

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

Thursday the 12th day of February, Two Thousand and Thirteen.

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

A.P.No. 50/2012

Between.

1. S. Pathikarasi W/o Late Sivalingam.
 2. M. Velayutham S/o Late Murugaiyan.
- .. Appellants.

And.

1. The Executive Officer,
Arulmighu Ekambaranathar Temple,
Kanchipuram. ... Respondent
2. T. Dhamodaran.
3. D. Kesavan.
4. M. Suresh ..Impleading Petitioners

In the matter of Arulmighu Ekambaranathar Temple,
Kanchipuram Town.

Appeal Petition filed under Section 34(A)(3) of the Tamil Nadu
HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated
15.07.2011 of the 1st Respondent/Executive Officer of the above
temple directing to pay the enhanced rent to avoid action under
Section 78 of the Act.

Order in R.Dis. A.P. 50/2012 (D2) Dated : 12.02.2013.

The above Appeal Petition having come on for final hearing
before me on 04.01.2013 in the presence of Thiru S. Thangavelu,
Counsel for the Appellants, Thiru P.V.Arul Phazham Nee, Counsel for
the 1st Respondent /Executive Officer and of Thiru N. Sathyamoorthi,
Counsel for the Impleading Petitioners, upon hearing their arguments
and after perusing the records and the matter having stood over for
consideration till this day, the following order is made:-

ORDER.

The above appeal petition has been filed under Section 34(A)(3) of the Hindu Religious and Charitable Endowments Act, 1959 against the order dated 15.07.2011 issued by the 1st Respondent/Executive Officer of Arulmighu Ekambaranathar Temple, Kancheepuram town directing the Appellants to pay the enhanced rent to avoid action under Section 78 of the Act.

1. The case of the Appellants is that they are the tenants of the property comprised in S.No.1052/2 admeasuring an extent of 1 Ground and 541 sq ft situated at Thoppai Mudali Street and Appaiyer lane Street, Royapuram, Chennai. They have been paying monthly rent of Rs.5/- p.m. as ground rent which was fixed long back. Fair rent to the property was fixed by the Fair Rent Committee at Rs. 2,200/- with effect from 01.11.2001 in 2005 as per G.O.Ms.No.353, dated 4.6.1999. The above order was challenged by the Appellants before the Commissioner in Appeal No.1/2006. The Appeal Petition was dismissed on 10.08.2007. The above order of the Commissioner was challenged before the Hon'ble High Court in C.R.P.No.3891/2008 and the said C.R.P. was allowed and the matter was remanded back to the Commissioner with direction to dispose the appeal after giving opportunity to both sides within a reasonable time of two weeks. After remand the Appeal Petition No.1/2006 was disposed of with directions to the Executive Officer to take appropriate action for fixation of fair rent in accordance with the revised guidelines issued in G.O.Ms.No.456 dated 9.11.2007, and if the appellant fails to agree for payment of such fair rent to be fixed, action as already proposed to cancel the tenancy of the appellant and action under section 78 and 79 of the Act for eviction may be taken.

2. In the mean time the sub-tenants under the appellants viz., T. Damodaran, Suresh and Kesavan has been regularized as tenants and fair rent was fixed to their portion of property occupied as per G.O. by the authorities and they are directly paying the fair rent fixed by the temple regularly. Meanwhile, the Appellants filed

R.C.O.P.No.453/2007 before the Court of Small Causes, Chennai against Tvl T. Damodaran and Kesavan under Section 4 of the Tamil Nadu Building (Lease and Rent Control) Act praying to fix fair rent to the property occupied by them at the Rate of Rs.6,223/- p.m. The said R.C.O.P was allowed on 20.12.2007 and the fair rent was fixed by the Court at the rate of Rs.6240/- per month for the premises admeasuring 367 sq ft occupied by Thiru T. Damodaran and Kesavan. Based upon the Fair Rent Fixation order of the Court of Small Causes, the Executive Officer by the impugned order fixed Fair Rent for the premises admeasuring 1736 sq ft under the occupation of the Appellants at Rs. 28,992/-p.m and directed the appellants to give consent to the said fixation and to pay the fair rent fixed, otherwise action under section 78 will be initiated.

3. The appellants contended that the 1st Respondent is well aware that the vacant land measuring 2941 sq ft (1 Ground and 541 Sq ft) owned by the temple has been in the tenancy of the appellants and their predecessors-in-title for well over 100 years on a monthly rent of Rs.5/- as fixed by the Temple under a duly registered agreement of lease dated 09.02.1928 and the rent has been paid regularly on due receipts. Further all the taxes due to the Corporation of Chennai, Water and Electricity charges have been paid for all these years only by the appellants. Even so, by order dated 01.07.2005, the 1st Respondent fixed the month rent for the whole extent of vacant land at Rs.2200/- and demanded payment from 01.11.2001 onwards. On appeal, A.P.No.1/2006 (Remanded) D2 by orders dated 26.06.2009, this Hon'ble authority was pleased to direct the Executive Officer of the Temple to re-fix the fair rent in accordance with the guidelines issued in G.O.Ms.No.456 dated 9.11.2007. While so, under the impugned orders the monthly rent has been fixed at Rs.28,922/- payable for a portion (unspecified) from 01.11.2001 and for the remaining portion from 01.07.2007, also reducing the total extent of land under tenancy to 1736 sq ft. The impugned order has been issued at the instance of vested interest for grabbing the Temple

lands, after forcing out the appellants to vacate by making wholly unjust and arbitrary demands for payment of huge amounts as arrears of rent. The impugned order is motivated, unwarranted and is an abuse of powers vested in the Executive Officer 1st Respondent. Therefore, the impugned order dated 15.07.2011 of the 1st Respondent/Executive Officer is liable to be set aside and to direct to fix monthly fair rent for the vacant land in S.No.1052/2 Royapuram, Chennai measuring an extent of 2941 sq.ft within specified boundaries owned by the Temple and held by appellants as tenants in accordance with G.O.Ms.No.456, dated 09.11.2007 and G.O.Ms.No.298 dated 20.7.2010 providing the guidelines for fixing the monthly rent for the vacant lands belonging to the temple and furnish a copy of working sheet prepared for arriving at the monthly rent.

4. I heard Thiru S.Thangavel, counsel for the Appellant, Thiru P.V. Arul Phazam Nee, counsel for the 1st Respondent, Thiru N. Sathyamoorthy, counsel for the Impleading Petitioners/Respondents 2 to 4 and perused the records. The impleading parties/ Respondents 2 to 4 have filed separate affidavit stating that Thiru T.Dhamodaran is occupying 630 sq ft, Thiru Kesavan 365 sq ft and Thiru Suresh 210 sq.ft respectively and each one has been regularized as a tenant of the temple by the authorities.

5. Previously, Fair rent was fixed for the entire 1 Ground 541 sq ft of landed property as per G.O.Ms.No.353 dated 04.06.1999 under the occupation of the appellants. But the same was not accepted by the appellants and challenged in A.P.No.1/2006 and the same was dismissed. In C.R.P. 3891/2008 filed against the said order, the Hon'ble High Court remanded the matter to the Commissioner for fresh disposal. After remand the Commissioner disposed the A.P.1/2006 with directions to the Executive Officer to re-fix the rent as per G.O. No.456 dated 09.11.2007. Meanwhile, the appellant filed R.C.O.P.No.453/2007 against the Respondents 2 to 4 who were sub-tenants under them, before the Court of Small Causes and get fixed the Fair Rent at Rs. 6240/- for the area admeasuring 367 sq ft leased

out to the sub-tenants by the appellants. Based on the above order of the Court, the Executive Officer has now fixed fair rent to the remaining area occupied by the appellants in the impugned order.

6. During the enquiry, the counsel for the appellants admitted that the appellants sub-let the property to different persons including Respondents 2 to 4. The Sub-tenants/Respondents 2 to 4 have been regularized as direct tenants by the temple. R.C.O.P.No.453/2007 filed by the appellants against sub-tenants clearly proves that the properties leased out to the appellants have been sub-let to other parties in breach of the terms and conditions of lease. Further, the appellants themselves by letter dated 24.01.2011 addressed to the Commissioner has stated that Thiru Dhamodharan who was a tenant under them, has been regularized as a tenant by the temple for 365 sq.ft and they are ready and willing to pay the fair rent to be fixed for the remaining area. Now they cannot plead to direct the Executive Officer to fix fair rent for the entire 2941 sq ft of land which shows their malafide, dishonest intention against the then subtenants and the temple and hence this prayer is rejected as not maintainable. So far as the prayer relating to revision of fair rent fixation as per the Govt. Orders in force, it is seen from the records, whenever fair rent to the property was fixed, the appellants who do not concede for such fair rent, is of the habit of challenging the notice issued by the Executive Officer of the temple one way or other. Therefore, that portion of the prayer also cannot be given as the appellants having violated the terms and conditions of lease and sublet the property to different persons as subtenants and enriched illegally is not entitle for any indulgence. The fair rent claimed by the 1st Respondent/Executive Officer is only on the basis of the Fair Rent Fixed by the Court of Small Cause as claimed by the Appellants in R.C.O.P.No.453/2007 and needs no interference.

7. The 1st Respondent is directed to take appropriate action against the appellants in accordance with law for breach of conditions of lease. The impugned order of demanding fair rent on the basis of

the Courts order holds good for calculating damages for use and occupation of the property actually under possession, occupation and enjoyment of the appellants. With the above directions the revision petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Petitioner through Thiru S. Thangavelu, Advocate, Madras Bar Association, High Court Buildings, Chennai. 104.
2. The 1st Respondent/Executive Officer through Thiru P.V. Arul Phazam Nee, Advocate, 18, Law Chambers, High Court Buildings, Chennai.104.
3. Impleading Petitioners/Respondents 2 to 4 through Thiru N. Sathiamoorthy, Advocate, 62, Law Chambers, High Court Buildings, Chennai.104.

Copy to:

4. The Joint Commissioner, HR & CE Admn. Dept., Vellore.
5. The Assistant Commissioner, HR & CE Admn. Department Kancheepuram.

6 &7 Extras