

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2017

Pronounced on : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.2444 of 2011

and

M.P.No.1 of 2011

Gopal

.. Petitioner

Vs.

1.V.A.Sathyanarayanan
Managing Trustee of
Sri Thirunavukkarasu Swamigal Madam,
Vellore, No.25 Kottai Pillaiyar Koil Street,
Saidapet, Vellore, Vellore District.

2.Dhatchayani

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, against the Judgment and Decree in RCA.No.1 of 2006 dated 20.04.2011 passed by the Sub Court, Vellore, reversing the Judgment and Decree in RCOP.No.45 of 1987, dated 08.11.2005 passed by the Rent Controller/ Principal District Munsif, Vellore.

For Petitioner : Mr.P.Seshadri

For Respondents : Mr.A.U.Ilango (for R1)

ORDER

The instant Civil Revision Petition is filed as against the Judgment and Decree passed in R.C.A.No.1 of 2006 on the file of the Learned Subordinate Judge, Vellore. reversing the Judgment and Decree passed in R.C.O.P.No.45 of 1987 on the file of the Learned Rent Controller, Vellore.

2.The issue involved in filing of the R.C.O.P was to fix fair rent, a sum of Rs.5,000/- to the property in Door No.4/3 Officer's Line, Vellore Town, North Arcot District.

3.Before parting with the factual and legal aspects of instant case this court has recorded its deep concern about the length of the legal Proceedings to get justice in Rent Control Matters. The available records show that the R.C.O.P., was filed in the year 1987 and before this court CRP is filed in the year of 2011 and after the lapse of nearly about 6 years, the court get the opportunity to give its verdict finally. By this observation this court has held that the parties and their

Counsels must be fair enough to all extent for the earliest disposal of the cases concerned, in order to inspire confidence upon the litigants then only the people and the litigants would have more faith upon the legal parameter and the present justice delivery system.

4. Now, let this Court enter into the issue involved in the instant case. Admittedly, the Trustee of Sri. Thirunavukarasu Swamigal Madam, Vellore, filed the aforesaid Rent Control Original Petition for the fixation of fair rent as against the Respondents therein. The prayer sought for is to fix the fair rent for the petition property at a sum of Rs.5,000/- per month or as per the market value of the property. In the said proceedings, the 2nd Respondent filed counter and refuted all the averments of the petition inter alia, Further, it is contended by the 2nd Respondent therein that the claim of Rs.5,000/- as fair rent is very high. Further, the 2nd respondent also filed additional counter by questioning the jurisdiction of the Rent Control Tribunal by disputing the character of the Trust as Public Trust and thereby the Rent Control Act cannot have application at all.

5. The learned Rent Controller after considering the totality of the case concluded that as the petitioner did not prove the character of the

trust, the fair rent cannot be fixed. Feeling aggrieved over the Judgment and Decree passed in R.C.O.P.No.45 of 1987, the Petitioner/Landlord filed an Appeal in R.C.A.No. 1 of 2006. Here also after full-fledged proceedings, the Appellate Tribunal allowed the Appeal by set-aside the Judgment and Decree passed in R.C.O.P.No.45 of 1987. The Appellate Tribunal directed the Respondent/Tenant to pay the monthly rent from the date of filing of the R.C.O.P.No.45 of 1987.

6. Aggrieved over the Judgment and Decree passed in R.C.A.No.1 of 2006 dated 08.07.2005 the instant Civil Revision is preferred.

7. The learned Counsel for the Revision Petitioner has contended that the Appellate authority is erred in holding that the petition Trust is a Private Trust. Further, without considering the oral and documentary evidence the learned Appellate Authority concluded that the Petition Property is a private trust property. Moreover, he also contended that the fixation of the value of the property as Rs.200/- per square feet is wrong. As far as the Judgment and Decree passed in the R.C.A.No.1 of 2006 is concerned, it was passed without considering the facts and circumstances of the case. So he prays that the Civil Revision Petition is to be allowed. To support his arguments, he has relied on the

following citations:

(i) In the case of Narayana Guruviah Chetty's Estate and Charities by its Trustees P.Manavala Chetty and others Vs. K.V. Venkateswaran and another reported in CDJ 1981 MHC 413:

At the time when these two ejectment suits were filed (Ejt. S.Nos.76 and 78 of 1976), even private trusts were exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act. But, pending the suits the particular Government order, was amended extending the privilege only to the public trusts.

(ii) Mulla Gulam Ali and Safiabai D.Trust ..Appellant -Vs- Deelip Kumar and Co. .. Respondent reported in (2003) 11 Supreme Court Cases 772 (II):

A.Rent Control and Eviction – Exemption from operation of Rent Act – public charitable trust – Where management of the trust vested in members of a single family, but trust deed clearly showed charitable objects for benefit of the public (including opening and maintenance of schools and colleges, giving medical aid and assistance to

the destitute or orphans, and making donations in times of natural calamities) and lower courts had found that appellant trust was a charitable institution and that it was actually engaged in such activities, held on facts, the public character of the appellant trust was not taken away – High Court erred in allowing respondent tenant's second appeal – Civil Procedure Code, 1908, S.92 – T.N. Buildings (Lease and Rent Control) Act, 1960 (18 of 1960), S.29

B.Trusts and Trustees – Public Trust – Character of – Public Character of trust, held, is not taken away by the fact that control of its administration is vested in a particular group of people – Clarified that in case of maladministration or where objects not carried out for benefit of public remedy lies in provisions of S. 92 Cpc – Civil Procedure Code, 1908, S.92 – Hindu law- Religious and Charitable Endowments – Public or Private. सत्यमेव जयते

(iii) The Commissioner HR and CE Administration
Department Nungambakkam High Road, Madras – 34
..Appellant -Vs- C.V.Sudharsan and another .. Respondents
reported in 2000 (II) CTC 559:

Hindu Religious and Charitable Endowments Act, 1959, Sections 6(16), 6(17) and 6(19) – Document creating an absolute endowment of property belonging to founder to meet expenses for Thadhiyaradhana (offering food to devotees) in Perumal temple in Madras – Document reciting that rental income accruing from property after deducting expenses for house repairs and tax should be used for above purpose – Founder of charities intended to provide free feeding of pilgrims in temple – Founder has totally divested himself of any right to property – Endowment can be either by express dedication or necessary implication – Founder inscribed stone with words that property had been endowed and got it impleaded in property – Such endowment is referred to in subsequent partition deed – Declaration and dedication are clear and unambiguous – Any observance of religious character whether connected with math, temple or not is religious charity – Any property dowed for performance of any religious charity would be specific endowment – Feeding of pilgrims in temple after same is offered for deity is public

charity and is of religious character – Endowment created under partition deed is specific endowment - (Para's 21,22,24,26)

Hindu Religious and Charitable Endowment, Act 1959

– Trust – Private Trust and Public Trust – Provision in document for feeding of pilgrims in perumal temple – Beneficiaries under such documents are incapable of being ascertained – Such trust is public trust.

(iv) A.Venkatasamy Naidu Vs. State of Tamil Nadu reported in CDJ 1972 MHC 298:

(1)The State of Tamil Nadu, through the State representative (Land Reforms), the authorized Officer, Land Reforms, Madurai 2 (the respondent herein) issued a notice dated 04.04.1970 under section 9(2) (b) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Act LVIII of 1961) (hereinafter referred to as the Act), directing the Petitioner herein to show cause why he should not hand over 4.25 standard acres from out of his private trust lands. According to the respondent, the petitioner is having a

private trust, that the private trust is entitled to hold only 30 standard acres and that since he is owning 34.25 standard acres, he has to declare an extent of 4.25 standard acres as surplus holding. The petitioner alleged before the respondent that the trust is exempted from the operation of the act and that he would produce necessary documents and sought extension of time to file his objections to the notice under section 9(2)(b). In spite of several opportunities given to the petitioner to file his objections, no objection was filed by him before the respondent. Finally, the respondent rejected the further request for grant of extension of time by a month to file objection, and directed the petitioner to furnish the particulars of surplus land to the extent of 4.25 standard acres within seven days from the date of the receipt of his order dated 22.06.1970.

(v) K.M. Venkataraman Chettiar and sons by Mg. Partner
Vs. N.G. Kutram Kasthuri Rangiah Chettiar Charity estate,
Trichi, rep by its trustee reported in CDJ 1982 MHC 480:

The defendant against whom an order of eviction has been passed is the appellant in this second appeal.

(vi)Vittal Vel Press rep. by Thayarammal Sri Rangaswamy Temple Mulla Sahib St. George Town, Madras rep. by its Executive Officer reported in CDJ 2000 MHC 814:

The Petitioner, who is a tenant under a temple having suffered a decree of eviction and fought all the way up to Supreme Court, is now before this court making a last ditch to resist execution on the ground that the exemption from provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 under G.O.Ms.No.2000, dated 16.08.1976 (herein after referred to as G.O) will not cover buildings owned by temples. The executability of the decree for eviction obtained by the respondent in O.S.No.2504 of 1976 was challenged by an application under section 47, Civil Procedure Code, which was dismissed by the court below. The Civil Revision Petition is against this order.

8.Per contra, the learned counsel for the 1st Respondent/Appellant/Petitioner Landlord would submit that the question of the nature of trust was not originally raised by the Revision Petitioner before the leaned trial Court at the first instance, but by way

of filing additional counter, the character of the Trust was questioned and the application of the Act itself was questioned. At the same time it is found that prior to the initiation of the Rent Control proceedings, rent has been paid by the petitioner without questioning the character of the Trust. Further, it is also contented by the Counsel for the 1st Respondent that the character was already decided by the legal proceedings in R.C.O.P.No.41 of 1981 and the same was decided by this court also in the order passed in CRP.No.2207 of 1991. Having knowledge about the proceedings the Revision Petitioner cannot contend about the nature of trust. This fact was not refuted by the learned counsel for the Revision Petitioner. To support his arguments, he has relied on the following citations:

(i).(2014) 9 Supreme Court Cases 78 (Hindustan Petroleum Corporation Ltd -Vs- Dilbahar Sing):

A Rent Control and eviction-Revision- Interference with findings of fact of first appellate Court/authority- Revisional powers of High Court under various State Rent Acts-scope of- Held, none of the Rent Acts of Haryana, T.N.or Kerala confer on revisional authority the power as wide as that of the appellate court despite such statutory revisional power being wider than that provided in S. 115 of

CPC- Provisions under consideration do not permit High Court to invoke its revisional jurisdiction under the cloak of an appeal in disguise-Revisional Court is not entitled to re-appreciate the evidence and substitute its own conclusion in place of conclusion of appellate authority-view in Rukmini Amma, (1993) 1 SCC 499, affirmed- Ram Dass, (1988) 3 SCC 131 does not lay down any different principle it only emphasizes that in dealing with findings of fact, the examination of findings of fact by High Court is limited to satisfy itself that the decision is "according to law"

(ii)MLJ 2000 – 474 (Julikabi (died and another) -Vs- Vairavan):

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960 as amended by Act XXIII of 1973) Sec.14(1) – Petition for eviction on the ground demolition and construction-Petition ordered-Confirmed by the appellate authority-Revision petition by tenant-Denial of title by the tenant during the course of the proceedings-Grant for ordering eviction-No amendment is required.

(iii)1974 (1) Supreme Court Cases Page No. 242
(Nagindar Ramdas -Vs-Dalpatram Ichharam alias Brijram):

Rent Control and Eviction-Generally-Whether can be decreed on a non-statutory ground by the rent Court/Tribunal exercising special jurisdiction under a Rent Act -Whether such a rule can be read from the scheme and purpose of the statute by necessary implication when not so expressly stated as in the Bombay Rent Act-Support for such a construction from the express provisions of Delhi and Madras Rent Acts.

9.So the issue before this court is that as to whether the Judgment and Decree passed in RCA.No.1 of 2006 requires any interference in the revision jurisdiction of this court. Now the very short question is to be answered is that whether the Sri. Thirunavukarasu Swamygal Madam is a private trust or Public trust and the R.C.O.P. No.45 of 1987 for Fixation of fair rent is maintainable or not.

10.At this juncture, it is to be noted here that the Revision Petitioner namely Gopal is arrayed as 5th Respondent in the

R.C.O.P.No.41 of 1981 by way of an application to implead followed by death of his father namely Munusamy by taking out an application in I.A.No. 20 of 1986 order dated 09.08.1990. Admittedly in the proceeding in the R.C.O.P.No.41 of 1981, the Revision Petitioner as 5th Respondent filed his counter statement but did not question the character of the trust as a Private or Public trust. Whereas in the R.C.O.P.No.41 of 1981, it is held that the 1st Respondent that is Sri.Thirunavukarasu Swamygal Madam is a private trust.

11.Further, the proceeding of the C.R.P.No.2207 of 1981 filed by the Revision Petitioner herein namely Gopal also held the aforesaid madam is a private trust. So, it is clear that the Revision Petitioner is estopped from agitating once again about the character of the trust by filing the present Revision Petition.

12.Therefore, the character of the trust cannot be questioned once again by the Revision Petitioner. Hence the proceedings of the Tamil Nadu Buildings (Lease and Rent Control) Act are very well applicable and the R.C.O.P is also very well maintainable.

13.Now, the 2nd point is relating to the fixation of Fair Rent. It is

an admitted case that the petition property is in the central part of Vellore City and the Rent Fixed by the Appellate Authority, a sum of Rs.5000/- is a Fair Rent in the consider opinion of this court. At the same time the calculation of the Learned Appellate Authority is carefully scrutinized and found that the same is fair rent.

14.In the result, this Civil Revision Petition fails accordingly dismissed with the observation that the 1st Respondent is entitled to receive the fair rent of Rs.5,000/- per month from the date of filling of the petition in R.C.O.P.No. 47 of 1987. Consequently, connected miscellaneous petition is closed. No costs.

**14.11.2017
(2/2)**

vs

Index: Yes
Speaking order

To

1.The Subordinate Judge,
Vellore.

2.The Principal District Munsif/Rent Controller,
Vellore.

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M.V.MURALIDARAN.J.,

VS



**Pre-Delivery order made in
C.R.P.(NPD)No.2444 of 2011
and
M.P.No.1 of 2011**

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**14.11.2017
(2/2)**