

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

Monday the 28th day of March, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni, I.A.S.,
Commissioner.

A.P. 27/2015 D2

Between

M.Gurusamy Nadar

...Appellant

And

The Deputy Commissioner / Executive Officer,
Arulmigu Kallalagar Thirukoil,
Alagarkoil, Madurai District.

.... Respondents.

In the matter of Arulmigu Kallalagar Thirukoil, Alagarkoil,
Madurai District.

The 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 29.4.2008 of the Joint Commissioner, Madurai in fixing fair rent and subsequent notice issued on 6.2.2013.

Order in D.Dis.A.P.27/2015 D2 dated: 28.03.2016

The above Appeal petition came up for final hearing before me on 1.3.2016 in the presence of M/s.John, Counsel for the petitioner, M/s.P.Gopalan Counsel for the respondent. Upon hearing their arguments and having perused 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 29.4.2008 of the Joint Commissioner Madurai in fixing fair rent and subsequent notice issued on 6.2.2013.

2. The appellant contended that he is running a old sags business in Door No.46, North Perumal Maistry Street, Madurai which belongs to the respondent temple. The property tax paid by him was not taken into account by the respondent temple while arriving arrears of rent. The

appellant executed lease deed on November 1990. The fair rent was fixed by the fair rent fixation committee and the appellant was asked to pay Rs.12,000/-. He has filed objection and the respondent has agreed in writing to receive Rs.6000 per month as fair rent. So it is estopped from raising the rent. The fair rent fixing committee before visiting the building did not issue any notice to the appellant. The committee did not take measurement of the property. It did not ascertain from the next door neighbour as to what they pay for their leased building to make a comparison. The committee has not complied with mandatory conditions and therefore the fair rent fixed by the committee and the enhanced rent periodically fixed is not fair rent under the eye of law. Copy of the fair rent fixation order was obtained under the Right to Information Act. The adjacent site belonging to the respondent temple lies vacant, uninhabitable without fetching any income and it is not put to any use by the temple authority. The situation of the building is pitiable and it is situated in a 10 feet narrow lane and not even a showcase can be fixed and business done. The appellant is running a dull business with no adequate income by doing business in old Sags since the agriculture has declined. The electric connection though taken in the name of the respondent temple, it is being repaired and maintained by him. In fixing the fair rent excess land which is not in the use of the appellant and the imaginary lands were taken into account.

3. In the written submission the respondent contended that the above revision petition filed against the order passed in Na.Ka.No.1059/2009/B1 dated 6.2.2013 by the respondent temple, Madurai is neither maintainable in law nor on facts, when admittedly the petitioner did not challenge the earlier fair rent demand issued in Na.Ka.No.1059/2009/B1 dated 11.9.2009 directing him to pay the arrears of fair rent fixed as per the orders of the Government. Pursuant to the order of the Government for fixation of fair rent for the properties belonging to the Religious Institutions and also as per G.O.Ms.No.456, Tamil Development, Culture, Religious and Information Department, dated 9.11.2007, fair rent committee has been constituted by the

department and for the property in the occupation of the petitioner, fair rent committee fixed the fair rent at 18,093/- per month and the fixation of fair rent has also been communicated to all the tenants numbering 38 persons including the petitioner and all the tenants including the revision petitioner were given notice of demand for payment of fair rent along with the details of working sheet. Excepting the petitioner, all the other tenants have been paying the fair rent including the enhanced rent fixed once in three years as per the aforesaid G.O. The fair rent originally fixed Rs.18,093.- has been revised once in three years in accordance with the G.O. aforesaid by reducing it from 33 1/3% to 15% for commercial use and accordingly., the revised demand has been sent to the petitioner in Na.Ka.No.1059/09/A1 dated 11.9.2009 and the same has been acknowledged by him under which, the petitioner was called upon to pay the rental arrears work out to Rs.21,77,240/- as on 30.6.2009 after adjusting the payment already made by him. Due to mounting rental arrears, once again by another communication sent to the petitioner in Na.Ka.No.1059/2009/A1 dated 22.3.2013 calling upon the petitioner to pay the rental arrears work out to 32,39,372/- as on 22.3.2013 by RPAD and the same has also been acknowledged by him. Due to non-payment of rental arrears on the basis of fair rent fixed for the occupation of the property by the petitioner, proceedings have been initiated by the respondent temple under Section 78 of the TNHR&CE Act Madurai and on merits, by an order issued in Na.Ka.No.7665/2013-E1 dated 13.5.2015, the petitioner has been held to be an encroacher and consequently, this respondent has been directed to take possession of the property from the petitioner and the order of eviction has become final.

4. I heard M/s.John Counsel for the appellant, Thiru.P.Gopalan Counsel for the respondent and perused the relevant records.

5. The appellant mainly contended that (1) in the year 1998 the respondent fixed the rent at Rs.12,373/- After considering the objection filed by the appellant the same was reduced to Rs.6000/-. (2) Further, on 6.2.2013 the respondent issued a demand notice directing him to pay a

sum of Rs.32,12,987/- as arrears of rent. But fair rent was fixed without giving opportunity of hearing to the petitioner.(3) The fair rent fixation statement was not communicated to him and the same was obtained under RTI Act. (4) Property Tax paid by him was not deducted in the arrears. Fair rent fixed to the other tenants are very low.

6. In the year 1998, the fair rent has been fixed as per G.O.353 but the same was reduced arbitrarily by the temple authorities. Thereafter various Government Orders have been issued regarding fixation of fair rent. As per the Government orders the fair rent has to be fixed retrospectively. Accordingly fair rent was fixed, by the fair rent committee as per G.O.456 dated 9.11.2007 and communicated to the appellant by letter dated 11.9.2009 through RPAD and the same was duly acknowledged by the appellant. The appellant also requested the respondent temple to reduce the rent vide his letter dated 9.10.2009. Hence the contention of the appellant that the fair rent fixation statement was not served to him but obtained only under RTI Act is not correct.

7. The other contention of the appellant is the fair rent fixed to other tenant is very low. The appellant failed to note that the extent of area occupied by other tenants. The area occupied by the appellant is 2786 sq.ft. But area occupied by the other tenants are ranging from 50 sq.ft to 1376 sq.ft. The difference in the rent is due to the area under occupancy of the tenant. It is pertinent to point out that all the tenants except the appellant accepted and paid the rent fixed by the committee regularly. Even if the rent fixed is low, it could be revised in accordance with law. Further, if the appellant paid the property tax, he may deduct the said amount by producing the original receipts. It cannot be a ground to challenge the rent fixation.

8. Since the appellant failed to pay the rent fixed by the committee, the lease was terminated and proceedings under Section 78 were initiated against the appellant in the year 2013. To avoid the eviction proceedings he filed Writ Petition challenging the subsequent communication sent by the temple requesting the petitioner to pay the

arrears, as if the original fixation order was not communicated to him. Meanwhile the Joint Commissioner, Madurai by an order issued in proceeding Rc.No.7665/2013/E1 dated 13.5.2015, held that the appellant is an encroacher and ordered to evict him from the suit premises.

9. The fair rent has been fixed by the fair rent committee constituted under Section 34(A) of the TNHR&CE Act following the guidelines prescribed in various Government Orders. But the petitioner wants to pay the rent arbitrarily fixed by the then Trustees in the year 1998. He is squatting on the property by paying lesser rent and there is huge arrears of rent. He never thought about payment of arrears. The temple being the owner of the property has every right to fix the rent in accordance with law. The fair rent has been fixed in accordance with law.

Therefore I find no infirmity or illegality in the fixation of fair rent. The appellant is directed to pay the entire arrears within 15 days from the date of receipt of this order. If the appellant fails, the eviction order passed by the Joint Commissioner, Madurai in Rc.No.7665/2013/E1 dated 13.5.2015 shall be given effect. Further the respondent temple is also directed to take action under Section 79(C) of the Act to recover the arrears. With the above directions the appeal petition is hereby dismissed.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1. The Appellant through M/s.John, Advocate, 23, Law chambers, Madurai Bench of Madras High Court, Madurai 23.
2. The Deputy Commissioner /Executive Officer through Thiru.P.Gopalan, Advocate, No.55, Law Chambers, High Court, Chennai 104.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Madurai.
4. The Assistant Commissioner, HR & CE Admn.Dept., Madurai.
5. Extra.