

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.471 of 2022
and W.M.P.Nos.520 and 521 of 2022

The Mylapore Club
Rep.by its Secretary
39, Luz Church Road
Mylapore, Chennai 600 004.

.... Petitioner

-Vs-

1.The Joint Commissioner / Executive Officer
Arulmighu Sri Kapaleeswarar Tirukoil
Mylapore, Chennai 600 004.

2.The Commissioner
Hindu Religious and Charitable Endowments
Department, Uthamar Gandhi Salai
Chennai – 600 034.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in respect of the without Prejudice Notice in Na. Ka. No. 980 / 2007 / A4 dated 22.12.2021 and quash the same as being illegal arbitrary and in violation of the law and directing the Respondents their officers sub - Ordinates agents or any other persons or entities claiming and / or acting under the said Respondents not to do any acts deeds and things and / or take any action in contravention of the G.O.3P No.4 dated 09.03.2007.

For Petitioner : Ms.Madhu Preetha
for Mr.R.Parthasarathy

For Respondents : Mr.T.Chandrasekaran
Special Government Pleader

ORDER

The demand notice dated 22.12.2021 issued by the Joint Commissioner / Executive Officer of Arulmighu Kapaleeswarar Temple, Mylapore is under challenge in the present writ petition. The petitioner club is a society registered under the Societies Registration Act and has been in existence for over a century, and has aimed at augmenting a holistic growth of its members by providing an avenue for extracurricular and leisure activities. The petitioner claims that they are lessee in occupation of the temple premises and paying the rent and that fair rent has not been fixed in accordance with the provisions of the H.R.&C.E., Act.

2. Section 34 of the H.R.&C.E., Act deals with alienation of immovable trust properties. Under Section 34, the maximum period of lease is five years and beyond the period of five years, the approval of the competent authority / Government is mandatory. In respect of fixation of lease rent, Section 34-A(1) stipulates as follows,

"34-A(1) 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 refixed in the like manner once in three years by the said Committee.”

3. Therefore, the committee constituted under Section 34-A of the Act is duty bound to fix the rent based on the prevailing market rental value and the guidelines as may be prescribed. The re-fixation is to be done once in three years by the Committee. Such mandatory procedures are to be followed by the competent authority of the H.R.&C.E., Department and in the event of failure, the authorities competent who committed lapse, dereliction of duty and negligence and caused financial loss to the temple properties are liable to be prosecuted in accordance with law. It is not as if that the authorities can re-fix the rent without following the procedures, but it is mandatory to follow the procedures stipulated under Section 34-A of the H.R.& C.E., Act for fixation and re-fixation of rent. More specifically, the rent must be fixed based on the prevailing market rental value. Thus, an assessment has to be made and accordingly the rent is to be fixed. But, unfortunately there are wilder allegations that the temple properties are mostly misused and the fair rent has not

been fixed in accordance with the spirit of Section 34-A of the Act. The active and passive collisions of the authorities are to be identified and stern actions are to be initiated without any misplaced sympathy by the higher officials. Protecting the temple and its properties are the mandate under the provisions of the Act and Rules. Once the H.R.&C.E., Department has taken over the temple and its administration, then they are submitting themselves for a clean and transparent administration, and for the protection of the temple, its belongings and its properties. Taking over the temple properties and committing the lapses, negligence and dereliction of duty is serious in view of the fact that the great souls, out of their devotion to the God, donated their valuable properties and their belongings to the deity and therefore, the wishes of the donors as per their intention is to be fulfilled. In the event of any violation, they are not only violating the provisions of the Act and Rules, but also violating the terms and conditions on which the properties are donated by the donors for the benefit of the temple and the devotees.

4. In the present case, the authorities have to verify whether the periodical fixation or re-fixation, as the case may be, has been done or not. It is not as if the valuable properties belongs to the temple are dealt with in a casual manner and the prevailing market rental value has not been fixed by following the procedures as contemplated under Section 34-A of the Act. Therefore, the authorities competent are bound to perform their duties vigilantly, diligently and in accordance with the Act and

Rules. The impugned demand notice issued on 22.12.2021 reveals that the rent was fixed from 01.07.2016 and the details regarding the rent fixed was communicated to the petitioner. Further, the breakup details were also furnished in respect of the arrears of rent to be collected. This being the factum, the petitioner has to comply with the demand or in the event of any objections in respect of the calculations, prefer an appeal before the competent authority in the manner prescribed under the provisions of the Act.

5. No writ against a demand notice or show cause notice is maintainable in a routine manner. A writ against a show cause notice or demand notice can be entertained only on limited grounds viz., if the same has been issued by an incompetent authority having no jurisdiction or if an allegation of malafides are raised. Even in such case, the authority against whom such malafides is alleged, the authority has to be impleaded in his personal capacity.

6. The impugned demand notice has been issued by following the procedures contemplated in accordance with the provisions of the Act and Rules and a communication has been given to the person concerned. On receipt of any such demand, the person against whom such notice is issued, may either comply with the demand made or raise objections before the competent authority or appellate authority in case of any objections to the demand so made. In the event of

objections, an adjudication is certainly warranted and such an adjudication must be done based on the documents and evidences available on record. However, such an elaborate adjudication cannot be done by the High Court under Article 226 of the Constitution of India.

7. The power of judicial review under Article 226 of the Constitution of India is to ensure whether the processes through which a decision is taken by the competent authority is in consonance with the Act and Rules or not, but not the decision itself. Thus, all disputed facts and circumstances are to be adjudicated before the competent authority or before the appellate authority concerned. This certainly is the reason why the High Courts are not entertaining a writ petition against the show cause notices and competent authorities and notices. The demand notices are issued based on initial determination made by the original authorities. In the event of any objection, then an adjudication must be done with reference to the documents and evidences. In the present case, if at all any dispute arises regarding the calculation, the petitioner is at liberty to approach the competent authority or the appellate authority by preferring an appeal in the manner prescribed. However, a writ petition need not be entertained at this stage and High Court cannot adjudicate the issues relating to the fixation of rent already made by following the procedures by the respondents. Even if the procedures are not followed by the authorities in the fixation of rent, they are bound to do so in accordance with the provisions of the Act and Rules.

8. This being the factum, the petitioner is bound to pay the fair rent in accordance with law. In the event of any dispute, they are liberty to approach the competent authority.

9. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

03.02.2022

Index : Yes/No
Internet : Yes/No
KST
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