

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

Thursday the 28th day of February, Two Thousand and thirteen.

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

A.P.No.58 of 2012 / D2

Between.

1. V. Balachandar, S/o A.J. Venkatesan.
 2. V. Anandan, S/o A.J. Venkatesan.
- Appellants

And

T.V. Ramanatha Gurukul, Hereditary Trustee,
Arulmighu Thirtheeswaraswamy Thirukoil, Thiruvallur – ... Respondent
602 001.

In the matter of Arulmighu Thirtheeswaraswamy Temple,
Thiruvallur.

Appeal Petition filed under Section 34(A)(3) of the Tamil Nadu
HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated:
27.08.2012 of the Hereditary Trustee in informing the fair rent.

Order in A.P.No.58/2012/ D2/ dated: 28.2.2012

The above appeal petition having come on for final hearing before me
on 8.2.2013 before me in the presence of Thiru A. Palaniappan, Counsel
for the Appellants and M/s. S.D. Ramalingam, Counsel for the
Respondent. 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 filed under Section 34 (A)(3) of the act
against the notice dated 27.8.2012 of the Hereditary Trustee in informing
the fair rent.

2. The case of the appellants is that they are tenants in respect of lands belongs to Arulmighu Thirtheeswaraswamy Temple, Thiruvallur comprised in Survey No. 505/4 and 505/6 at about 35000 sq.ft. situated in C.V.Naidu Road, Thiruvallur. The lands are subject matter of tenancy by means of a Registered Lease Deed dated 9.1.1986 for a monthly rent of Rs. 200/- p.m. and the appellants are using the same for non-residential purpose for running a sawmill, timber and building material mart. The Respondent/Hereditary Trustee had issued a demand notice fixing the rent in respect of the land at Rs. 26,225/-. The impugned notice was promptly replied by the appellants on 17.9.2012 by a letter. The present appeal preferred by the appellants as against the fixation of the exorbitant rent by the respondent and demanding the same retrospectively. The rent fixed is unreasonable and without any justification. The impugned notice and fixing fair rent is not in consonance to the provisions of the Act and is liable to be set aside. The entirety of the demand in the notice in respect of the retrospective demand of rent is hit by limitation and is miserably barred by law of limitation. No opportunity was given to the appellants and the appellants had not participated in the process of fixation of fair rent and the appellants were not heard. The demand notice contains irrelevant particulars and information for the calculation of rent pertaining to the extent of land. The fair rent was fixed erroneously for 41,985 sq.ft. contrary to the actual extent of land of tenancy is only 35,000/- sq.ft.

3. In the counter affidavit the respondent contended that the appellants are the tenant with the temple in respect of the land comprised in Survey No. 505/4 and 505/6 measuring about 41,985 sq.ft. and the appellants are using the same for non-residential purposes. They are running a saw mill and the entire property is used for commercial purpose only. In accordance with the Government orders, the fair rent for the above property was fixed from 1.11.2001 onwards at Rs. 26,255/- taking into consideration of the guideline value

in respect of the survey numbers in which the property is situated. As per the Government orders the rent has to be increased once in three years by 15%. Taking into consideration of the above facts, the fair rent was fixed as on 1.11.2001 and the work sheet by adding 15% once in three years and the present rent payable by the appellants has been arrived at Rs. 39,930/-. The work sheet and method of calculation has been communicated to the appellants in and by notice dated 27.8.2012 for which the appellants have sent reply dated 17.9.2012 stating the objections. After considering the objections the respondent sent reply through their counsel on 13.10.2012 and demanded the fair rent as fixed since there was no valid objection made by the appellants. The Respondent further contended that there is no need to call the appellants in the process of fixing fair rent since the same is done as per government guideline and orders. The rent has been fixed as per the Government orders to all the tenants of the temple as per guidelines. The demand of retrospective fair rent is barred by limitation and unenforceable in law the appellants are put to strict proof of the same. The temple is entitled to claim the fair rent from 2001 onwards and no part of their claim is barred by limitation in view of amended Section 109 of the H.R. & C.E. Act. The property is situated in a prime locality and the market values of the lands have gone up in several folds. The appellants are paying meager rent that too not regularly, but the appellants are making profit from and out of the temple property.

4. I heard Thiru A. Palaniappan, Counsel for the appellant and Thiru S.D. Ramalingam, Counsel for the Respondent and perused the relevant records. The main contention of the appellant is that no opportunity was given to them in the process of fixation of fair rent and the appellant were not heard. But there is no need to hear the appellant. In 2009(6) CTC 512, the Division Bench of Hon'ble High Court of Madras held 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”

Accordingly fair rent fixation statement has been sent to the appellants vide impugned notice. The appellants also furnished reply on 17.9.2012. During the course of enquiry fair rent calculation statement fixed by the Committee has been furnished to the appellants. If the appellants want to submit any objections, they may file written objections to the Respondent within 7 days from the date of receipt of this order and after the receipt of the Written Objections if any, the Respondent should place the same before the Committee and pass appropriate order within 30 days thereafter. With the above directions the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order /

Superintendent.

To

1. The Appellants through Thiru A. Palaniappan, Advocate, Old No. 35, New No.71, Armenian Street, First Floor, 1B, Chennai.1
2. The Respondent through Thiru S.D. Ramalingam, Advocate, New No. 321, Old No. 156, Linghi Chetty Street, Chennai-1.

Copy to:

3. The Joint Commissioner, HR&CE Admn.Dept., Vellore
4. The Inspector, HR&CE Admn.Department, Thiruvallur.
5. The Assistant Commissioner, HR&CE Admn.Department, Thiruvellore.
6. Extra.