

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2009

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE RAJA ELANGO

W.A.Nos.471 to 474 of 2009

R.Vinayaga Sengunder .. Appellant in
W.A.No.471 of 2009

K.S.Natarajan Sengunder .. Appellant in
W.A.No.472 of 2009

Krishna & Co.
rep.by its Partner
K.N.Namasivaya Sengunthar
Old No.9/1, New No.13
Jones Road, Saidapet
Chennai 600 015 .. Appellant in
W.A.No.473 of 2009

Asiatic Enterprises
rep.by its Partner T.V.Balaji
Old No.6, New No.5
Jones Road, Saidapet
Chennai 600 015 .. Appellant in
W.A.No.474 of 2009

-Vs-

1. The Executive Officer
Arulmighu Karaneeswarar Thirukoil
Devastanam, Saidapet
Chennai 600 015

2. The Joint Commissioner
HR & CE
Nungambakkam
Chennai 600 034

.. Respondents 1 & 2 in all
the Writ Appeals

Appeals filed under Clause 15 of the Letters Patent against the order dated 2.7.2008 made in W.P.Nos.6784, 6785, 6786 & 10405 of 2005. Petitions filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records relating to the impugned proceedings dated 18.1.05 of the first respondent and quash the same as illegal against law.

For Appellants :: Mr.K.V.Anantha Krishnan
No appearance

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents :: Mr.T.Chandrasekaran
Special Government Pleader
(H.R.&C.E.)

JUDGMENT

(Judgment of the Court was delivered by S.J.MUKHOPADHAYA, J.)

As the appeals have been preferred against the common order and common question of law is involved, they are disposed of by this common judgment.

2. The appellants are running timber shops in the premises belonging to the temple, Arulmighu Karaneeswarar Tirukoil, Chennai (hereinafter referred to as "the temple") and were inducted as tenants since 1980 and 1999 respectively. In the year 2001, the rent was enhanced, but subsequently, by notices issued on 18th January, 2005, the rent has further been enhanced giving retrospective date of effect from 1st November, 2001 and arrears have also been claimed by the respondents. They preferred different writ petitions in 2005 challenging the order on the ground that (i) Fixation Committee report dated 22nd July, 2004 and Joint Commissioner's order dated 7th October, 2004 fixing rent were not served, only notices dated 18th January, 2005 issued by the Executive Officer were received; (ii) fixing of rent from retrospective date is illegal; (iii) insertion of Section 34-(A) to (D) during 2003 superseded G.O.Ms.No.353 dated 4th June, 1999 and hence fixing the rent on the basis of the G.O.Ms.No.353 dated 4th June, 1999 is wrong. Initially, interim stay was granted, but subsequently, by the common order dated 2nd July, 2008, all the writ petitions were dismissed there being alternative remedy of appeal available to the appellants.

3. It is stated that after the Court's order, they preferred statutory appeals on 14th July, 2008 before the Commissioner, which have not been numbered. In the meantime, notices have been issued terminating the tenancy for non-payment of the arrears.

4. Earlier the case was taken up on 20th April, 2009, when the following interim order was passed:-

"Meanwhile, Mr.Ananda Kannan, learned counsel for the appellants submits that the appellants will clear the arrears of revised rent from the date of knowledge i.e., from January, 2005 at the rate of Rs.7,940/- per month in W.A.No.471 of 2009, at the rate of Rs.3,500/- per month in W.A.No.472 of 2009, and at the rate of Rs.6,290/- per month in W.A.Nos.473 and 474 of 2009 after giving credit to the amount which has been paid already. Similarly, from 1st January, 2007 the appellants will clear the arrears of rent at the rate of Rs.9,131/- per month in W.A.No.471 of 2009, at the rate of Rs.4,629/- per month in W.A.No.472 of 2009 and at the rate of Rs.8,319/- per month in W.A.Nos.473 and 474 of 2009 after giving credit to the amount which has been paid already. These payments will be cleared by end of May, 2009."

5. The learned Special Government Pleader appearing on behalf of the respondents accepted that the appellants are paying the rent as per the interim order from January, 2005 at the rate shown by this Court and quoted above.

6. We have perused the records and also heard the learned Special Government Pleader appearing on behalf of the respondents.

7. It will be evident from the impugned order passed by the learned single Judge that the learned Judge, while noticed the stand taken by the appellants, as also taken in these appeals, has not entertained the writ petitions in view of the alternative remedy of appeal being available. In fact, a similar matter came up for consideration before this Court in Arulmighu Meenakshi Sundareswarar Koil Kadaikarargal Sangam, Madurai v. State of Tamil Nadu and others, 2000 (1) CTC 471, wherein, under similar circumstances, as against the enhancement of rent, the Court dismissed the writ petition with liberty to move before the appellate authority under Section 21. The said matter was taken up on appeal by the association of shop owners of the temple in Writ Appeal No.402 of 2000 and a Bench presided by K.G.Balakrishnan, Chief Justice (as he then was), by judgment dated 13th March, 2000, observed as follows:-

"3. The learned counsel for the appellant has submitted that the tenants of the temple cannot be compared with the tenants of the private properties and there is no basis for the Government to direct the authorities to fix rent at 8.38 per cent on the basis of the market rate. The learned counsel assailing the Clause 7 of the impugned order has submitted that such a fixation is nothing but arbitrary. He has also submitted that the members of the appellant association are very small merchants and they cannot afford to pay such a higher rent. We are not able to accept the said submission. The Government issued the said order only to guidelines to be followed in all the temples. The appellant has not established before us that Clause 7 of the Government Order directing the authorities to fix the rent at 0.30 per cent of the market rate is an arbitrary one. Since they are the guidelines, if any amount is fixed contrary to the same, the appellant can always approach the appellate authority under Section 21 of the Act as directed by the learned single Judge. Hence, we do not find any merits in the writ appeal. Writ Appeal is dismissed."

8. Similar was the view of the Division Bench in Writ Appeal No.849 of 2005 (A.Raghunathan v. The Executive Officer and two others), disposed of by judgment dated 21st April, 2003. Taking into consideration the aforesaid judgment in A.Raghunathan's case, the Division Bench presided by M.Katju, Chief Justice (as he then was)

observed as follows:-

"4. It is alleged by the appellant that by his demand letter dated 16.1.2005, the Executive Officer of the temple is now demanding exorbitant rent, failing payment of which he has threatened legal proceedings and eviction proceedings. In our opinion, if the landlord is demanding exorbitant rent which the tenant is unwilling or unable to pay, then unless the tenant has the protection of the Rent Control Act or some other statute, the tenant will have to vacate the property because that property does not belong to him. Such matters are purely contractual, unless some statutory protection is provided for. In the present case, there is no statutory protection at all for the appellant and hence if he is unwilling to pay the rent demanded by the landlord he has to vacate.

5. The matter is purely in the realm of contract and at any event writ jurisdiction is not the proper remedy. The writ appeal is dismissed. Consequently, WAMP.No.1605 of 2005 is also dismissed. No costs."

9. A Division Bench in Writ Appeal No.425 of 2007 (K.Narayanan v. The Joint Commissioner and another) by judgment dated 15th March, 2007, dealt with G.O.Ms.No.353 dated 4th June, 1999 and in paragraph-2 of the said judgment, the following observation was made:-

"2. We tried to find out the nexus of fixing the date such as 1.11.2001 for payment of enhanced rent. It was brought to the notice of the learned single Judge that vide G.O.Ms.No.353, dated 4.6.1999 the State Government issued revised guidelines for enhancement of rent at the rate of 33.31 once in three years. While so, the Government issued another order dated 8.8.2001 addressing the Special Commissioner and the Commissioner, HR & CE referring the earlier G.O.Ms.No.353, dated 4.6.1999 and two other letters of the Government and directed the Commissioner to implement the said decision dated 4.6.1999 with effect from 1.11.2001. The authority should have implemented the order way back in the year 1999 but it was implemented from the subsequent date that is with effect from 1.11.2001. In view of the aforesaid fact and that the property belongs to Devasthanam (temple), this Court is not inclined to interfere with the order passed by the learned single Judge. The writ appeal is dismissed. No costs."

10. Having noticed all the aforesaid facts including the amendment made by Section 34-A, the substance of the decisions were noticed by the learned Judge, as quoted hereunder:

1. The relationship between the petitioners and the temple is only contractual in nature and therefore, the Court cannot interfere with any dispute between them.

2. G.O.Ms.No.353, Tamil Development and Culture, Hindu Religious Department, dated 4.6.1999 is a guideline, which can be validly adopted by subordinate officers and executive officers of the temple.

3. Section 34-A of the Act is only an enabling provision in constituting the committee and the Executive Officers can either act upon such a revision or can by the general guidelines made by the Government.

4. If any party, who is aggrieved by such fixation on the ground that either the guidelines were not followed or it is exorbitant, there is a remedy provided under Section 21 of the Act and therefore, without availing such remedy, this Court cannot entertain the writ petition.

11. Subsequent to the judgment, Section 34-A was introduced. As per Section 34-A(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, prefer appeal to the Commissioner.

12. In view of the aforesaid ruling and the provisions of law, the learned single Judge having not interfered with the writ petitions, allowing the appellants to prefer statutory appeals, we find no ground to interfere with the said order. The appellants may raise all the questions they raised in the writ petitions before the appellate authority, who will decide the question taking into consideration the relevant law or record and the judgments rendered by this Court.

13. So far as the eviction of the appellants is concerned, this Court has already made it clear by order dated 20th April, 2009 as to what amount to be paid by one or other appellant(s). If the appellants pay the amount in terms of the interim order passed by this Court and continue to pay such amount till the statutory appeals are finally decided, the respondents should not evict the appellants from their respective shops. However, for non-compliance, i.e., if the fixed amount is not paid as per the interim order, it will be open to the respondents to take appropriate steps against the appellants.

The writ appeals stand disposed of with the aforesaid observations, but there shall be no order as to costs. Consequently, M.P.Nos.1, 2 & 3 of 2009 are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ss

To

1. The Executive Officer
Arulmighu Karaneeswarar Thirukoil Devastanam
Saidapet
Chennai 600 015

2. The Joint Commissioner (H.R.& C.E.)
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

+4 cc to Mr.K.V.Anantha Krishnan, Advocate, SR.No.33627, 33629 to33631

2 cc To The Government Pleader, SR.33760 to 33762

W.A.Nos.471 to 474 of 2009

MSM {CO}
TP/11.8.2009.

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