justifiable reason has been adduced to prove that the fair rent fixed is exorbitant or is in excess of its market value. The only contention that no notice was issued cannot be accepted as the appellant was well aware of the rent fixation in the suit. The fair rent has been fixed as per guidelines issued by the Government Orders from time to time. The validity of the Government orders have been upheld by the Hon'ble High Court in W.A. 402/2000 dated 13.3.2000 and W.P. 8831/2003 dated 29.7.2008. Hence, the impugned notice needs no interference. The appellant is directed to pay the entire arrears within 30 days from the date of receipt of this order. If the appellant fails to settle the arrears within the stipulated time, the Executive Officer is directed to initiate action under Section 78 of the Act. With the above observation, the appeal petition is dismissed.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Appellant through Thiru.B.T.Sheshadri, Advocate, No.5, Luz Avenue, 5th Street, Mylapore, Chennai-600 004.
2. The Respondent through Thiru S.D. Ramalingam, Advocate, 321, Linghi Chetty Street, II Floor, Chennai 600 001.

Copy to:

3. The Joint Commissioner, HR & CE Admn.Dept., Chennai-34.
4. The Inspector, HR&CE Admn.Department, Circle-VI, Chennai.
5. The Assistant Commissioner, HR&CE Admn.Department, Chennai-34.
6. Extras.