

(2014) 03 MAD CK 0192

In the Madras High Court

Case No : Writ Petition No"s. 14422 to 14425 of 2013

C. Palanisamy

APPELLANT

Vs

The Commissioner, HR and CE Administration Department,
The Joint Commissioner, HR and CE Administration
Department and The Executive Officer, Arulmighu
Mayurananthasamy Temple

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34A 78

Citation : (2014) 03 MAD CK 0192

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Srinivasan, SC for Mr. B. Sivaraman, for the Appellant; S. Kandaswamy, Spl. G.P. (HR and CE) for R1 and R2 and Mr. R. Kannan for R3, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner was a lessee for four different commercial premises and he was paying the rent originally for a sum of Rs. 1,044/-, which was fixed in the year 1988. Subsequently, in the year 1998, the rent was increased to Rs. 1,400/- per annum and again, the rent was increased to Rs. 54,000/- in the year 2001. Since the petitioner has not paid the increased rent of Rs. 54,000/- and thereby he committed default, the third respondent initiated proceedings u/s 78 of the Tamil Nadu Hindu Religious & Charitable Endowment Act (in short "Act"), terminating the lease given to the petitioner, vide order dated 10.10.2002. Aggrieved by the same, when revision petition was filed in R.P. Nos. 55 to 58 of 2002, the first respondent dismissed the same on 26.09.2003. Thereafter, a writ petition was filed in W.P. No. 4478 of 2004 against the above said revision order dated 26.09.2003, whereby, this Court, by order dated 22.04.2010, dismissed the writ petition with a direction to the petitioner to file fresh application on the basis of G.O.Ms. No. 456 of 2007, dated 09.11.2007. Subsequently, when the

third respondent passed an order directing the petitioner to pay a sum of Rs. 16,45,556/- being the enhanced rent within 15 days, the petitioner sent a reply dated 22.06.2011 pointing out the issuance of G.O.Ms. No. 298, dated 20.07.2010 and that the infirmity committed by the respondent in fixing the fair rent, when the market value of the property was only Rs. 34 per sq.ft. during the year 2001. But, the third respondent passed an another order with calculation sheet for two buildings and three vacant site and thereby directed him to pay a sum of Rs. 24,37,516/- within 15 days. Subsequently, pursuant to the order of the third respondent, the second respondent, by order dated 13.12.2012, passed in M.P. Nos. 38, 39, 61 & 62 of 2012, directed the petitioner to pay all the rent arrears amount within 30 days. Aggrieved by the same, when revision petitions preferred, the first respondent, by order dated 02.01.2013, passed in R.P. Nos. 3 to 6 of 2013 D2, dismissed the revision petitions preferred by the petitioner. Hence, the present writ petitions are filed to quash the impugned orders passed by the first respondent. Learned Senior counsel appearing for the petitioner submitted that the first respondent has passed the impugned order without considering the case of the petitioner for fixing the fair rent on the basis of G.O.Ms. No. 298, dated 06.07.2010. He further stated that respondents 1 and 2 have not given any opportunity before fixing the fair rent, therefore, the respondent cannot now ask for a sum of Rs. 24,37,516/- towards arrears of rent. When the petitioner was not served with the order copy passed in Mu.Mu. No. 10044/2001 A3, dated 29.10.2001, on the basis of G.O.Ms. No. 353, dated 04.06.1999, it is not open to the respondents to say that the petitioner was a defaulter. Moreover, he has paid substantial amount, hence, he cannot be held as a defaulter. He finally pleaded that the petitioner is prepared to pay the same amount, if he is allowed to continue in the same shops.

2. Opposing the said submission, learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the petitioner has no basis to challenge the fixation of fair rent, for the reasons that although he has been in possession for the past 15 years, i.e. from 1998 onwards, he has not come forward to pay either the fair rent or the other arrears as stated above. He further submitted that the second respondent, by taking note of the fact that the petitioner has committed default for about 15 years in paying the rent, terminated the lease of the petitioner and thereby evicted him from the premises in the year 2002 itself, therefore, he cannot now ask for any opportunity regarding fixation of fair rent. When the petitioner refused to challenge the fixation of fair rent order dated 29.10.2001 and again refused to pay the arrears, he has no right to challenge the impugned orders. He has also brought to the notice of this Court a proceeding dated 26.02.2014 of the Joint Commissioner, wherein it is seen that the Joint Commissioner, after evicting the petitioner from all the four properties leased out to him, handed over the same to the third respondent temple.

3. Heard both sides.

4. It is an admitted fact that the petitioner was originally paying an annual rent of Rs. 1,044/-, which was fixed in the year 1988, therefore, according to the market value, it was subsequently increased to Rs. 1,400/- in the year 1988 and again, in the year 2001, it was increased to Rs. 54,000/- per annum. It is also an admitted fact that the petitioner has failed to pay the increased rent of Rs. 54,000/- and therefore, the temple administration, by taking note of the default committed by the petitioner, terminated his lease with effect from 31.10.2002. Therefore, the belated contention of the learned Senior counsel for the petitioner that he was not served with a copy of the order fixing fair rent is liable to be rejected. Besides, the leased properties are within the limit of Rajapalayam Municipal town and that the description of all four properties are ---

i) building bearing door No. 53/B5 to extent of 763.12 sq.ft.

ii) building bearing 53/B5/1 to an extent of 217.43 sq.ft.

iii) vacant site measuring 5996 sq.ft. in S. No. 276/A1

iv) vacant site measuring 11476.6 sq.ft. in S. No. 276/1. Admittedly, in the above said properties, the petitioner is running a weigh bridge with a godown and also a dumping yard. When he has been using these properties for commercial purpose, as per the guideline value given by the Sub-Registrar, Rajapalayam, vide his letter dated 10.12.2007, the fair rent was fixed at Rs. 257.30/- per sq.ft. The Executive Officer of the temple, in his letter dated 25.01.2011, intimated the fixation of rent at Rs. 257.30/- per sq.ft and thereby demanded arrears of rent. The petitioner, on receipt of the above said letter, sent demand drafts for the total value of Rs. 1,26,000/- along with his letter dated 11.02.2011 and in the said letter, he has not raised any objection regarding the fixation of rent. However, only after four months, he sent a letter dated 26.06.2011 raising objections by stating that the guideline value fixed by the Sub-Registrar was wrong and further requested for reduction of fair rent on the ground that the market value of the properties per square feet was at Rs. 34/-, but not Rs. 257/- as claimed by the Executive Officer. Even at this stage also, the petitioner did not come forward to challenge the fair rent, therefore, it is too late for the petitioner to make an excuse that he was not informed about the fixation of fair rent.

5. It is also pertinent to refer to Section 34A of the Act, which is extracted hereunder:--

34-A. Fixation of lease rent.--The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be fixed in the like manner once in three years by the said

Committee.

Explanation. -- For the purpose of this sub-section, "prevailing market rental value" means the amount of rent paid for similar types of properties situated in the locality where the immovable property of the religious institution is situated.

(2) The Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution concerned, shall pass an order fixing the lease rent and intimate the same to the lessee specifying a time within which such lease rent shall be paid.

(3) Any person aggrieved by an order passed under sub-section (2), may, within a period of thirty days from the date of receipt of such order, appeal to the Commissioner, in such form and in such manner, as may be prescribed.

(4) The Commissioner may after giving the person aggrieved an opportunity of being heard, pass such order as he thinks fit.

(5) Any person aggrieved by an order passed by the Commissioner under sub-section (4) may, within ninety days from the date of receipt of such order, prefer a revision petition to the High Court:

Provided that no appeal or revision shall be entertained under sub-section (3) or sub-section (5), as the case may be, unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision, as the case may be.

A mere reading of sub-section (5) of Section 3A of the Act clearly depicts that no appeal or revision shall be entertained under sub-section (3) or sub-section (5), as the case may be, unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision. Therefore, the intention of the petitioner for not filing any appeal or revision against the fixation of fair rent is very clear that he does not want to deposit the arrears of rent as fixed by the third respondent. However, without challenging order for fixation of rent, he has challenged only the termination order before the first respondent. The first respondent, by order dated 26.09.2003, passed in R.P. Nos. 55 to 58 of 2002, dismissed the revisions filed by the petitioner. The said order was challenged before this Court and this Court, by order dated 10.01.2012, passed in W.P. Nos. 5034 to 5037 of 2004, while dismissing the writ petitions, observed thus:

12. In my considered opinion, since the said G.O. came into force in the year 2007, failure to pay the arrears up to the year 2004 cannot be justified by quoting the G.O. The learned counsel appearing for the temple would submit that till today the petitioner has not paid any amount as rent though he has been in

occupation of the properties. The learned counsel appearing for the temple would further emphatically say that as of now, the petitioner is liable to pay arrears of rent which would roughly works out to Rs. 24,75,516/-.

13. In my considered opinion, such a defaulter who has been squatting upon a public property viz., a temple property, cannot have any indulgence at the hands of this Court. For all these reasons, I hold that the writ petitions are liable to be dismissed and accordingly, all the writ petitions are dismissed. The respondents are at liberty to evict the petitioner from the properties and proceed to recover the arrears of rent from the petitioner in accordance with law. No Costs.

When this Court has already come down heavily against the petitioner as extracted above by taking note of the conduct of the petitioner in not clearing the arrears of rent, I am not able to see any unreasonableness on the part of the respondents in terminating the lease given to the petitioner. Therefore, I find no infirmity in the impugned order passed by the first respondent. It is also pertinent to note that the second respondent, in his proceedings dated 26.02.2014, has taken over possession of all the four properties leased out to the petitioner, and to that effect, learned counsel for respondents 1 and 2 produced the above said proceedings and the same is also placed on record.

In fine, for the reasons stated above, I do not find any merit in the writ petitions filed by the petitioner and accordingly, they are dismissed. No Costs. Consequential, all the connected miscellaneous petitions are closed.