

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

Friday the 2nd day of January, Two thousand and Fifteen.

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

A.P.13/2014 D2

Between.

Thiruvannamalai Sevasramam Educational Trust .. Appellant
rep.by its Secretary/Correspondent
Dr.D. Subburayan.

And

1. The Joint Commissioner,
H.R. & C.E. Department,Villupuram.
2. Esanya Madam,
Thiruvannamalai
Rep.by its Madathipathi
Srila Sri M.M. Meiyappa Gnanadesiga
Swamigal,
Kovilur Mutt, Karaikkudi Taluk,
Sivagangai District. .. Respondents.

In the matter of Arulmighu Esanya Madam, Thiruvannamalai.

Appeal petition filed 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 26.2.2013 of the Joint Commissioner, HR & CE Admn.Dept., Villupuram in fixing the fair rent under Section 34(A) of the Act in Pro.Rc.No. 6116/2011.

Order in D.Dis. A.P.13/2014 D2 dated : 2.1.2015.

The above Appeal Petition having come on for final hearing before me on 7.11.2014 in the presence of Ms. G. Sumitra, Counsel for the Appellant and Thiru E. Ganesh, Counsel for the 2nd respondent. Upon hearing their arguments and perusing the connected records the following order is made:-

ORDER.

The above appeal petition filed under Section 34(A)(3) of the Act against the order dated 26.2.2014 of the Joint Commissioner, Villupuram in fixing the fair rent under Section 34 (A) of the Act in his Pro.Rc.No. 6116/2011.

2. The case of the appellant is that the Trust for the purpose of running the school approached the 2nd respondent for leasing out the property and the 2nd respondent has also accepted the offer. Thereby a registered lease agreement dated 21.2.1994 as Document No. 1151 of 1994 for the two items of vacant land described thereunder one having an extent of 32,247 sq.ft. and another having an extent of 2997 sq.ft. situate in T.S.No. 87, 1st Ward, 4th Block, Esanyam Road, Thiruvannamalai District. The period of lease agreed in the said agreement was from 14.2.1994 to 13.2.2006 and the appellant has to pay the annual rent of Rs. 100/- per year to the 2nd Respondent for the vacant land leased out under the said agreement. The appellant was permitted to construct superstructure as per its requirements for running of the school. The appellant has also constructed the existing building in the vacant land leased out to the appellant and the appellant is in possession and enjoyment of the superstructure as per the terms of the lease and running the school. The appellant Trust is paying the tax and other charges levied over the superstructure and for the enjoyment of the property. The 2nd respondent had also filed a suit in O.S.No.208 of 2007 on the file of the District Munsif, Thiruvannamalai seeking ejectment of the appellant and for damages for use and occupation of the land leased out to the appellant and the said suit is pending. In the circumstances an order was passed fixing fair rent without hearing the appellant. Hence, the appellant filed W.P. 19222 of 2011 before the Hon'ble High Court, Madras and the same was ordered on 24.4.2012 and the Hon'ble High Court was pleased to direct the 1st respondent to fix fair

rent in accordance with law after providing opportunity to the parties. In pursuance of the same the 1st respondent called for an enquiry and without considering the case of the appellant, the 1st respondent has passed the impugned order. The lease between the appellant and the 2nd respondent is only in respect of vacant land, the 1st respondent ought to have fixed the fair rent only in respect of the land leased out to the appellant and not for the superstructure is now in existence. The 1st respondent without calling for objections from the appellant *suo motu* has arrived a calculation in the fixation of fair rent for the vacant land leased out to the appellant and without considering the guideline value of the land. The land next to the land of the appellant which is also belonged to the 2nd respondent had been leased out to one third party for commercial purpose for a period of 54 years for a monthly rent of Rs.700/-. If the same is taken into account, for the land leased out to the appellant, the same would come only around Rs. 5040/- per month. The 1st respondent erred in simply adopting the norms fixed by the PWD and government for fixing the fair rent without considering the nature of the lease in favour of the appellant.

3. In the counter affidavit, the 2nd respondent has stated that originally the leased premises were utilized by the then pontiff (Madathipathi) of Easanya Mutt viz. Sri la Sri Ramanatha Gnana Desika Swamigal for the purpose of running School for the poor children at free of cost ad for performing Arakattalai. After Swamigal attaining Mukthi, some third parties tried to encroach upon the premises. During 1991, the appellant approached the then Pontiff (Madathipathi) of Easanya and Kovilur Mutt to take lease of the said property for the purpose of running a school. Thereafter during 1994 too, a registered lease agreement was entered into between the parties for the period of 12 years upto 13.2.2006. By virtue of the lease agreement, an extent of 32,247 sq.ft. and 2997 sq.ft and the buildings lying therein has been leased out to the appellant trust for the paltry sum of Rs. 100 per year. The land and

building in the leased premises have been commercially exploited by the Appellant and they have been enriched by the income derived from the School running there at. The appellant have chosen to question the fixation of fair rent for the third occasion so as to protract from paying the legitimate rent and arrears to the Mutt. By and large, the appellant has also partly succeeded in their endeavor by not paying the arrears by not paying the arrears which amounts to Rs. 97,78,200/- upto October, 2014 and also by not paying the present monthly rent of Rs. 1,73,700/- . The appellant is continuing to pay the pittance of Rs. 300/- per year which is unacceptable and against the all canons of justice. Since the Government orders and relevant provisions of the Act are alone supreme and have overriding effect over the clauses of the Agreement, if it contrary to the provisions and allied Government Orders and the clauses of the agreement shall not prevent the authorities from fixing the fair rent from at least 1.11.2001, but however the Fair rent Committee considering the lease agreement existing between the parties, has in its magnanimity fixed the fair rent from March 2006 alone. By virtue of that, the appellant has been evaded from the liability to pay arrears prior to February, 2006. Whilso, instead of utilizing the benevolent fair rent calculation, the appellant has deliberately filed the present appeal so as to protract further from paying the arrears and present fair rent of Rs. 1,73,700/- per month. There are numerous records to show that the buildings have been constructed prior to the Lease agreement entered with the appellant and it is admitted fact that the property was leased out to the appellant with the buildings. The mere fact that the then Pontiff (Madathipathi) was running a School for poor and needy prior to the Leasing out the property to the appellant would prove the above factum. Even in the previous calculations, the appellant has not took such plea earlier and now so as to protract the payments, has took such frivolous stand which is unsustainable and contrary to the truth. The Committee well considered the Guideline value of the land apart from

that the fair rent Committee has to take into consideration the market rental value and guideline value whichever is higher to determine the fair rent. Further, as per the Revenue orders as per law governing rental fixations, the market rental value shall be determined by taking into consideration rent prevailing in the surrounding area upto 1.6 k.m. radius. The comprehensive rent calculation has been determined the members of the Committee in its appropriateness and accordingly, they determined the fair rent as per the provisions of the Act, allied G.Os. Rules and Norms fixed by the Public Works Department and Government. The comprehensive rent calculation itself explicitly provided the reasons and factors influenced and calculation. The pendency of the suit has no relevance to the fair rent fixation, since the fair rent is not the subject matter of the said suit, besides that the appellant is liable to pay the fair rent till he evicted under due process of law. The appeal is unsustainable and deliberately filed with the intention to evade from paying their legitimate dues and to further commercially exploit the property by paying pittance of Rs. 300/-per year for an extent of 35,239 sq.ft. of land and building lying therein.

4. I heard Thiru G. Sumitra, Counsel for the appellant, Thiru E. Ganesh, Counsel for the 2nd Respondent and perused the relevant records. The appellant challenging fair rent mainly on the following grounds : (1) Fair rent fixed without considering the guideline value of the land. (2) Only vacant land leased out to the appellant and buildings were constructed by the appellant. But fair rent has been fixed to the superstructure also.

5. Regarding guideline value, the fair rent committee shall fix the fair rent taking into account the prevailing market rental value and guidelines prescribed by the Government. As per the existing Government orders, the market rental value shall be determined by taking into consideration the highest rent prevailing in the surrounding area within the radius of 1.6 kms were the immediate property of the

religious institution situated. Further, the appellant has not produced any document in support of his contention that the guideline value taken by the fair rent fixation committee is not correct. Therefore the above objection has no basis and not sustainable.

6. Regarding, fixation of fair rent to the buildings, it is admitted by the appellant that some of the buildings are in exist prior to the year 1994. In the previous order dated 18.11.2011 passed by the Joint Commissioner, Villupuram it was observed that “நில உடமையாளர் வாடகைதாரருக்கு குத்தகைக்கு விடப்பட்ட 35,259 ச.அ. காலி நிலம் மற்றும் அதில் 1994க்கு முன்பு கட்டப்பட்ட பிளாக் எண்.1ல் 2757 ச.அ. கொண்ட கட்டிடத்திற்கும், பிளாக் 4-ல் 3276 ச.அடி கொண்ட கட்டிடத்திற்கும் நியாய வாடகை நிர்ணயம் செய்யப்படவேண்டுமென முடிவு செய்யப்படுகிறது.” The appellant herein had filed objection on 9.5.2011 and 24.5.2011. In the said objection he merely contended that depreciation should be calculated at 2% instead of 1% because the age of the building is more than 100 years. But in the impugned order, fair rent has been fixed to the entire buildings. On perusal of record, it is inferred that buildings were measured in the presence of the Vice Chairman of the Trust and he has also signed and the fair rent has been fixed to the entire buildings. Further the fair rent was also fixed in consultation with trust representative and Madathipathi. Hence, the contention of the appellant that no opportunity was given before fixing fair rent is not acceptable. But the main issue to be decided is whether the buildings constructed by the Mutt or the Appellant. Without deciding the above issue, the fair rent could not be fixed. Therefore, the impugned order suffers from infirmity to that extent only. Hence, it is ordered as follows:

(1) Both the appellant and the 2nd respondent Mutt is directed to produce records/documents related to construction of building before the Joint Commissioner. The Joint Commissioner after verifying the said documents place the same before the fair rent fixation committee.

(2). The committee should verify the documents and decide who constructed the building.

(3) Thereafter, fair rent has to be fixed in accordance with the provisions of the Act subject to compliance of the condition imposed in Sl.No.4 and communicated to the appellant within 3 months from the date of receipt of this order.

(4) Since, it is not in dispute that some of the buildings are in exist prior to 1994, the appellant is directed to pay the 50% of the fair rent fixed in the impugned order till fixation of fair rent as directed above. And also the appellant is directed to pay the 50% of arrears within one month from the date of receipt of this order. If the appellant failed to comply with the above order, the objection of the appellant need not be considered and the 2nd respondent is at liberty to take action in accordance with the law.

With the above direction, the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.

To

1. The Appellant through M/s G. Sumitra, Advocate, No. 35, Law Chambers, High Court Buildings, Chennai.104.
2. The 2nd Respondent through Thiru E. Ganesh, Advocate, No. 61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai 85.

Copy to:

3. The Joint Commissioner, HR&CE Admn.Dept., Villupuram. (By RPAD) (Along with files in (1) Rc.No. 2620/2011, (2) O.A. 10/89 (3) Rc.No.1578/2010 (4) Rc.No. 6116/2011.
4. The Assistant Commissioner, HR & CE Adm.Dept., Thiruvannamalai.
5. Extra.