

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.3116 of 2014
and M.P.No.1 of 2014

P.Gnanasoundari

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Petitioner

Vs

Sri Srinivasamurthy Mandiram
Rep.by its Executive Trustee
No.1, Ellai Amman Kmoil Street,
West Mambalam,
Chennai – 600 033.

....

Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the judgment and decree dated 12.03.2014 made in C.M.A.No.55 of 2013 on the file of XVII Additional Judge, City Civil Court, Chennai confirming the fair and decreetal order dated 11.03.2013 made in I.A.No.8998 of 2007 in O.S.No.9218 of 1995 on the file of V Asst. Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.N.R.Chandran,
Senior Counsel for
M/s.K.Shakespeare

ORDER

This Civil Revision Petition is filed against the judgment and decree dated 12.03.2014 made in C.M.A.No.55 of 2013 on the file of XVII Additional Judge, City Civil Court, Chennai confirming the fair and decreetal order dated 11.03.2013 made in I.A.No.8998 of 2007 in O.S.No.9218 of 1995 on the file of V Asst. Judge, City Civil Court, Chennai.

2. The petitioner is tenant in O.S.No.9218 of 1995 on the file of V Asst. Judge, City Civil Court, Chennai and appellant in CMA No.108 of 2008 on the file of Additional District & Sessions Judge, Fast Track Court No.IV, Chennai. The respondent is the landlord on the file of V Asst. Judge, City Civil Court, Chennai and respondent in CMA No.108 of 2008 on the file of Additional District & Sessions Judge, Fast Track Court No.IV, Chennai. Originally the respondent filed the said suit against the petitioner before this Court in C.S.No.384 of 1995 for a declaration that the petitioner and two others are trespassers; directing the petitioner and two others to pay damages for wrongful use and occupation at Rs.6,000/- per year for the last three years ; directing the petitioner and two others to deliver vacant possession to the respondent and directing

the petitioner and two others to pay means and profits at Rs.50/- per month.

2 (a) The petitioner filed written statement in the month of December 1995. The petitioner filed application in C.S.No.384 of 1995 before this Court for appointment of Advocate Commissioner to measure the land under her occupation and fix the market value of the land. According to the petitioner, her husband Peter became a lessee under the respondent in respect of the land comprised in T.S.No.54 of Block No.19, bearing Old Door No.7, New No.31, Ellaianman Koil Street, West Mambalam, Chennai – 33. The area leased out to her husband Peter is one ground and 634 sq.ft. In the land leased out to him, her husband put up superstructure at his cost and was doing firewood business in one portion and was residing in the superstructure put up by him in another portion with his family members. When her husband paid the rent to the respondent in the year 1984, the respondent refused to receive the same. The rent sent by money orders were also refused by the respondent.

2 (b) The petitioner's husband filed a suit in O.S.No.477 of 1984 against the respondent for injunction restraining them from

interfering with his peaceful possession and enjoyment of the suit property. The relief of declaration for purchase of the land under City Tenants Protection Act was dismissed on the ground that if any action is taken against the lessor to eject the lessee from the land leased out to them, then the lessees are entitled to get protection under the City Tenants Protection Act. Subsequently, the petitioner's husband died on 23.10.1989 leaving the petitioner and their children as his legal heirs. After his death, the respondent recognised the petitioner as tenant and demanded the rent but refused to issue any receipts. In the said circumstances only, arrears occurred. The petitioner denied that she is a trespasser. Once the respondent has recognised the petitioner as tenant, they are estopped from saying that the petitioner is a trespasser. She is always ready and willing to deposit the arrears of rent. The petitioner is in absolute and continuous possession of the suit schedule property for more than 19 years and put up superstructure at her own costs. The petitioner is entitled to purchase the land for the value fixed by the Court. In the meantime, the suit was transferred to City Civil Court, Chennai and re-numbered as O.S.No.9218 of 1995 and I.A. was re-numbered as I.A.No.8998 of 2007.

2(c) The respondent filed counter and denied all the averments of the petitioner and submitted that the petitioner is not a tenant. The husband of the petitioner was lessee only for a period of three years which expired on 31.03.1979. Subsequently, the lease was not renewed. The petitioner was not recognised as a tenant by the respondent. She is only a trespasser. The husband of the petitioner filed O.S.No.4771 of 1984 for declaration that he is entitled to get the relief under City Tenants' Protection Act and for permanent injunction. The relief of declaration was dismissed. After the death of the petitioner's husband, the petitioner was not recognised as a tenant by the respondent and she has not paid any rent to the respondent. The petitioner is not a tenant as defined under the City Tenants Protection Act and therefore she is not entitled to seek the relief under Section 9 of the Act.

3. Before the learned Judge, the petitioner examined herself as PW1 and marked twenty four documents as Exs.P1 to P24. On the side of the respondent, no one was examined. Ten documents were marked as Exs.R1 to R10. The learned Judge, considering the materials on record, averments in the affidavit and counter affidavit, dismissed the application.

4. Against the said order of dismissal dated 11.03.2013 made in I.A.No.8998 of 2007 in O.S.No.9218 of 1995, the petitioner filed CMA No.108 of 2008 before the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai. The learned Additional District and Sessions Judge, Fast Track Court No.IV, Chennai, considering the pleadings, provision of Section 9 of the City Tenants' Protection Act, order of the learned V Asst. Judge, City Civil Court, Chennai and the judgment dated 17.03.1987 made in O.S.No.4771 of 1984, dismissed the appeal.

5. Challenging the said judgment and decree dated 12.03.2014 made in C.M.A.No.55 of 2013 confirming the fair and decreetal order dated 11.03.2013 made in I.A.No.8998 of 2007 in O.S.No.9218 of 1995, the present Civil Revision Petition is filed by the petitioner.

6. The learned counsel for the petitioner contended that the Courts below failed to appreciate Section 9 of the City Tenants Protection Act and erroneously rejected the claim of the petitioner. The learned Judge erred in dismissing the application of the petitioner on the ground that the respondent is a religious institution whereas this Court, in the judgment rendered in **A.S.No.768 of**

1974 [E.Venkatasubbiah v. The Commissioner, H.R & C.E. (Admn.) Department, Madras] which was marked as Ex.R8, held that the respondent is not a religious institution. The Courts below erred in holding that the petitioner denied the title of the respondent under Ex.R4 whereas the petitioner sought only clarification regarding the proposal of Government to acquire the land under his occupation. The respondent, in the notice dated 25.08.1990, marked as Ex.R3, admitted that the petitioner's husband Peter put up the superstructure and after his death, the petitioner is in absolute possession and enjoyment of the suit property and called upon the petitioner to pay the arrears of rent.

6 (a) The Courts below erred in holding that the petitioner is not entitled to claim protection under Section 9 of the City Tenants Protection Act on the ground that the petitioner has not paid the rent. In the judgment in O.S.No.4771 of 1984, the relief of declaration was rejected on the ground that only when the suit for ejectment is filed, the petitioner's husband is entitled to such declaration. The petitioner has filed Ex.P5, certificate of Registration of users of Weights and Measures issued in favour of the petitioner which would show that the petitioner is continuing the business of her husband. The learned Judge erred in dismissing the

appeal on the ground that application can be filed only when the suit is filed for ejectment and in a suit for declaration and possession. The learned counsel for the petitioner, in support of his contention, relied on the following judgments -

(1) 1995 Supp (2) SCC 397 [Hindustan Petroleum Corporation v. Raja D.V. Appa Rao Bahadur]

8. We do not think we need labour very much because clause 7 clearly points to the rights of the Indian Company. First of all, it contains a non obstante clause. Therefore, one will have to look at this clause and clause alone. Consequently, the statutory succession is not only in respect of the right or interest in any property but also their right under any lease or under right of tenancy which the foreign company had. Therefore, qua tenant, if the foreign company had a right to purchase the property that right will certainly enure to the benefit of the Indian Company. There cannot be denial of such a right. Of course, that will be subject to satisfying the condition laid down under the Madras City Tenants' Protection Act, 1976 (sic 1922) particularly Section 9. In this case, there is no dispute that if fulfils all the qualifications so as to entitle the foreign company to purchase under Section 9 of the City Tenants' Protection Act.

(2) 1998 (1) LW 115 [C.V.Kannappan and others v. S.N.Srikantan and others]

3. The purpose to which the plaintiff may put the property is an extraneous factor. Then he would switch over to Ranganthan v. Chinnadurai Nadar, and relied upon it extensively.

It was a case in which the tenant had admittedly taken nearly four grounds of open site on a monthly rent of Rs.25 for the purpose of carrying on business in firewood. A Commissioner was appointed and he found a small structure put up by the tenant in the property. The landlord stated that he would give an extent of 45 ft. x 30 ft which would be the minimum extent required by the tenant, whereas the Commissioner stated that having regard to the extent of the business and the coming of lorries at nights, and when servants were required to be present during nights at the site for unloading purposes, etc., the whole area was necessary for the tenant.

(3) 1958 (11) MLJ 516 [A.Ponnambala Achary v. K.Mani]

*Section 12 of the Act will have to be read consistent with the object and provisions of the enactment. The provisions of Section 12 only refer to the erection of building that is with respect to its type, nature, size, etc., and not to any other stipulation like its demolition and delivery of vacant possession. The provisions of Section 9 of the Act are not subject to any contract between the parties. Section 12 cannot be read so as to enable the parties to contract out of the statute. In *Thayarammal v. Junus Ckettiar* A.I.R. 1936 Mad. 844, Pandrang Rao, J., observed:*

The Proviso applies, in my opinion, only to stipulations regarding the erection of buildings that is to say, stipulations restricting the right of the tenant to build such buildings as he likes either as regards the size, their cost, their situation and so on, and it certainly cannot relate to stipulations cutting down or extinguishing altogether the right of the tenant to get compensation in respect of buildings built by him which is given to him by the Act.

(4) 1983 (11) MLJ 428 [M/s.S.Gopalakrishna and Bros. v. S.Nagamanickam]

6..... A tenant defined in *Section 2(4)* of the Act includes a lessee in possession of the land after the determination of the tenancy agreement. Since the petitioner continues to be in possession of the property after the determination of the lease, Exhibit A-2 and on the basis of the renewal, of the lease for a period of 7 years, he will clearly be a tenant as defined in the Act in respect of the area which he has retained after surrendering a portion of the leasehold property as per the compromise memo. It is not, therefore, possible to agree with the finding of the lower appellate Court that the petitioner is not a tenant as defined in the Act.

(5) 1971 (1) MLJ 200 [Haridas Girdhardas and Ors. v. Varadaraja Pillari and Anr.]

7. That takes us to the merits of the appellant's claim. Before dealing with it, we would like to dispose of the contention that it is only in a suit in ejectment, the 1st respondent could at all invoke to his aid the provisions of the Act. In our opinion, this is not a correct view of the effect of the Act. What it does is to protect the tenant, which term it has defined, from eviction in terms of the common Law under which, on expiry of the lease, the tenant is liable to surrender vacant possession after removing the the superstructures put up by him, however, valuable they may be. The availability of this protection to a tenant is not dependent upon filing of a suit in ejectment. The protection against eviction is a qualified one and the qualification no doubt operates in a suit in ejectment. That is to say, the right of the tenant to get compensation for the superstructures which he had put up on the land is a condition to its surrender or his right to exercise an option to purchase the land for its value. There is also the further protection to the tenant that he can apply

for fixation of fair rent. This right is also available to the landlord. The rights of a tenant under the Act are further protected by Section 12 which says that nothing in a contract made by him shall take away or limit his rights under the Act. The operation of this section again is not dependent upon a suit in ejectment and that means the protection covers the entire range of rights of the tenant under the Act. We think, therefore, that the 1st respondent is entitled to rely on his right under the Act in defence to the suit, which, as we understand, appears to be a device in the guise of a suit for declaration and specific performance to defeat the 1st respondent's rights under the Act. We say so because once the declaration asked for is given along with a direction for specific performance, as asked for by the appellants, it would at once mean an raid of the 1st Respondent's rights under the Act.

(6) 1966 (1) MLJ 1 (SC) [R.Venkataswami Naidu and another v. Narasram Naraindas alias Purushottamdas]

If it can be so enforced, S. 3 which gives the tenant a right to compensation for the building cannot be applicable to a case where there was such a covenant for the Act could not at the same time have countenanced a compulsory demolition of a building at the instance of the lessor and a right in the tenant to compensation for that building. The enforceability of the covenant, therefore, indicated the scope of s. 3 in spite of its wide terms and the equally wide definition of the word "tenant" in the Act. That scope was that the section had no application here there was such a covenant. Learned counsel for the lessor advanced the same reasoning summarising the position by the observation that the erection contemplated by s. 3 was a lawful erection, that is, not in breach of any covenant not to build.

**(8) 1992 (SC) 2295 [M.Ramasamy Pilladi (dead)
by Lrs. v. The Hazarath Syed Shah Mian Sakkaf
Khadiri Thaikal]**

6. In the facts and circumstances of this case the view taken by the High Court is wrong and is liable to be set aside. A perusal of the plaint dated 15.9.1967 clearly shows that the plaintiff had come forward with a clear case that the defendant was a tenant holding over and the High Court was not right to make out a new case beyond the pleadings.

8. Thus, in the facts and circumstances of this case we hold that the defendant appellant was entitled to the benefit of the provision of [Section 9](#) of the Act.

7. Per contra, the learned Senior Counsel appearing for the respondent submitted that the petitioner's husband himself ceased to be a tenant as the lease issued in his favour was not renewed. In O.S.No.4771 of 1984 filed by the petitioner's husband, the relief of declaration that he is entitled to protection under the City Tenants' Protection Act was rejected. After the death of the petitioner's husband, the petitioner was not carrying on the business in the suit property but she has sub-let the suit portion of the property to third party and is residing in the other portion. She has not paid rent as she is not a tenant. Therefore, she is not entitled to protection under Section 9 of the City Tenants' Protection Act. In support of

his contention, the learned Senior Counsel relied on the judgment reported in **2004 (1) CTC 781 [R.Sundara Naicker v. S.Chinnamal and others]** wherein it has been held as follows -

14. Nowhere in the written statement filed by the respondents defendants there is any plea to repudiate the contention made in the plaint, especially the allegation made in paragraph 7 of the plaint that the defendants were occupying the land as unlawful trespassers. It has not been pleaded by the defendants that they were the tenants. Instead of that, what they have pleaded in the written statement was only to the effect that they were living in the suit property for more than four decades.

15. Further, the capacity to live has not been described, especially when the plaint allegation was that the defendants live there as unlawful trespassers. Inasmuch as the written statement of the respondents defendants did not even plead that they were the tenants in the suit property, the reasoning found in the plaint that they were only trespassers is all the more probalised that a suit for recovery of possession was rightly filed. There is every justification for the plaintiff for not having filed a suit for ejectment and to file the suit for recovery of possession with, of-course, declaration of title.

16. Thus, there is not at all a suit for ejectment and added to that no relationship of landlord and tenants is proved. So, consequentially, the respondents are not entitled to file the applications under Section 9 of the said Act in a suit filed for recovery of possession based upon the unlawful possession of the defendants. The said applications filed under Section 9 of the said Act are not maintainable and in limine, they are liable to be dismissed.

8. Heard the learned counsel for the petitioner as well as the learned Senior Counsel appearing for the respondent and perused the materials available on record.

9. The petitioner has filed the present petition stating that the respondent is the owner of the vacant land and her husband has put up superstructure at his cost and was doing firewood business in one portion and was residing in the superstructure put up by him in another portion with his family members. It was admitted that the vacant land was leased out to the petitioner's husband on 29.03.1976 for three years and subsequently it was not renewed. According to the petitioner's husband, the respondent did not receive the rent tendered by him in the year 1984 and money orders sent to him were also refused by him. The petitioner's husband did not take any steps to deposit the rent into the court. On the other hand, he filed suit in O.S.No.4771 of 1984 for declaration that he is entitled to protection under Section 9 of the City Tenants' Protection Act. Even in the said suit, the petitioner's husband did not get permission or direction to deposit the rent. In the said suit, the learned XVI Asst. Judge, City Civil Court, Chennai has recorded a finding from the evidence of the petitioner's husband that he has gone to Mumbai and is not in possession of the petition

premises. This shows that the petitioner's husband was not carrying on business in the suit property. After the death of petitioner's husband, the respondent did not recognise the petitioner as tenant and has treated only as a trespasser. The petitioner has not substantiated her case that she was willing to pay the rent but respondent refused to receive the same and issue receipt and therefore she did not pay the rent which is not a valid ground for non-payment of rent.

10. The learned counsel for the petitioner produced the receipts for payment of rent which shows that the petitioner has paid rent only from 08.04.2009. From the materials on record, it is seen that both the petitioner and her husband did not pay the rent and did not take steps to deposit the rent. The land was leased out to the petitioner's husband and he was permitted to put up temporary superstructure to carry on his firewood business. In view of the fact that the lease issued in favour of the petitioner's husband was not extended after 31.03.1979, the petitioner's husband failed to pay the rent from the year 1984 and has gone to Mumbai, was not in possession of the petition property and the petitioner has not paid the rent after the death of her husband and explanation given by the petitioner for not paying the rent is not acceptable, the

petitioner is not a tenant as defined under Section 9 of the City Tenants' Protection Act. In view of the finding that the petitioner is not a tenant, the judgments relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. Both the Courts below have appreciated the facts and law in proper perspective and dismissed the application and appeal by giving cogent and valid reasons. There is no irregularity or illegality in the order impugned in this revision warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2017

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To

1.The XVII Additional Judge,
City Civil Court,
Chennai

2.The V Asst. Judge,
City Civil Court,
Chennai.

V.M.VELUMANI, J.

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C.R.P.(PD) No.3116 of 2014

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