

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

Monday the 2nd day of December, Two thousand and thirteen.

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

A.P. 44/2013 D2

Between

1. J.Vincent Pakianathan .. Appellant.
2. J.Sundarraaj
3. J.Robert Kennedy
4. J.Ratheeskumar
5. J.Joseph Nixon

And

1. The Joint Commissioner/Executive Officer,
A/m. Incorporated and Unincorporated
Devaswoms Chozharaja Thirukovil,
Head office,Suseendram, Nagerkoil,
Kanyakumari District.
 2. The Executive Officer,
A/m.Chozharaja Thirukovil, Nagerkoil,
Kanyakumari District.
- .. Respondents.

In the matter of A/m.Chozharaja Thirukovil, Nagerkoil,
Kanyakumari District.

Appeal Petition under Section 34(A)(3) of the Tamil Nadu H.R.&
C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated
04.09.2013 made in Proc.Rc.No.3164/2004 on the file of the Joint
Commissioner/Executive Officer, Incorporated and Unincorporated
Devaswoms, Suseendram, Kanyakumari District fixing fair rent.

Order in D.Dis. A.P.44/2013 (D2) dated : 2.12.2013.

The Appeal Petition having come for hearing before me on
12.11.2013 in the presence of Thiru R. Subramanian, Counsel for the

Appellant. Upon hearing the arguments and perusing the relevant records the following order is made:-

ORDER.

The above appeal petition filed under Section 34 (A)(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 against the order dated 4.9.2013 made in Pro. Rc.No. 3164/2004 on the file of the Joint Commissioner/ Executive Officer of the above temple informing the fair rent.

2. The appellant contended that the Joint Commissioner/ Executive Officer has passed the impugned order without hearing them. Various clause in G.O.Ms.No. 456 and G.O.Ms.No. 298 are not followed. The Respondent failed to see that the G.O.Ms.No.456 has held that the fair rent would be operative from 2001. The respondent claim from 1998 is illegal. The respondent ought to have fixed fair rent on the basis of the rent payable for the adjacent properties as per Section 34A of the Act.

3. In the Counter affidavit the Joint Commissioner/ Executive Officer has contended that the leasehold property is situated abutting National Highway in the northern side in the heart of Nagercoil Town. This property is situated in a very important place in Nagercoil Town opposite to District Club. Various other commercial complexes are situated adjoining to that property. Thus the leasehold property is situated in a commercial area and the appellant is using the leasehold property for commercial purposes for his wood log business and is earning substantial income by using the leasehold property. The allegations alleged in the ground No.1 of the appeal memorandum that the authorities have not given notice and heard the appellants before fixing fair rent is totally erroneous. The fair rent Committee members had visited and inspected the leasehold property in the presence of the predecessor of appellant M.P. Jabamalai and had measured the

leasehold property and had enquired with Jabamalai and has fixed the fair rent in accordance with law taking into consideration of the matters stated by the lessee also. There is no violation of the principles of natural justice or audi alterem partem as alleged. Principles of natural justice were fully complied with while fixing fair rent by the fair rent committee. The allegations stated in ground Nos.2 to 4 of appeal memorandum are also not correct. The appellants are aware of the details of the calculation of the fair rent. The Government orders are correctly followed. The fair rent committee had fixed fair rent at the rate of Rs. 3,150/- per month from 01.11.2001 onwards. That fair rent has been increased at 15% once in 3 years as provided in G.O.No. 456, G.O.No. 298 is applicable only for tenants who use the property for residential. The appellant is using leasehold property purely for commercial purposes and so the G.O.No. 298 is not applicable to the appellant.

4. I heard Thiru R. Subramanian, Counsel for the appellants and perused the relevant records. Originally the property in S.No.C 16/186 admeasuring 2943 sq.ft. was leased out to one Jebamalai father of the appellants. The said Jabamalai was died on 3.1.2011. Thereafter the appellants are occupying the property without any valid lease agreement. Hence, they have no locus standi to question the impugned order. Further, it is admitted by the appellant that the said property was leased out to his father form 1.12.1998 and the property has been used commercially. Since the appellants exploiting the property commercially, the fair rent has been fixed with effect from 1.12.1998 as per the guidelines issued in the G.O.Ms.No.56, C.T. & R.E. Dept., dated 19.2.1998, G.O.Ms.No. 353 dated 4.6.1999 and G.O.Ms.No. 456, dated 9.11.2007. The fair rent has been fixed by the fair rent committee as per Section 34 (A) of the H.R. & C.E. Act.

5. If the amount of rent paid for similar types of properties situated in the localities where the properties situated is less than the fair rent fixed, the appellant ought to prove with substantial evidence. Further,

as stated above, the appellants occupying the property without any valid lease agreement. Hence, the possession of the appellant is illegal, unlawful and it squarely falls within the term encroacher as contemplated under Section 78 of the Act. Hence, the contention of the appellant that no opportunity was given before fixing the fair rent cannot be sustainable.

For the foregoing reasons stated above, I find no valid reasons to interfere with the impugned order and the appeal petition deserves no merits. Accordingly the order dated 4.9.2013 of the Joint Commissioner/Executive Officer is hereby confirmed and the appeal petition dismissed as devoid of merits.

/typed to dictation/

**Sd. P. Dhanapal,
Commissioner.**

/ true copy/by order/

Superintendent.

To

1. The Appellant through M/s. R.Subramanian, Advocate, No.51, Law Chambers, High Court Buildings, Chennai. 104.
2. The 1st Respondent/Joint Commissioner/Executive Officer, A/m. Incorporated and Unincorporated Devaswoms, Suseendram, Kanyakumari District.
3. The 2nd Respondent/Sri Kariyam, Sri Nagaraja Devaswom, Nagercoil.
4. The Joint Commissioner, HR & CE Admn.Dept., Tirunelveli.
5. Extra.