

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

Monday the 16th day of June, One Thousand and Fourteen

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

A.P.2/2014 D2

Between.

Mallika Ammal W/o Ayub.

.. Appellant

And

**1. The Executive Officer, Arulmighu
Padaleeswarar Devasthanam,
Thiruppapuliyur, Cuddalore 607 002.**

**2. The Joint Commissioner,
H.R. & C.E. Department,Villupuram.**

.. Respondent.

**In the matter of Arulmighu Padaleeswarar Temple,
Thiruppapuliyur, Cuddalore.**

**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
26.11.2013 of the Executive Officer informing the fair rent.**

Order in D.Dis. A.P.2/2014 (D2) dated : 16.6.2014.

**The above Appeal petition having come on for final hearing before
me on 29.4.2014 in the presence of Thiru G. Devi, Counsel for the
Appellant and Thiru T. SudhanRaj, Counsel for the 1st
respondent/Executive Officer. Upon hearing their arguments and after
perusing the connected records and the matter having stood over for
consideration till this day, the following order is passed.**

ORDER

**The above appeal petition filed under Section 34 (A) (3) of the Act
against the order dated 26.11.2013 of the Executive Officer informing the
fair rent.**

2. The appellant contended that the 1st respondent ought to have given a prior notice before fixing any fair rent as per Section 34 (A)(2) and also as per instruction issued by the Commissioner, particularly in Commissioner's Na.Ka. 40651 of 2008 dated 2.2.2009. The fixation of fair rent by the 1st Respondent is exorbitant and arbitrary, since various Government orders including latest G.O.Ms.No.456, dated 9.11.2007 etc. are not followed. The 1st respondent ought not to have fixed any fair rent to the superstructure but ought to have determined the fair rent only for the temple land which fact has been admitted by the competent courts of law and also the then Commissioner vide Pro.No. 27958/2000 M1 dated 8.9.2001. The 1st respondent ought to have fixed fair rent a sum of Rs. 4000/- for the total extent of leased out land of 1050 sq.ft. even if 15% of the market value of the land is added every three years till the current year. The appellant was compelled to pay highly enhanced rent every year only under the threat of proceedings under Section 78 and 79 of the Act and in view of such payment without prejudice, the 1st respondent cannot concluded that the Appellant has admitted to pay the enhanced rent at the exorbitant rate unilaterally.

3. In the Counter Affidavit the respondent Executive Officer stated that one Mallikammal W/o Ayub was the tenant under the Temple in T.S.No.1752, Block 45, Ward 5, Lawrence Road, Cuddalore. The period for tenancy is for 3 years from 10.3.1983 and her tenancy expired on 9.3.1986. Hence after the expiry of her tenancy she herself became the encroacher of the temple land as per Section 78 (1)(b) of the Tamil Nadu H.R. & C.E. Act, 1959. And only because of the direction of the Commissioner in 2001, no action to evict Mrs. Mallikammal was initiated. But it will not forbid the respondent from seeking fair rent from the occupant from time to time. And the appellant cannot deny the fair rent citing the said order for ever. The order was passed based on the oral undertaking given by the husband of Mallikammal before the Joint Commissioner. Prior notice was given to Mallikammal on

23.6.2005. The guidelines issued in G.O.Ms.Nos. 353 of 1999, 131 of 2004 and 456 of 2007 were followed while fixing the fair rent. A detailed working sheet also was given to Mallikammal on the advice of the Joint Commissioner. This respondent followed all the guidelines in fixing the fair rent and enough opportunity was also given to Mallikammal. Since the said Mallikammal did not turn up, the fair rent was fixed and intimated to her. The arrival of Rs. 4,000/- as fair rent by the appellant is on the wrong side. The value of the temple property is very high and based on the guidelines only the present fair rent is fixed by this respondent.

3. In the reply affidavit, the appellant stated that she was compelled to pay a sum of Rs. 10,770/- by the authorities per month only to the land and not to the superstructure but suddenly without granting her any opportunity the respondents have increased the monthly rent at exorbitant rate of Rs.43,000/- which is said to include rent for land and superstructure forgetting the fact that it was admitted by the department that she is the owner of the superstructure for which she need to pay any rent to her own building to the Temple authorities who are entitled to seek rent per month only for the temple land. However without prejudice to the objection and right and claims she has paid increased higher rent to the 1st Respondent. It is unfair and untenable to allege that the order dated 26.11.2013 of the respondent was passed only based on the oral undertaking given by her husband before the 2nd respondent herein. Such oral undertaking will have to be proved by the respondents. It is not correct to allege that prior notice was issued to her on 23.6.2005 which has to be proved by the respondents. The working sheet was given to the counsel only in the last hearing date i.e. on 21.3.2014, she was very much shocked to see that the fixation of rent without any basis. It was stated in the working sheet as per G.O.Ms.No.353, rent was fixed at 0.3% of guideline value and fixed the same as Rs. 7080/- per month. But actually, from the year

1.4.2003 to 31.7.2007, the Guideline value was only Rs. 1260/- per sq.ft. in Laurence Road area and 0.3% of the total value was only Rs. 3557/-. But in the working sheet it was fixed doubly at Rs. 7080/-. If the respondent has correctly fixed the rent in 2004 as per the guideline value, subsequently she would not have faced the disproportionate further enhancement of rent without considering the proper guideline, the respondent has made the unilateral enhancement which is illegal, improper and against principles of natural justice. She was always represented by her husband due to her illness before the authorities and hence the fair rent was not fixed after granting her a fair and reasonable opportunity as per Principles of natural justice, the 1st respondent has falsely stated that she consented before the 2nd respondent for the fair rent and got a favourable order which saved her from eviction and it is shocking, unfair and unwarranted for an officer like 1st respondent to allege in para 9 of the counter that otherwise the order would have been different footing which amounts actually a threat and coercion to a lawful lessee of the temple land inspite of her payment of alleged huge arrears of rent which fact was not at all considered.

4. I heard M/s G. Devi, Counsel for the appellant and Thiru T. Sudhan Raj, Counsel for the Respondent/Executive Officer. The appellant mainly contended that no notice given before fixing fair rent and the respondent ought not to have fixed fair rent to the superstructure but for the land only. Initially the fair rent was fixed in the year 2005 and informed to the petitioner. Against which the petitioner neither preferred any appeal nor paid the fair rent. Since there was huge arrears, the lease of the petitioner was terminated by notice dated 23.6.2005. Subsequently, proceedings under Section 78 was initiated against the petitioner. In the said enquiry, the petitioner's husband has submitted that the petitioner is ready to pay the fair rent, if the fair rent is fixed after measuring the buildings since there was difference in the measurement. Accordingly, the fair rent has been fixed

and served to the petitioner on 26.11.2013 along with calculation statement. If she was aggrieved by the said fixation, she ought to have filed objection before the Joint Commissioner. The petitioner has not filed any objection before the Joint commissioner, but on the other hand she settled entire arrears as per the calculation statement. In view of this, the Joint Commissioner disposed of the proceedings initiated under Section 78 of the Act. Hence she is estopped from challenging the said fixation.

Further, the lease of petitioner was terminated in the year 2005 itself. After the termination of lease, there is no lease subsisting between the appellant and the 2nd Respondent/temple. Hence any lease entered between the temple and the appellant thereafter shall be construed as new lease only. Hence, the respondent/Executive Officer has fixed the fair rent based on 1.4.2012 guideline value. The suit property is situated in the prime locality of the Cuddalore Town and it worth several Crores. The petitioner is very much aware that the prevailing market rental value is higher than the fair rent fixed by the fair rent committee. If the suit property is leased out in public auction, it will fetch higher income to the temple. Even, if the petitioner feels the rent is higher, she is at liberty to vacate and deliver the vacant possession of the suit property to the temple.

Therefore, for the foregoing reasons stated supra, I find no illegality in the order issued by the 2nd respondent. Accordingly, the impugned order dated 26.11.2013 is hereby confirmed and the appeal petition is dismissed as devoid of any merit.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/by order/

Superintendent.

p.t.o.

To

- 1. The Appellant through M/s. G. Devi, Advocate, No.346/161, Thambu Chetty Street, Chennai -1.**
- 2. The Executive Officer through Thiru T. Sudhan Raj, Advocate, No.7, Law Chhambars, High Court, Chennai.104.**

Copy to:

- 3. The Joint Commissioner, HR&CE Admn.Dept., Villupuram.**
- 4. The Assistant Commissioner, HR & CE Admn.Dept., Cuddalore.**
- 5. Extra.**