

BEFORE THE COMMISSIONER, HR&CE ADMN DEPARTMENT,
CHENNAI-34.

Tuesday the 12th day of February, Two thousand and Thirteen.

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

A.P. 18 and 19/2012 D2

Between.

1. Mrs. U. Santosh, W/o Uttamchand Jain. .. Appellant in A.P. 18/12
2. S. Vijayakumar, S/o Sohanraj. .. Appellant in A.P. 19/12

And

The Executive Officer,
Arulmighu Kandasamy Temple,
Tiruporur – 603 110,
Kancheepuram District.

... Respondent.

In the matter of Arulmighu Kandasamy Temple, Thiruporur,
Chengleput Taluk, Kancheepuram 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
15.09.2011 issued by the Executive Officer, Arulmighu Kandasamy
Temple, Thiruporur, Chengleput Taluk, Kancheepuram District
informing the petitioners to pay the arrears of rent due till 30.06.2011.

Common order in D.Dis.A.P.18 and 19/2012 (D2) dated : 12.02.2013.

The above Appeal Petitions having come on for final hearing before
me on 04.01.2013 in the presence of Thiru K. Bhavatharini, Counsel for
the Appellants and M/s A.S.Kailasam & Associates, Counsel for the
Respondent, upon hearing their arguments and after perusing the
relevant records and the matter having stood over for consideration till
this day, the following order is made:-

ORDER.

The above appeal petitions have been filed under Section 34 (A) of
the Hindu Religious and Charitable Endowments Act, 1959 challenging

the notice dated 15.09.2011 issued by the Respondent/Executive Officer of the above temple informing the appellants to pay the arrears of rent due from them till 30.06.2011 and requesting them to clear off the arrears before 30.09.2011 to avoid termination of lease and action under Section 78 of the Act.

1. The appellants contended that they took lease of the temple property situated at No.66, Elephant Gate Street, Sowcarpet, Chennai 79 to an extent of 52 sq.ft at Rs. 200/-p.m, and 823 sq.ft. at Rs. 400/- p.m respectively from 1.1.1988 and have been regularly paying the rent without any arrears.

2. During March 1996, the appellants received a communication from the respondent that they have increased the rent from Rs.200/- to Rs.800/- and Rs.400/- to Rs.1,400/- respectively. Even after receiving the letter the appellants continued to pay the previous rent and the respondent also accepted the same without any objection.

3. All of a sudden during 10.04.2002, the respondent herein increased the rent to Rs. 430/- p.m. and Rs. 6750/- p.m. respectively. The appellants on receiving the said letter requested the temple to reduce the amount of rent and continued to pay the old rent which was also acknowledged by the respondent without any protest.

4. The increase of rent was done by temple without inspecting the premises by a duly authorized Engineer as the building is in a dilapidated condition and requested the respondent to permit them to carry out repairs or to demolish and reconstruct the building. The temple authorities permitted to carry out the repairs with condition to hand over the building to the temple to fix new rent as per norms. Since no assurance was given by the temple to fix the old rent, the appellants never carried out the repairs.

5. But, all of a sudden on 15.09.2011, the respondent sent the impugned notice demanding arrears of Rent of Rs. 50,972/- and Rs.9,31,032/- without any calculation or reasoning to the effect. The respondent also locked the premises and sealed without any proper order

from the relevant authority. Therefore, the appellants with no other option paid a sum of Rs.10,000/- and Rs.40,000/- respectively on 25.09.2011 in order to open the premises and to carry on their business and were forced to admit the arrears.

6. Therefore, the appellants have filed this appeal praying to stay the impugned order of the respondent and to direct the respondent to accept the old rent which is being paid till date and set aside the impugned order dated 15.09.2011.

7. The Respondent who filed counter affidavit contended that it is true that the above temple property was leased out to the appellants originally for doing textile business but subsequently the nature of business has been changed by the appellants without the consent of the Respondent. The appellants has been paying rent from 01.01.1998 may be true, but the rents received after 18.03.2002 have been received without prejudice to the rights of the respondent and receiving the rent will not waive the fair rent fixed.

8. The area under occupation is 52 sq.ft. and 823 sq.ft. respectively and the Fair Rent fixed by the Fair Rent Fixation Committee was at Rs. 656/- p.m. and Rs.6750/- p.m. respectively in accordance with Government order and the same was communicated to appellants on 01.04.2002. Before fixing the fair rent, the Fair Rent Fixation Committee has taken into consideration all the aspects required under the law and there is no necessity to give a notice as has been laid down by the Division Bench of the Madras High Court. However, the appellants were heard before fixing the fair rent on 18.3.2002 and orders communicated on 01.04.2002 which was received by the appellants without any protest. Since the impugned communication, is only a reminder in continuation of the earlier order, the appeal is not maintainable and has to be rejected in limini. The appellants have not filed an appeal against the original order and hence the present appeal against a letter dated 15.9.2011 is not maintainable. The respondent further contended that the under Section 34-A of the Act, the authorities under the Act will take into

account the market value prevailing and fix the fair rent, and under Sub-section 2 of Section 34-A, the Executive Officer or the Trustee of a Religious Institution shall pass an order fixing the lease rent and intimate the same to the lessee fixing a time frame. The proposed rent fixation was communicated to the appellants, the appellants have slept over the same and when a reminder has been sent stating that the appellants were treated as encroachers under Section 78 of the Act, they came with this appeal which is an abuse of the process of this forum and prayed to dismiss the appeal.

9. In the reply affidavit filed by the appellants they submitted that the building is dilapidated condition. Even though till date rent has been paid for the leased portions, the building cannot be used for any business purpose and they are willing to take the premises on Donor basis provided if the respondent allow them to construct or willing to enter into a fresh lease agreement on the basis of donor allotment, they are willing to pay the rent. It is baseless to claim exorbitant amount for the building where no activities are being carried out by them. The building has been retained by them only for sentimental value.

10. I heard M/s.Bhavatharini, Counsel for the appellants and M/s A.S. Kailasam & Associates, Counsel for the Respondent and perused the records. It is seen from the records and as stated in the counter affidavit by the respondent that fair rent to the property was fixed by the Fair Rent Committee on 18.03.2002 as per the guidelines issued in the Government order and the same was communicated to the appellants on 01.04.2002. Against that order of fair rent fixation the appellants did not file any appeal as provided under Section 34.A of the Act. What is challenged in these proceedings is only a reminder and nothing more, sent by the respondent requesting to pay the arrears of rent accumulated till 30.06.2011 so as to avoid eviction proceedings as rightly pointed out by the learned counsel for the respondent. The appellants after having received the fair rent fixation order in the year 2002 have slept over the matter for nearly 10 years and has now come before this form

challenging the reminder letter dated 15.09.2011 of the Executive Officer. However, a copy of the fair rent fixation statement and calculation sheet has been furnished to the appellants in open court. As fair rent has been fixed as per the guidelines issued in the Government Orders, the appellants neither dispute the fair rent fixation as exorbitant with relevant materials nor rent calculation as wrong. In the absence of any such dispute about the fixation of fair rent to the property and arrears of rent due under dispute, I find no merits in the appeal petitions which deserve to be dismissed as devoid of any merits. In fine the appeal fails and accordingly it is hereby dismissed as devoid of merit.

11. The appellants are directed to pay the arrears of rent as on date to the temple within 15 days from the date of receipt of this order. Liberty is also given to the appellants to approach the temple authority seeking necessary permission to carry out the repair works in the above premises, after paying the entire rental arrears if so advised. If the appellants fail to comply with the above directions within the stipulated period, the Executive Officer is at liberty to take appropriate action in accordance with law. With the above observation, the appeal petitions stands dismissed.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner

/true copy/by order/

Superintendent.

To

1. The Appellants through M/s K. Bhawatharini, Advocate
No.210, Law Chambers, High Court, Chennai. 600 104.
 2. The Executive Officer through M/s A.S. Kailasam and Associates,
86, Law Chambers, High Court Buildings, Chennai.600 104.
- Copy to:
3. The Joint Commissioner, HR&CE Admn. Dept., Vellore.
 - 4 & 5. The Inspector, HR&CE Admn. Department, Chingleput/Chennai
Circle VI.
 - 6 & 7. The Assistant Commissioner, HR&CE Admn. Department,
Kancheepuram./Chennai.34
 - 8 & 9. Extra.