

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

Tuesday the 15th day of April, Two Thousand and Fourteen

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

A.P. 33 and 35/2013 D2

Between

Dakshinamurthy

..Appellant in both A.Ps.

And

**The Executive Officer,
Arulmighu Kachaleeswarar Temple,
Armenian Street, Chennai.1.**

.Respondent in both A.Ps.

In the matter of Arulmighu Katchaleeswarar Temple, Armenian Street, Chennai-1

Appeal Petitions filed under Section 34(A)(3) of the Tamil Nadu H.R.& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated 23.8.2013 of the Executive Officer of the temple fixing the fair rent. Common Order in D.Dis. A.P.33 and 35/2013 (D2) dated : 15.4.2014.

The above Appeal petitions having come on for final hearing before me on 15.4.2014 in the presence of Thiru N. Satyamoorthy, Counsel for the Appellant and Thiru S.D. Ramalingam, Counsel for the Respondent/Executive Officer. Upon hearing their arguments and perusing the connected records and the matter having stood over for consideration till this day, the following order is passed.

COMMON ORDER

The above appeal petitions filed under Section 34 (A)(3) of the Act against the notice dated 23.8.2013 of the Executive Officer of the temple in informing the fair rent.

2. The appellant contended that he is a tenant for the land measuring 740 sq.ft. and 618 sq.ft. respectively situated at

Kachaleeswarar Thotta Street, Chennai-1 for several years. Originally he has paid the rent for the said lands at the Rate of Rs.6/- and Rs.26/- per month. Thereafter, it has been enhanced to Rs.100/-for each land with effect from 1.1.1993. Thereafter it has been enhanced to Rs.1000/- to each land per month. The appellant has been paying the rents regularly without any default whatsoever. He has put up construction spending his hard earning money in the said land. The appellant and his sons are living in the house. He has received the impugned notice dated 23.8.2013 in which it has been stated that as per G.O.Ms.No.456, H.R.& C.E. and Tamil Development and Culture, dated 9.11.2007 and G.O.Ms.No.298, HR & CE and Tamil Nadu Development and Culture dated 20.7.2010 the rent for the said lands has been enhanced to Rs. 5247/- and 4337/-per month respectively with retrospective effect. Further in the said notice the Respondent has further claimed a sum of Rs. 5,31,913/- and Rs.4,39,451/- as arrears respectively. The respondent failed to give an opportunity to the Appellant before fixing the Fair rent for the said land so as to enable him to give his opinion or defence before fixing the fair rent for the said land so as to enable him to give his opinion or defence before fixing the said fair rent for the said land. The Respondent ought to have seen that the enhancement of monthly rent itself is arbitrary, the demand of the Respondent vide notice dated 23.8.2013 for a sum of Rs.5,31,913/- and Rs. 4,39,451/- respectively as arrears of rent is against law. The act of the Respondent is arbitrariness and unreasonableness which is the outcome of the unfettered powers. Viewed from any angle the impugned notice dated 23.8.2013 issued by the Respondent is liable to be set aside.

3. In the counter affidavit, the Executive Officer/respondent has stated that the temple is the owner of the land in Survey No. 2896 and a portion of lands measuring about 618 sq.ft. bearing Door No.33/18 and 748 sq.ft. bearing Door No. 33/19, Katchaleeswarar Garden Street, Chennai.1 were let out to the Appellant on a monthly rent of Rs. 1000/-

for each land payable according to English Calendar month. The appellant has not obtained any permission to put up construction from the temple and the Department. The property is used for non-residential and a portion as residential. The guideline value for the property in the year 2001 is Rs. 1388/- and Rs.1338/- per sq.ft. respectively. Hence as per the Government orders the rent was fixed in the year 2003 at Rs.2,479/- and Rs.3000/- respectively per month from 1.11.2001 and the same was communicated to the Appellant in and by letter dated 14.2.2003. In spite of the receipt of the same the appellant has not filed any appeal as against the said order. Subsequent to the Government orders in G.O.No.456 of 2007 the rent was increased to Rs.3279/- per month for the 618 sq.ft land and Rs.3968/- per month for the 748 Sq.ft for the land. The said revision of rent was also communicated to the Appellant in and by letter dated 27.8.2008. In spite of the receipt of the said letter the Appellant has not preferred any Appeal before the Commissioner. The fair rent has been fixed as early as 2001 and communicated in the year 2002 as per the Government order. The subsequent reductions or fixation is pursuant to the original rent fixed as per the earliest Government orders. Hence, there is no illegality. Several communications has been sent to the appellant to state his objections to the said letter and the amount claimed thereby impliedly admitting the increased fair rent. There is no arbitrariness or unreasonableness in the fixation of fair rent and the fair rent has been fixed as per the guidelines irrespective of the persons or the tenant and uniformly all the properties belonging to the temples.

4. I heard Thiru N. Sathyamoorthy, Counsel for the appellant and Thiru S.D. Ramalingam, Counsel for the Respondent/Executive Officer and perused the relevant records. The Counsel for the appellant mainly argued that no opportunity was given before fixing the fair rent. Hence the Executive Officer of the temple is directed to furnish fair rent fixation order along with calculation statement within 15 days from the date of

receipt of this order. The appellant has to give his objection if any, within 15 days after the receipt of calculation statement. After the receipt of the objection from the appellant, the Executive Officer should consider the above objection and inform the appellant along with fair rent fixation order.

In view of the above observation, the impugned notice issued is hereby set aside and the appeal petitions are allowed.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/by order/

Superintendent.

To

1. The Appellant through Thiru N. Sathyamoorthy, Advocate, No.62, New Law Chambers, High Court Buildings, Chennai.104.
2. The Respondent/Executive Officer through Thiru S.D. Ramalingam, No.321, (Old No. 156), Linghi Chetty Street, II Floor, Chennai 600 001.

Copy to:

3. The Joint Commissioner, HR & CE Admn.Dept., Chennai.34.
4. The Assistant Commissioner, HR&CE Admn. Dept., Chennai.34.
5. Extra.