

National Textile Corporation Limited vs The Commissioner on 15 September, 2023

Author: S.Srimathy

Bench: S.Srimathy

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.19754, 3702, 8851,
10468 of 2023 & 17484 of 2019 of 2023
and

W.M.P(MD)Nos.13969 of 2019, 16307, 16310, 3486,
8074, 9307, 8073, 8075, 3487 & 9301 of 2023

W.P.(MD)Nos.19754 of 2023

National Textile Corporation Limited,
Rep Through its Manager (Marketing).

... Petitioner

Vs.

1. The Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai.
2. The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowment Department,
Madurai Division,
Madurai.
3. The Executive Officer,
Arulmigu Menakshi Sundareswarar Temple,
Madurai.

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<https://www.mhc.tn.gov.in/judis>

4. The Assistant Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowment Department,
Madurai Division,
Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records and to quash the orders passed by the 3rd respondent in Na.Ka.no.2915/2010/E2 dated 15.07.2023 and to quash such the same as illegal and further direct the respondents herein to compute the enhancement of rent with prospective effect for the respective month from the year 2001.

In all Writ Petitions:

For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.S.Kameswaran
Government Advocate, for R-1, R-2 & R-3

Mr.V.R.Shanmuganathan, for R-3

COMMON ORDER

These writ petitions are filed by National Textile Corporation Limited. Since the issue involved in these writ petitions are similar in nature and the orders that are challenged is consequential order, hence all the writ petitions <https://www.mhc.tn.gov.in/judis> are taken up together and disposed of by a Common order.

2. (i) The writ petition in W.P.(MD)No17484 of 2019 is filed for writ of Certiorari, to quash the impugned order dated 30.12.2017 passed by the 2nd respondent in Na.K.No.2925/ 2017/E2.

2. (ii) The writ petition in W.P.(MD)No.3702 of 2023 is filed for writ of Certiorarified Mandamus to quash the impugned order dated 20.07.2022 passed by the 2nd respondent in Na.Ka.2915/2009/E2 and to direct the 2 nd respondent to remove the seal and allow the petitioner to run the showroom.

2. (iii) The writ petition in W.P.(MD)No.8851 of 2023 is filed for writ of Certiorari, to quash the impugned order dated 06.04.2023 the 4th respondent passed in Na.Ka.No.4126/2011-1/A1 as illegal.

2. (iv) The writ petition in W.P.(MD)No.10468 of 2023 is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 16.02.2019 passed by the 1st respondent in Na.Ka.No.4342/2019/M1 and as illegal and further direct the respondents herein to compute the enhancement of rent with <https://www.mhc.tn.gov.in/judis> prospective effect for the respective months from the year 2001.

2. (v) The writ petition in W.P.(MD)No.19754 of 2023 is filed for Certiorarified Mandamus to quash the impugned order dated 15.07.2023 passed by the 3rd respondent in Na.Ka.no.2915/2010/E2 as illegal and further direct the respondents herein to compute the enhancement of rent with prospective effect for the respective month from the year 2001.

3. The brief facts are that the petitioner is a Central Public Sector Undertaking under Ministry of Textiles, Government of India, running show rooms with non-profit motive and only to serve society. The petitioner and the 3rd respondent are having tenancy agreement from 1980 onwards, for more than 43 years having jural relationship under tenancy law. Till the year 2009 the rent for the subject property was Rs.4000/- and the petitioner had never defaulted in paying the rent. Only when the rent was exorbitantly increased the petitioner lawfully opposed the enhancement and therefore the petitioner cannot be termed as defaulter and encroacher. All of a sudden on 14.08.2009 the rent was increased to Rs.14,570/- commencing from 2001 to 2004 with retrospective effect. On the same date 14.08.2009 there was enhancement for the rent for a period from 2004 <https://www.mhc.tn.gov.in/judis> to 2007 and 2007 to 2010 which was also in retrospective effect. On 18.05.2013 there was an enhancement from 2010 to 2013, on 23.09.2017 there was an enhancement from 2013 to 2016 retrospectively. The contention of the petitioner is that respondents have increased rent retrospectively, from the year 2001 onwards, hence he had lawfully contested the case. But the respondents have initiated proceedings under various provisions of HR & CE Act and passed an order to vacate the petitioner from the premises on 10.09.2013. The petitioner was contesting the case.

4. Again on 30.12.2017 there was enhancement from 2016 to 2019 partly retrospectively and partly prospectively. Again on 04.02.2022 there was an enhancement from 2019 to 2022 which was also retrospectively. On 24.01.2023 the 3rd respondent enhanced the rent from 01.07.2022 to 30.06.2025, which was received on 04.03.2023 and the same is also retrospectively from 01.07.2022 to 31.01.2023. The petitioner submitted objections on 07.03.2023. On 10.04.2023 the petitioner received a notice informing the Fair Rent Committee meeting would be held on 20.04.2023. the petitioner had attended the meeting and submitted written objection stating the enhancement is retrospective and the <https://www.mhc.tn.gov.in/judis> measurement of premises is incorrect. The respondent after issuing notice dated 14.04.2023 visited the premises and measured the premises on 28.04.2023. On 15.07.2023 the respondent passed the impugned order by referring the petitioner as defaulter and encroacher. Aggrieved over the same the present writ petition is filed. The petitioner is relying on the Judgement passed by this court in W.P.(MD) No.10167 of 2014, dated 13.07.2017, wherein this Court directed the petitioner to submit a petition before the Commissioner and the Commissioner was directed to consider the petitioner's case, sympathetically as far as the arrears amount of the rent is concerned.

5. The 3rd respondent had filed counter wherein it is stated that the temple is having various land and buildings and one such property is let out to the petitioner in Ward No.6, Block No.10, T.S.No.1159 Door No.112 West Chithirai Street, Madurai admeasuring 1600 square feet was let out on monthly rental basis. As per section 34-A read with G.O.Ms.No.456 Tamil Development, Hindu Religious and Charitable Endowment News dated 09.11.2007 and other government orders fair rent is fixed by the Fair Rent Committee based on the market value of the property. The contention of the writ petitioner is that it was a <https://www.mhc.tn.gov.in/judis> unilateral revision and the same is not permissible. Infact the writ petitioner was put on due notice on 21.03.2012 for which the petitioner submitted reply on 07.05.2012, then the writ petitioner had accepted the revision of rent on 22.04.2013. The Fair Rent is fixed as follows:

- i. 01.07.2001 to 30.06.2004 as Rs.14,570/-
- ii. 01.07.2004 to 30.06.2007 as Rs.16,760/-
- iii. 01.07.2007 to 30.06.2010 as Rs.19,275/-
- iv. 01.07.2010 to 30.06.2013 as Rs.22,170/-

Now the petitioner cannot turn around and claim that the rent is fixed retrospectively. As per the revised rent the petitioner was directed to pay Rs.

19,77,465/- on 01.07.2012, since the petitioner did not pay the rental arrears, treating them as encroacher, the respondents had initiated section 78 proceedings to evict. The respondents had passed the final order on 10.09.2013 and the section 21 Revision petition was dismissed on 17.03.2014. Instead of paying the arrears the petitioner preferred W.P.(MD)No.10167 of 2014.

6. Initially there was an order of status quo on 25.06.2014, then the order was modified on 04.07.2014 to pay 50% of the arrears within a period of eight weeks. But the petitioner did not comply with the order. Then the writ <https://www.mhc.tn.gov.in/judis> petition was taken up for final hearing on 13.07.2017 wherein this Court had directed to consider the case of the petitioner sympathetically. Hence the petitioner submitted representation dated 12.10.2017 seeking waiver of rent and on 14.02.2018 it was clearly informed the waiver cannot be accepted.

Subsequently the respondents by calculating the arrears of rent along with damages for use and occupation upto March 2018 issued proceedings dated 08.04.2018 to pay Rs.21,97,272/-. The said order is appealable under section 21, but the petitioner had preferred W.P.(MD)No.17484 of 2019 with an intention to drag. As per G.O.Ms.No.456, the Fair Rent Committee after analyzing the market value and various other factors, further had fixed fair rent from 01.07.2016 to 30.06.2019 at Rs.49,600/- per month. Then for the period from 01.07.2019 to 30.06.2022 at Rs.50,050/- per month.

7. Pursuant to routine revision of rent the respondent vide proceedings dated 04.02.2022 directed the petitioner to pay a sum of Rs. 36,84,878/- towards arrears of rent and damages for use and occupation subsequent to the termination of rental agreement till 30.06.2022. On receipt of such proceedings, the petitioner paid Rs.2,65,992/- and Rs.44,332/- towards the <https://www.mhc.tn.gov.in/judis> same. After deducting the said amount the 3rd respondent issued the impugned demand notice dated 20.02.2022 directing the petitioner to pay Rs.34,88,654/- the balance amount within 15 days, failing which action under section 70(C) of the Act for recovery of amount. Even thereafter the petitioner had not come forward to pay the arrears of rent and damages. Hence the respondent sealed the premises on 14.12.2022. Even thereafter the petitioner kept quiet. The respondent after taking note of the fact that the writ petitioner is Central

Government Entity with an intention to give one more opportunity issued the impugned proceedings dated 24.01.2023, directing the petitioner to pay Rs.37,16,854/- for using the premises until November 2022, otherwise the 3rd respondent would be constrained to deal with the petitioner as willful defaulter and steps would be taken for evicting. Challenging the same the petitioner had filed W.P.(MD)No.3702 of 2023 and the same is pending without interim orders.

8. Thereafter based on the final orders of the Commissioner, the 3rd respondent by invoking the power under section 79(1) of the Act proceeded with the eviction process, which is challenged in W.P.(MD)No.8851 of 2023 and interim order was granted directing the 3rd respondent to receive the cheque and <https://www.mhc.tn.gov.in/judis> also directed to pay additional amount of Rs.5 lakhs. Based on the interim order, the petitioner had paid Rs.14,54,291/- and additional sum of Rs.5,00,000/-. On receipt of the payment, the 3rd respondent removed the lock and seal and permitted to run the shop. When the petitioner is already declared as encroacher with malafide intention, the petitioner had submitted representation to reduce the rent for which the Commissioner replied vide letter dated 16.02.2019, citing fair rent is already fixed as per provisions and if there is any violation, the same shall be questioned by way of appeal under section 30A. But after lapse of four years, the same is challenged in W.P.(MD)No.10468 of 2023 and the same is pending without any interim orders.

9. At this stage the writ petitioner submitted a letter dated 25.03.2023 to the Commissioner requesting to revise the rent and the same was forwarded to 3rd respondent for passing orders by following due process vide letter dated 05.04.2023 and 16.06.2023. Hence the 3rd respondent vide letter dated 15.07.2023 clearly informed the petitioner that they have fixed the rent and damages for using the premises after termination of rental agreement by following the norms. Under the Act the 3rd respondent temple is not having any power to relax the fair rent <https://www.mhc.tn.gov.in/judis> already fixed. Moreover, the fair rent can be fixed only for tenant and not for encroacher. The petitioner had come with this present petition mainly on the ground that the impugned order of fixing fair rent retrospectively is impermissible and the readiness of petitioner to remit the entire outstanding rent in the light of computation done with the prospective effect has not been appreciated and further it is claimed by the writ petitioner that fixation of fair rent is exorbitant and the same has been done unilaterally without giving opportunity to the petitioner herein. Initially the 3rd respondent revised the rent based on G.O.Ms.No.456 and other government orders, in the line of fair committee, after analyzing the market value and other relevant factors for the premises in the year 2012 and the same was never questioned by the petitioner till date. Infact the writ petitioner has accepted the revision of rent by letter dated 22.04.2013. But as per revision of rent the petitioner did not come forward to pay the arrears and the respondent took action under section 78 treating the petitioner has encroached on the ground of wilful default by proceedings dated 10.09.2013 and the revision petition was dismissed on 17.03.2014.

10. The writ petitioner challenged the same in W.P.(MD)No.10167 of <https://www.mhc.tn.gov.in/judis> 2014. If the waiver is granted to the petitioner, it will open flood gates and the said rejection was not questioned by the writ petitioner till date. As agreed by the petitioner, the monthly rent was revised as Rs.49,600 from 01.07.2016 to 30.06.2019, vide proceedings dated 30.12.2017 and the same is challenged in W.P. (MD)No.17484 of 2018. The

petitioner having accepted the rent and revision of rent as per norms in earlier writ petition in W.P.(MD)No.10167 of 2014, now the petitioner is estopped from questioning the subsequent enhancement of rent.

11. Subsequently the Hon'ble Court issued series of direction in W.P. (MD)No.16833 of 2017, vide order dated 12.02.2018, directing all the temples to take appropriate action for recovery of arrears of rent, failing, which directed to take steps to evict the lessees. Accordingly, the 3rd respondent temple took steps and initiated proceedings dated 08.04.2018, calling upon the writ petitioner to pay a sum of Rs.25,97,272/- towards arrears of rent and damages. None of the above grounds are factually tenable and legally sustainable. It is not correct to contend that revision of rent was 100% and is contrary to the government orders. In fact, the revision of rent was from 2001 and it was periodically increased at 15% every <https://www.mhc.tn.gov.in/judis> three years and it is not correct to contend that it was enhanced by 100%.

Similarly, the contention that before revising the rent no opportunity to show cause was issued also incorrect. Infact notice was given on 21.03.2012 to which the petitioner also submitted reply on 07.05.2012. Further the petitioner vide letter dated 22.04.2013, have accepted for revision of rent, it is pertinent to note here that against the said order of revision the rent, the writ petitioner has not availed the remedy of filing appeal under section 34-A(5) of the Act and the order revising the rent has become final.

12. Furthermore, when the writ petition had filed W.P.(MD)No.10167 of 2014 was taken up for final disposal on 13.06.2017 the petitioner had given up their right to challenge the revision of rent and have consented before the Court agreeing for enhancement of rent and now the petitioner cannot go back. The contention that the order of the respondent is contrary to the orders of the Court passed in W.P.(MD)No.10167 of 2014 is denied and submitted that the respondent had passed an order as per the direction of the Court. The plea of the petitioner for waiver of rental of arrears was negatived by proceedings dated 14.02.2018. The said proceeding dated 14.02.2018 was not challenged by the petitioner. <https://www.mhc.tn.gov.in/judis>

13. On the other hand, the said proceedings have been suppressed by the writ petitioner in the above writ petition. Therefore, the contention the order impugned in the petition is contrary to the orders of this court does not merit any acceptance. With regard to the contention of the writ petitioner that they have challenged subsequent revision rent for the period from 01.07.2016 to 30.06.2019 in W.P.(MD)No.17484 of 2019 is concerned mere pendency of writ petition challenging the demand for subsequent period will not take away the right of this writ petitioner to proceed with the original revision of rent which also accepted by the writ petitioner, or particularly when the same was pending without any interim orders. The rent was fixed for the premises as per the government orders. The petitioner was duly put on notice and the writ petitioner had admitted and accepted the said fair rent. There was no challenge to the fixation of fair rent till date and thus the fixation has become final.

14. On other hand on account of non-payment of arrears of rent, eviction proceedings were initiated and it is confirmed in the appeal and was unsuccessfully challenged by the petitioner. The writ

petitioner before this Court <https://www.mhc.tn.gov.in/judis> have admitted for enhancement of rent and have only made a request that they will approach the authorities for waiver of arrears of rent and they have approached the respondent for waiver and the same is negatived. The said order of rejecting the waiver was also not put a challenge and the same have also become final. The said rejection is suppressed in the above writ petition. In the said circumstances the present impugned order is only a communication calling the petitioner to pay the arrears and damages which does not require any interference. In the decision in A.A.Gopala Krishnan Vs. Cochin Devaswom Board and others reported in (2007) 7 SCC 402, has cautioned about the misuse of temple properties and the need to protect such properties. The petitioner being a Central Government owned corporation cannot claim any concession and cannot enjoy the possession at meagre rent. Therefore, the respondent prayed to dismiss the petition.

15. Heard Mr.K.R.Laxman, the Learned Counsel appearing for the Petitioner, Mr.S.Kameswaran, the Learned Government Advocate, appearing for R-1, R-2 & R-3, Mr.V.R.Shanmuganathan, the Learned counsel appearing for R-3 and perused the material documents available on record. <https://www.mhc.tn.gov.in/judis>

16. The Learned Counsel appearing for the 3rd respondent had vehemently opposed the plea of retrospective revision of rent and submitted that the enhancement is not retrospective. The enhancement is based on the Section 37-A of the HR & CE Act read with G.O.Ms.No.456, dated 09.11.2007 and the said G.O. states that the enhancement is from 01.11.2001 onwards. The said G.O. was already uphold by the Hon'ble Division Bench of this Court, therefore, in the present case also the enhancement was fixed from November 2001 onwards. But on perusal of the counter affidavit of the 3rd respondent, it is seen that the respondents have done revision from 01.07.2001 onwards i.e. 01.07.2001 to 30.06.2004, but the G.O.Ms.No.456 states the revision can be from 01.11.2001. Therefore, this Court is of the considered opinion that the rent from 01.07.2001 is against the G.O.Ms.No.456 and the claim of the petitioner has some validity.

17. The further contention of the petitioner is that the respondents have not issued any notice and hence it is violative of principles of natural justice. It is seen that the government had issued G.O.Ms.No.56 Commercial Tax and Hindu Religious and Charitable Endowment Department dated 19.02.1998 to fix <https://www.mhc.tn.gov.in/judis> fair rent to the land and buildings belong to the HR&CE department.

Subsequently the G.O.Ms.No.353 Tamil Development and Culture and Hindu Religious and Charitable Endowment Department dated 04.06.1999 was issued relaxing certain regulations stated in the earlier G.O. Thereafter also certain complaints were received alleging there was steep increase in rent and hence G.O.Ms.No.353 was kept in abeyance. Thereafter it was directed to enforce the G.O. from 01.11.2001 through Government Letter Ms. No.160 Tamil Development and Culture and Hindu Religious and Charitable Endowment Department dated 08.08.2001. In the meanwhile, section 34-A, 34-B, 34-C and 34-D was inserted in the Tamil Nadu Hindu Religious and Charitable Endowment Act through Tamil Nadu Hindu Religious and Charitable Endowment (Amendment) Act 2003 (Tamil Nadu Act 25 of 2003), which came into effect from 10.05.2003, wherein the provisions directed to form Fair Rent Committee consisting of Joint Commissioner, the Executive

Officer or Trustee or Chairman of Board of Trustees as the case may be.

18. Thereafter a High Level Meeting of the Hon'ble Chief Minister was held on 17.10.2007 and based on the decision G.O.Ms.No.456 Tamil <https://www.mhc.tn.gov.in/judis> Development and Culture and Hindu Religious and Charitable Endowment Department dated 09.11.2007 was issued wherein the increase of 33.3% was reduced to 15%, then building occupied other than commercial was reduced from 0.20 to 0.10 and the increase shall be once in three years.

19. In the present case the respondents have issued letter to the petitioner informing the revision in rent vide letter dated 22.12.1999, wherein it is stated that the committee had revised rent from 01.17.1998 as Rs.12,800/-. Absolutely there is no notice to petitioner before issuing this revision of rent dated 22.12.1999 and also there is no calculation sheet, the respondents have not indicated the basis on which the rent is fixed. Again, the respondent had issued notice dated 02.10.2004 wherein it is stated that the petitioner was paying Rs. 4000 as rent, but the respondent had increased 33.3% revision of rent from 01.07.1998 to 30.06.2001 as Rs.12,800/- and from 01.07.2001 to 30.06.2004 as Rs.17,862/-. The petitioner had not paid the same and also the petitioner had not executed fresh lease agreement, hence eviction proceedings is initiated under section 78.

<https://www.mhc.tn.gov.in/judis>

20. But, interestingly the respondent had issued eviction order dated 14.08.2003 itself, wherein it is stated in the said notice that the revision is fixed based on G.O.Ms.No.353 dated 04.06.1999. In the eviction notice dated 02.10.2004 there is no reference to 14.08.2003 notice. Therefore, it is evident that the 3rd respondent without issuing any notice to revise the rent had straight away issued eviction notice. At the cost of repetition, the show cause notice was issued on 02.10.2004, but eviction notice was issued prior to the same i.e. 14.08.2003. Moreover, the increase in rent is 33.3%. But the respondents have not taken into account that the increase was reduced as 15% subsequently through G.O.Ms.No.

456. Hence the increase in rent through letter dated 22.12.1999, 02.10.2004 and the eviction notice dated 14.08.2003 are illegal, since they are against G.O.Ms.No.456 and also violative of principles of natural justice. And this is substantiated by the judgments, which are discussed below.

21. Further as stated supra the sections 34-A to 34-D of the HR&CE Act was amended with effect from 10.05.2003 and thereafter the government had issued G.O.Ms.No.456 dated 09.11.2007. Prior to section 34-A, the 3rd respondent <https://www.mhc.tn.gov.in/judis> was executing lease agreement based on the G.O. and the said G.O. are only executive orders. Hence the agreement would be only contract between parties and has no statutory value to the said contract. But after the enactment of section 34-A the agreement would have the effect of statutory contract. When there is overlapping of "contract" and "statutory contract", the respondent cannot fix the cut off date from 01.11.2001, more so when the Act came into effect from 10.05.2003. After the enactment of 34-A, the respondent had taken a policy decision based on the High Level Meeting conducted by the Hon'ble Chief Minister's that the increase would be 15% and not 33.3% and the same was implemented through G.O.Ms.No.456 dated 09.11.2007. Therefore, the increase ought to be from

09.11.2007 only and not prior to 09.11.2007. Therefore, the first revision of rent at 15% shall be only from 09.11.2007 onwards.

22. It is seen that the respondents have not issued any proper notice after G.O.Ms.No.456 dated 09.11.2007. After a lapse of nearly two years the respondents had issued notice dated 14.08.2009 stating that based on the reduction of the increase from 33.3% to 15% the rent is reduced and stated that rent is fixed as Rs.14,570/-. Again, the respondent had not issued the calculation <https://www.mhc.tn.gov.in/judis> sheet and the basis on the calculation. It is only on 08.05.2013 the respondents had issued the basis of calculation. Even before issuing the calculation sheet and basis on the calculation the respondents had issue notice dated 21.03.2012 to the petitioner to evict from the premises. On perusal of the said notice it is seen that the notice is a Lawyer Notice, which can be termed as “pre suit notice”. It is pertinent to state the notice is not stating any of the previous proceedings, not referring to any order passed by the Fair Rent Committee, not referring to any calculation, in short, the notice is bald. It simple refers G.O.Ms.No.456 and the fixation for the period from 01.07.2001 to 30.06.2012 and the arrears amount. Therefore, it is evident that there is no notice calling upon the petitioner to submit objections for the revision of rent as per the G.O. and other provisions. Therefore, this Court is of the considered opinion there is violative of principles of natural justice.

23. The further contention of the petitioner is that the respondents have increased the rent retrospectively. As stated supra for the respondents had issued notice 14.08.2009 based on G.O.Ms.No.456, then issued “pre suit notice” dated 21.03.2012, then calculation sheet dated 06.05.2013. Even though the <https://www.mhc.tn.gov.in/judis> respondents have power to impose revised rent as per the G.O., the respondents are empowered to impose prospectively only. Interestingly the power is granted after enactment of the provisions of under section 34-A, which came into effect from 10.05.2003. It is in this section 34-A the constitution of “Fair Rent Committee” was allowed, which has statutory effect. And it is not stated when the Fair Rent Committee was formed and when the deliberations were carried out. Admittedly the petitioner was not issued any notice to attend the Fair Rent Committee meeting. When the respondents had issued notice for the first time indicating the increase rent, then the respondents are bound to impose prospectively only i.e. from 09.11.2007. Therefore, from the aforesaid narrated facts it is evident that the respondents have implemented the increase in rent effectively from G.O.Ms.No.456 dated 09.11.2007, but according to the respondents it is given effect from 01.11.2001 and the said G.O. was upheld by the Division Bench. However, it is seen that the revision of rent was given retrospective effect. The contention of the respondents cannot be accepted since the issue is already dealt with by various judgments.

24. The issuance of notice, natural justice and retrospective effect was <https://www.mhc.tn.gov.in/judis> considered by the Hon’ble High Court in the following cases:

- i. In the case of Arulmigu Anga
Kasivishwanathaswamy Temple Adimanaiveezh

Association Vs. State of Tamil Nadu and others reported in 2009 (6) CTC 512 has held that the objections of the lessee ought to be considered as per section 34A as well as based on the Circular issued in this regard and the relevant portion is extracted hereunder:

“15. The grievance regarding lack of opportunity must be accepted. We agree with the view expressed in CHEMPLAST SANMAR case reported in 2008 (4) CTC 793. But, this defect is cured by the proceedings dated 2.2.2009. Originally by proceedings in Na.Ka.No.40651/ 2008/ M3 dated 18.7.2008, the Government laid down guidelines for determination of lease rent and also directed that the Executive Officer should inform the lessee, the lease rent as determined as per Section 34A(2) of the Act. The Government also noted the fact that though 34A of the Act had come into force on 10.11.2003, certain guidelines had not been followed by the committee, while determining the lease rent and the defects are as follows:

1. rl;lg;gphpt[34V-d; fPHhd thlif ephz ; af; FGthy; epaha thlif ephz ; ak; bra;ag;gLtjpy;iy.

2. rpy ,dq;fspy; bray; mYtyh;. mwq;;fhtyh;. cjtp nfhl;lg;

<https://www.mhc.tn.gov.in/judis/bghwpahsh;Mfpnahh;fshy;kl;Lnk thlif eph;zapj;J mwpf;if mDg;ggLfpwJ>.

3. gy ,dq;;fspy;> khtl;l gjpthshpd; ,irt[lld;thlif ephz ; ak;

bra;ag;gLtjpy;iy.

4. re;ij kjpg;gpId fUj;jpy; bfhs;shky; tHpfh;l o kjpg;gpd; go epahathlif fz;fPL bra;ag;gLfpwJ.

5. murhiz vz;.353 ehs; 04/06/1999 kw;Wk; murhiz vz;.456 ehs; 09/11/2007 Mfpatw;wpy; bjhptpf;fg;gl;l tHp Kiwfisf; filg;gpof;;fhkny thlif ephz ; ak; bra;ag;gl;L tUfpwJ.

6. murhiz vz;.353 ehs; 04/06/1999 “gj;jp vz;.m-y;

bjhptpf;fg;gl;lthW tPLfs;; fhypkidfs;> filfs;> Fj;jif thlifapid “thlif eph;zaf;FG” K:yk; ephz ; ak; bra;ag;gl;L mwq;;fhtyh; FGtpd;ghprPyid me;je;j ,iz Mzah;fshy;

mq;;fPfhpf;fg;gLtjpy;iy.

7. murhiz vz;.353 ehs; 04/06/1999y; IX tJ gj;jpapy; bjhptpj;jthW K:d;whz;LfSf;F xUKiw thlif cah;tpid “thlif eph;zaf; FGtpd; K:yk; cah;jjg;gLtjpy;iy.

8. thlif ephz ; af; FGthy; eph;zak; bra;ag;Lk; thlifapid fz;fPL;Lj;jhSld; thlifjhuh;fSf;F mDg;gp xg;g[jy; bgWtjpy;iy.

16. The Government also noted that if guidelines are not followed, then the lease rent fixed by the committee is quashed either in appellate <https://www.mhc.tn.gov.in/judis> proceedings or by proceedings before the High Court wherein deficiency are pointed out. It was also noted that this only leads to the delay and loss to the lease rent for the temple and therefore, three strict guidelines were issued and it was also indicated that if they were not followed, stringent action would be initiated. Following this, further proceedings dated 2.2.2009 as per which, additional and clarificatory guidelines were issued and therefore, it is found that opportunity of raising objections is given to the lessee. The proceedings dated 2.2.2009 reads as follows:

1.thlif ephz; af; FGthy; eph;zak; bra;ag;gLk; thlifapid fzf;fPl;Lj;jhSld; thlifjhuh;fSf;F mDg;g[jy; ntz;Lk;.

2.fzf;fPl;Lj;jhspy; eph;zapf;fg;gl;Ls;s thlif. ,lj;jpd; gug;gst[.

fl;llj;jpd; gug;gst[. epykjpg;g[. FoapUg;g[tzpfj;jd;ik. thlif rjtPjk;. g[jpa thlif Mfpait Fwpj;J Ml;nrgidfs;

VjkuUg;gpd; mjid bka;g;gpf;Fk; Mtzq;;fSld; xUt
fhyj;jpw;Fs; kDjhuh;fs; gjpit mDg;g[jy; ntz;L
thlifjhuh;fSf;F mwptpg;g[mDg;gg;gly; ntz;Lk;.

3.nkny Fwpg;gpl;l tprhuizf;F thlifjhuh;fs; neuoa
tuntz;Lbkd typa[Wj;j njitapyi ; y. mth;fsplkpUe;J gjpiy
bgw;W ghprPypj;jhny nghJkhdJ.

4. nkW;Fwpg;gpl;lgo thlifjhuh;fsplkpUe;J bgwg;gLk; gjpy; thlif ephz ; af;FGthy; ghprPypf;fg;gl ntz;Lk;.

5. chpa fhyj;jp;w;Fs; gjpy; VJk; tutpy;iybadpy; ,Uf;Fk; Mtzq;;fspd; mog;gilapy; epaha thlif ephz ; ak; bra;jpl <https://www.mhc.tn.gov.in/judis> ghprPypf;fgl ntz;Lk;.

6. ghprPyidapd; mog;gilapy; chpa tptu';fis gjpt[bra;J. ,Wjpahd thlif ephz ; a cj;jutpid thlifjhuh;fSf;F tH';fp xg;g[jy; bgw ntz;Lk; nkW;fhZk; mwpti [uapd; go thlifjhuh;fSf;F thlif cah;t[Fwpj;J mwptpg;g[mDg;gp Ml;nrgizfs; bgw;W ,Wjpahf thlif eph;zak; bra;tjd; K:yk;. thlifjhuh;fs; ePjpkd;wj;ij mQqfp tHf;Ffs; bjhLg;gij jtph;f;fyhk; vdt[k;

bjhptpf;fg;gLfpwJ. ,r;Rw;wwpfi ; fapid bgw;Wf; bfhz;likf;fhd xg;g[jiy ,t;tYtyfj;jpw;F mDg;g midj;J rhh;epiy mYtyh;fSk; nfl;Lf; bfhs;sg;gLfpwhh;fs;

17. It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub section 2 of Section 34A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive Officer or trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing

market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to Sub Section 1 of Section 34A of the Act also makes it clear that what is meant by 'prevailing market value'. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the <https://www.mhc.tn.gov.in/judis> material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter, that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009. The direction contained therein shall be compulsorily followed." ii. In the case of M.Gurusamy Nadar Vs. Commissioner, Hindu Religious and Charitable Endowment Department reported in 2018 (3) MWN Civil 167 the Learned Single Judge had held that the rent cannot be fixed retrospectively and the relevant portion is extracted hereunder:

“15.It is well settled that an appeal cannot be an overall cure when the original authority has passed an order in violation of principles of natural justice. Hence in this case, this Court has no hesitation to hold that in this case fair rent has been fixed without following the guidelines and in violation of principles of natural justice.

16.In the order passed by the Commissioner, HR & CE Department, Chennai, it is stated that the rent has been fixed arbitrarily at Rs.6,000/- in the year 1998. When the Executive Officer of the temple has fixed the fair rent at Rs.6,000/- and that was the agreement till 2008, the tenant cannot be asked to pay more than what is agreed. Even, when the respondent is authorised to revise the rent, that cannot be with retrospective effect, as the tenant has indefeasible right to vacate the property, in case he is <https://www.mhc.tn.gov.in/judis> incapable of paying rent. The tenant cannot be mulcted by fixing rent arbitrarily with retrospective effect. Under the Transfer of Property Act, 1882, the rent should be primarily agreed between the parties. Except by agreement or a specific contract, there is no legal obligation on the part of the tenant to pay any rent that may be asked by the landlord.

17.It is no doubt true that the Government can issue guidelines for the purpose of fixing fair rent. In this case also, the Government originally framed guidelines in 1998 and thereafter, on 04.06.1999, vide G.O.Ms.No. 353 and subsequently the guidelines were revised by G.O.Ms.No.456, dated 09.11.2007. As per the Government Orders, the increase in rent once in three years was restricted to 15%. It was only on account of the fact that the previous Government Order issued in 1999 was implemented only w.e.f., 01.11.2001, a direction was issued to the temple authorities to revise the rent w.e.f., 01.11.2001. Since the revision of rent was suggested from 1998, a further direction was issued to revise the rent w.e.f., 01.07.1998 to 30.10.2001 by reducing the fair rent fixed by 15% from 01.11.2001. This Government Order cannot be interpreted to enable the temple authorities to revise the fair rent fixed even in a case where the fair rent was fixed earlier and paid till it was revised for the first time in

2008. Having regard to the settled principles of law, this Court is of the view that fixing the fair rent with retrospective effect is impermissible in law. However, the proceedings for fixing the fair rent was initiated for the first time in 2008, and it was promptly approved by the Joint Commissioner, HR & CE Department, by proceedings dated 29.04.2008. The tenant is liable to pay the rent fixed by authorities in terms of the Government Order, w.e.f., <https://www.mhc.tn.gov.in/judis> 01.05.2008. As pointed out earlier, the fair rent in this case was fixed by the Committee without issuing any prior notice to the tenant and without giving any opportunity to raise his objection with regard to extent of land in his enjoyment or with regard to value of the property.

18. It is relevant to mention the one important aspect of this matter in this context is that the guidelines issued by the Government indicated that the fair rent should be on the basis of the value of the building or on the basis of market rate, whichever is higher. The value of the building and the land need not be on the basis of market value, unless, there is a specific direction in this case by the Government. Having regard to the position that 0.06% of the value of the building can be the monthly rent for commercial building let out by the temple authorities, this Court is of the view that the fair rent may be even more than what it was fixed by the Committee earlier. Since the Committee has fixed fair rent in this case without notice to the tenant, this Court is of the view that the fair rent in respect of the property occupied by the petitioner as tenant is fixed arbitrarily and in violation of principles of natural justice. Without affording any opportunity, the demand notice dated 11.09.2009 was sent through RPAD, which is a clear violation of principles of natural justice. Hence the impugned order of the Commissioner, HR & CE Department, Chennai, in A.P.No.27 of 2015, D2, dated 28.03.2016, is set aside. It is open to the temple authorities to fix the fair rent w.e.f., 01.05.2008 following the guidelines issued by the Government, vide G.O.Ms.No.456, dated 09.11.2007 or any other subsequent guidelines or amendment in accordance with law, after giving an opportunity to the petitioner to raise his objection with regard to the <https://www.mhc.tn.gov.in/judis> basic factors, which are to be taken into account for the purpose of fixing fair rent w.e.f., 01.05.2008.

19. Though the Commissioner, HR & CE Department, Chennai, has confirmed the order of the Joint Commissioner, HR & CE Department, Madurai approving the rent suggested by the Fixation Committee, the third respondent, namely, the Executive Officer of the Temple is directed to place the matter before the Committee or the officers concerned, after issuing notice to the petitioner informing the petitioner about the basic factors, namely, the extent of land, extent of the building, probable market value of the land, cost of construction and other details, which are proposed to be taken by the Committee or the Officers concerned to fix the fair rent and after hearing whether he has any objection regarding the fixation of fair rent. Hence, the Civil Revision Petition is allowed and disposed of accordingly.” iii. In the case of W.A.(MD)No.503 of 2022 filed by J.A.C.Raj Vs the Commissioner, Hindu Religious and Charitable Endowment Department and others and in the case of W.A. (MD)No.509 of 2022 filed by M. Cruz Anthony Martin Vs the Commissioner, Hindu Religious and Charitable Endowment Department and others vide judgment dated 08.08.2022 the Honb’le Division Bench had referred to Arulmigu Angala Parameswari’s case and the M.Gurusamy’s case stated supra and <https://www.mhc.tn.gov.in/judis> had held the principles of natural justice is

mandatory and the retrospective increase cannot be permitted and the relevant portion of the judgement is extracted hereunder:

“9. Even though Section 34 (A) of the Act does not contemplate the issuance of notice before arriving at a fair rent, the observance of principles of natural justice is mandatory as the outcome of the proceedings affects the civil rights of parties. Therefore, the impugned demand notice fixing fair rent by the Committee cannot be sustained. Even though this Court expresses its concern and questions the propriety of fixing the fair rent with retrospective effect, the learned counsel appearing for the third respondent fairly admits that the lease rent that was increased earlier was taken note of and that the existing lease as per the lease agreement till 31.12.2018 will not be enhanced. It is represented that a proposal has also been submitted to the Joint Commissioner to the effect that the enhancement of fair rent will be with effect from 01.01.2019.”

16. From the above judgments it is evident that the 3rd respondent ought to take the objections of the petitioner, scrutinize it, then place the same before the committee. Then the committee would take note of the objections, thereafter finalize the rent. And the respondents should also follow the directions <https://www.mhc.tn.gov.in/judis> issued in the circular. Moreover, the previous Government Order issued in 1999 was implemented only w.e.f., 01.11.2001, a direction was issued to the temple authorities to revise the rent w.e.f., 01.11.2001, since the revision of rent was suggested from 1998, a further direction was issued to revise the rent w.e.f., 01.07.1998 to 30.10.2001 by reducing the fair rent fixed by 15% from 01.11.2001. Therefore, the G.O.MS.No.456 cannot be interpreted to enable the temple authorities to revise the fair rent from 01.11.2001. Also, in the third judgment referred supra, the court had questioned the propriety of fixing the fair rent with retrospective effect and the respondents had fairly admitted that the lease rent would not be enhanced retrospectively. Therefore, this Court following the aforesaid judgments is of the considered opinion that the respondents are not having power to fix rent retrospectively and fixing the fair rent with retrospective effect is impermissible in law. More so when the Act was amended in the year 2003 and then policy decision was taken to fix rent by reducing the hike from 33.3% to 15%, then any revision of rent ought to be fixed from the date of passing G.O.Ms.No.456 dated 09.11.2007.

<https://www.mhc.tn.gov.in/judis>

16. The further contention of the petitioner is that they had objected to the notice dated 21.03.2012 and had replied vide letter dated 07.05.2012 objecting for retrospective revision, wherein a plea in paragraph 6 of the reply, that the alleged revision of rent retrospectively with effect from 01.11.2001 based on the G.O. much later in time i.e. G.O.Ms.No.456 dated 09.01.2007 is not tenable under law. The provisions of TN HR & CE Act do not envisage and mandate such retrospective

revision. The reply further states that the details of revision were not given. But the contention of the respondent is that the petitioner had not filed any appeal under section 34-A(3) and also submitted that the reply dated 07.05.2012 cannot be considered, since it is only reply or representation.

The appeal ought to be in the prescribed format granted under “Application and Appeals Rules” as stated in G.O.Ms.No.3158 Revenue dated 29.07.1961, which is prescribed under SRO No.A.894 of 1961. The Rules are framed in exercise of power conferred by Section 116(2)(ii) of the Act. After hearing the argument of both sides, this Court is at loss since there are lapses on both sides which are as follows:

i. The petitioner after receipt of the said lawyer notice ought to have demanded the order which is passed by the Fair Rent Committee, so that it could have preferred an appeal.

<https://www.mhc.tn.gov.in/judis> ii. At least the respondent ought to have issued the copy of the order passed by the Fair Rent Committee along with the Lawyer Notice.

iii. At least the respondents after receipt of the reply dated 07.05.2012, wherein it has been specifically raised the plea of retrospective revision of rent, ought to have directed the petitioner to file an appeal in prescribed format.

iv. Even now the petitioner has not filed any appeal against the said Fair Rent Committee’s order. Interestingly in the counter this fact is stated repeatedly.

17. As stated supra the increase through letter dated 22.12.1999, 02.10.2004 and the eviction notice dated 14.08.2003 are illegal as the same is against G.O.Ms.No.456 and also violative of principles of natural justice. Subsequently the respondents had reduced the hike from 33.3% to 15% and 0.20% to 0.10% in G.O.Ms.No.456. Therefore, the respondents are bound to issue fresh notice after G.O.Ms.No.456 is passed. The respondents have issued notice based on G.O.Ms.No.456 only on 14.08.2009 and the same is not containing any details. The Lawyer notice dated 21.03.2012 cannot be challenged, since the same cannot be considered as impugned order. It is only on 06.05.2013, the respondent issued calculation sheet.

<https://www.mhc.tn.gov.in/judis>

18. Therefore, the case of the petitioner and the respondents ought to be considered in order to put an end to the litigation. The petitioner is Central Government entity and the 3rd respondent is temple and both are dealing with public money. The parties are litigating endlessly and in order to meet the ends of justice, this Court without relegating the case “to consider and pass orders” is passing the following directions:

i. This Court is of the considered opinion that “14.08.2009” ought to be the date from which date the revision of rent ought to be fixed, since the respondents have issued a

communication dated 14.08.2009 stating it as “Fair Rent Fixation order” without enclosing the calculation sheet by referring to G.O.Ms.No.456 dated 09.01.2007. Therefore, the revision ought to be from 01.07.2009 onwards.

ii. The respondents shall revise the rent of Rs.4000/- and re-calculate the revision of rent from 01.07.2009 to 30.06.2012 and thereafter increase the rent at 15% for every three years and so on.

<https://www.mhc.tn.gov.in/judis> iii. The respondents shall allow the petitioner to continue in the said premises.

iv. The petitioner and the respondents shall execute rental agreement based on the aforesaid directions.

v. The petitioner has already paid some amount based on the interim orders and the same shall be adjusted and the petitioner is further directed to pay the revised rent without default.

vi. The aforesaid direction shall be completed within a period of six weeks from the date of receipt of the copy of the order.

19. With the observations, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

<https://www.mhc.tn.gov.in/judis>
To

1. The Commissioner,

Tamil Nadu Hindu Religious and Charitable Endowment Department, Nungambakkam, Chennai.

2. The Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Department, Madurai Division, Madurai.

3. The Executive Officer, Arulmigu Menakshi Sundareswarar Temple, Madurai.

4. The Assistant Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Department, Madurai Division, Madurai <https://www.mhc.tn.gov.in/judis> S.SRIMATHY, J ksa

Common Order made in W.P.(MD)Nos.19754, 3702, 8851, 10468 of 2023 & 17484 of 2019
15.09.2023 <https://www.mhc.tn.gov.in/judis>