

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.310 of 2011
and
M.P.No.1 of 2011**

The Secretary,
Madras Race Club,
Guindy, Chennai-600 032.

.. Petitioner

Vs.

1.Saraswathi Kailasam

2.Lakshmi Vaithiyathan
rep. By her Power Agent A.S.Kailasam

3.A.S.Subramanian

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act 1960, as amended by Act 1 of 1980, against the order and decretal order dated 18.01.2011 passed in M.P.No.548 of 2010 in RCA.No.123 of 1994 by the Rent Control Appellate Authority cum VIII Judge, Small Causes Court, Chennai.

For Petitioner : Mr.AR.L.Sundaresan, Senior counsel
for M/s.L.Dhamodaran

For Respondents : Mr.P.Valliappan

ORDER

The respondent/appellant/tenant in M.P.No.548 of 2010 in RCA.No.123 of 1994, on the file of the VIIIth Judge, Small Causes Court, Chennai, is the civil revision petitioner before this Court.

2.The case of the respondents/landlords is that they have filed RCOP.No.2192 of 1987 against this petitioner, who is the tenant for eviction on the ground of wilful default in payment of monthly rent. It is the case of the respondents/petitioners/respondents/landlords (herein after called landlords) is that the monthly rent was fixed at Rs.175/- per month and this petitioner/respondent/appellant/tenant (herein after called tenant) is in arrears of rent from May 1984 onwards.

3.It is the further case of the landlord is that the tenant failed to pay the monthly rent from the current rent of Rs.175/- per month from May 1984 to May 1987 (37 months) and also in arrears of the fair rent of Rs.11,666/- from June 1987 to July 2010 (277 Months) fixed by the Court. It is also the case of the landlords that the arrears of contract rent comes to Rs.6,475/- and arrears of fair rent comes to

Rs.32,31,482/-. Hence, pending appeal in RCA.No.123 of 1994, the landlords have filed M.P.No.548 of 2010 in RCA.No.123 of 1994 to direct the tenant to pay the contract rent of Rs.175/- per month from May 1984 to May 1987 (37 months) and the fair rent of Rs.11,666/- per month from June 1987 to July 2010 (277 months). The arrears of contract rent comes to Rs.6,475/- and arrears of fair rent comes to Rs.32,31,482/- and the total arrears till July 2010 is Rs.32,37,957/-. As per the interim order of this Court Rs.2,00,000/- has been paid and the balance Rs.30,37,957/- to be paid otherwise further proceedings in the above RCA will be stopped and order of eviction in RCA.No.123 of 1994, pending on the file of the VIIIth Judge, Small Causes Court, Chennai, may be ordered.

4.It is the case of the tenant that the application filed in M.P.No.548 of 2010 is not maintainable in law and on facts and the same is liable to be dismissed. The tenant states that in view of the act, the landlords have alienated the property to one Mr.Kalid A.K.Ukari and others and the said purchasers have also filed an application bearing M.P.No.1360 of 1996 to implead themselves as respondents 4 to 10 in the appeal in RCA.No.123 of 1994 and the said application was allowed on 21.07.1996. The application M.P.Nos.419

and 420 of 2010 were filed to carry out the amendment is pending.

5.The tenant also states that an appeal in RCA.No.80 of 1994 preferred against the fixation of fair rent in RCOP.No.2191 of 1987 by the tenant, and the same is pending before the Appellate Court and the same is not reached the finality. Therefore, the application filed by the landlords under Section 11(4) of the Rent Control Act for recovery of arrears of fair rent is absolutely an act of abuse of process. The tenant also states that the undisputed facts of the case are that the Madras Race Club was originally managed and administered by the present set of office bearers. In the year 1986, the Government of Tamil Nadu by virtue of legislation Act No.26 of 1985 took over the Management of the Tenant Club on 19.04.1986 and all the properties including the lease hold right lands of the Club was vested with the Government. The Government has appointed a custodian to administer the Madras Race Club. The Tenant Madras Race Club challenged the Act passed by the Government and it went upto Supreme Court. Later, the Hon'ble Supreme Court rendered the verdict declaring the acquisition of the Madras Race Club vide Race Club (Acquisition and Transfer of Undertaking) Act 1986 is ultravirus to the Constitution of India and directed the Government of Tamil Nadu to hand over the

management and functioning of the Club to the duly constituted management committee under the memorandum and Articles of Association of the Tenant Club.

6.It is the further case of the tenant is that the management of Madras Race Club reverted back to the present management in the year 1997 only. In the meantime, the tenant club received a notice in the execution proceedings initiated by one Kalid A.K.Buhari to execute the order of eviction passed in the RCOP.No.2192 of 1987. Immediately on verification of records, the tenant club came to know that the respondents have filed the said RCOP for eviction on the ground of wilful default, denial of title, owner's occupation and also for business purpose and the eviction order was passed against the tenant club. Against which, the custodian of the Tenant club preferred the present appeal and the same was dismissed for default on 20.03.1997. After that, the tenant club has filed the application in M.P.No.548 of 2010 to condone the delay of 1576 days in filing application for restoration of the RCA and M.P.No.570 of 2001 filed for stay the order of eviction passed in RCOP.No.2192 of 1987 and both the petitions were dismissed by the Rent Controller. The tenant club challenged the said orders by way of civil revision petitions in CRP(NPD)Nos.738, 739

and 740 of 2003, on the file of this Court. The said civil revision petitions, the landlords claimed a sum of Rs.25,78,186/- as arrears of fair rent since June 1987 as per the order in RCOP.No.2191 of 1987. Subsequently, the said Civil revision petitions were allowed and the order passed in M.P.Nos.568, 569 and 570 of 2001 were set aside. But suppressing the said facts, the landlord has filed the petition alleging that the tenant club is in arrears of rent.

7.It is the further case of the tenant Club that the Madras Race Club had taken the property on lease from the year 1927 onwards and the Madras Race Club had been in occupation of the building and land admeasuring to an extent of 12.53 acres under the said lease. The original owner also renewed the lease from time to time. The rent payable for the property has been paid to the Urban Land Tax Authorities towards the urban land tax dues payable by the owner Mr.Nihal Chand Nahanta. The tenant also states that therefore the allegation of the landlord that the tenant club has not paid the rent and the tenant club has accumulated the arrears is a false statement. Therefore, the tenant states that landlords have no locus standi to maintain the above petition. The tenant club states that with regard to the reference of payment of Rs.2,00,000/- by the tenant is concerned,

the civil revision petition Nos.738 to 740 of 2003 preferred against the dismissal of the application in M.P.Nos.568 to 570 of 2001 was taken on file, on condition of payment of Rs.2,00,000/-. The compliance of the conditional order has been mis-interpreted by the petitioners. Therefore, the fair rent proceedings have not reached finality and hence, the claim of the landlords are unsustainable. There is absolutely no merits in the petition. Therefore, they prayed the learned VIIIth Judge, Small Causes Court, Chennai, to dismiss the petition in M.P.No.548 of 2010 filed under Section 11(4) of the Rent Control Act.

8.Considering both side arguments, the learned VIIIth Judge, Small Causes Court, Chennai-104, was pleased to allowed the said application directing the tenant club to pay or deposit the rent in respect of the rental arrears of the petition premises to the tune of Rs.30,37,957/- for the period from May 1984 to July 2010 and subsequent rent period till December 2010 at the rate of Rs.11,666/- per month on or before 31.01.2011, failing which further proceedings in the RCA will be stopped and eviction will be ordered under Section 11(4) of the Act.

9.The learned Judge has given the reason that the tenant has

not paid the difference of fair rent and the contractual rent for the period from June 1987 to July 2010 for totally 277 months to the tune of Rs.32,31,482/- as arrears of rent for the petition premises. The learned Judge also states that the fair rent was fixed for the petition premises on 31.12.1992 at the rate of Rs.11,666/- per month and the same rent has not been paid by the tenant till date. On the other hand, it is the case of the tenant that he has been paying only the Urban Land Tax to the Special Tahsildar and they admits that the difference of fair rent and after fixation of fair rent, the fair rent of the premises has not been paid by them to the landlord since the fair rent is not reached finality since the RCA.No.80 of 1994 is pending before the Rent Control Appellate Court.

10.The learned Judge also states that the fair rent appeal in RCA.No.80 of 1994 was dismissed for default long ago and the petition to condone the delay in filing the petition to restore the appeal is pending, hence it is clear that no appeal is pending right now against the fixation of fair rent before the Court and only the petition for condonation of delay is pending and hence, it cannot be say that the fixation of fair rent is not reached finality. Therefore, the contention of the tenant that the fair rent fixed by the premises has not reached

finality is not sustainable and the tenant is liable to pay the fair rent of the petition premises to the landlord.

11.The learned Judge also states that the tenant has not only failed to pay the difference of fair rent, but the contractual rent for the petition premises to the landlords also not paid for the past 23 years, which cannot be appreciated and the tenant is liable to pay the entire arrears of rent to the landlord and the rent has to be paid then and there when it comes due and therefore, the citations produced by the tenant is not applicable to this case, since the tenant has not even paid the contractual rent of the petition premises. Therefore, the learned Judge says that the landlords have established their case and the tenant is liable to pay the entire arrears of rent of the petition premises and accordingly, allowed the said M.P.No.548 of 2010 in RCA.No.123 of 1994 on 18.01.2011. Challenging the said order, the present civil revision petition has been filed by the tenant before this Court.

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12.I heard Mr.Mr.AR.L.Sundaresan, learned Senior counsel for M/s.L.Dhamodaran, learned counsel appearing for the petitioner and Mr.P.Valliappan, learned counsel appearing for the respondents and

perused all the materials available on record.

13.It is the case of the landlord is that when he filed the RCOP.No.2192 of 1987 against the tenant for eviction on the ground of wilful default in payment of monthly rent and the same was allowed on 04.10.1993, against the said judgment and decree in RCOP.No.2192 of 1987, the tenant has filed an appeal in R.C.A.No.123 of 1994 before the learned VIIIth Judge, Small Causes Court, Chennai.

14.Pending appeal, the landlord has filed a petition in M.P.No.548 of 2010 under Section 11(4) of the Tamil Nadu Rent Control Act, for to determine the arrears of rent from May 1984 to July 2010 (277 months) and direct the respondent/tenant to pay a sum of Rs.30,37,957/- towards arrears of rent and also direct him to the subsequent rent at the rate of Rs.11,666/- per month as and when it becomes due in default thereof to stop all further proceedings in RCA.No.123 of 1994.

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15.It is the case of the tenant that the custodian of the Government was took over the Management of the club on 19.04.1986 as per the Act passed in the year 1986 by the Government of Tamil

Nadu by virtue of legislation Act No.26/1985. Thereafter, all the properties including the lease hold right lands of the Club vested with the Government, after taking charges of the tenant Madras Race Club, the Government has appointed a custodian to administer the Madras Race Club. Thereafter, the tenant Madras Race Club was challenged the Act passed by the Government of Tamil Nadu before this Court and thereafter before the Hon'ble Supreme Court. After that, the Hon'ble Supreme Court held to declaring the acquisition of the Madras Race Club vide Race Club (Aquisition and Transfer of Undertaking) Act 1986, as ultravirus to the Constitution of India and the Hon'ble Supreme Court has directed the Government of Tamil Nadu to hand over the management for the functioning of the club to the duly constituted Management committee under the memorandum and Articles of Association of the tenant club. Therefore, in the year 1997 only the tenant club reverted back to the present management.

16.After taking possession of the club by his own Management, the tenant club received a notice in the execution proceedings passed in RCOP.No.2192 of 1987 filed by one Kaled A.K.Buhari, immediately on verification of records only, the tenant club came to know that the landlords have filed the said RCOP for eviction against the tenant club,

on the ground of wilful default, denial of title, owner's occupation and also for business purpose and eviction order was passed against the tenant club. The tenant club himself were admitted that against the order of eviction, the Government of Tamilnadu appointed the custodian who filed an appeal and the same was dismissed for default on 20.03.1997. Thereafter, the tenant club has filed an application in M.P.No.568 of 2010 to condone the delay of 1586 days in filing the application for restoration of RCA and also for M.P.No.570 of 2001 to stay the order of eviction passed in RCOP.No.2192 of 1987, but both the applications were dismissed by the Rent Control Appellate Court. Challenging the said order, the civil revision petitions in CRP(NPD)Nos.738, 739 and 740 of 2003 filed before this Court and this Court by directing the tenant to pay a sum of Rs.2,00,000/- as conditional order and allowed all the three civil revision petitions in CRP.Nos.738 to 740 of 2003. When the Rent Control Appeal is pending, it is the case of the Tenant Club is that the landlord has no locus standi to maintain the petition filed in M.P.No.548 of 2010 under Section 11(4) of the Tamil Nadu Rent Control Act.

17.It is the main contention of the tenant is that when no finality is arrived in the Rent Control Appeal, this landlord have no locus standi

to file an application in M.P.No.548 of 2010. To support his case they have produced the judgments in the case of **Nelson and another v. Renganatha Mudaliar** reported in **1995 TNLJ Page 270** and another case of **C.Renganathan v. M.Suri** reported in **1987 L.W. Page 100**. Both the judgments were held by this Court that failure to pay the difference of fair rent will not attract Section 10(2)(i) and consequently Section 11(4) of the Act. Therefore, the tenant has prayed for dismissal of the said M.P.No.548 of 2010 and for allowing the civil revision petition. When the tenant has not paid the difference of fair rent and contractual rent for the period from June 1987 to July 2010 for a total sum of Rs.32,31,482/-, when the fair rent was fixed at the rate of Rs.11,666/- and the same has not been paid by the tenant, it is my view that it is totally amounts to default in payment of monthly rent. Even otherwise, if the tenant has not paid the fare rent fixed by the Court atleast the Tenant Club might have pay the contractual rent, but that also not been paid by the Tenant Club.

18.It is the case of the tenant is that the tenant has been paying only the contractual rent to the Special Tahsildar, as per the order of Government of Tamilnadu and took charge of the management of the tenant club and the tenant also states that when the appeal filed

against the fair rent in RCOP.No.2192 of 1997 is pending, the M.P.No.548 of 2010 filed by the landlords is not maintainable. But, on perusal of the record, the Appeal in RCA.No.80 of 1994 was dismissed for default and thereafter, the restoration petition filed along with the condone delay petition and both the applications are pending. Thus being the case, the Tenant club does not say that the RCA.No.80 of 1994 is not reached finality.

19.It is also made clear that without the consent of the original landlords, the tenant club has no right to pay the alleged contractual rent towards the Urban Land Tax to the Special Tahsildar. Apart from this, the tenant has not produced any document to show whether the Tenant has paid the contractual rent towards the Urban Land Tax to the Special Tahsildar, Urban Land Tax. It is made clear that admittedly, the landlord has not given any consent to Tenant Club the payment of contractual rent towards the Urban Land Tax to the Special Tahsildar, Urban Land Tax and the tenant also not produced any documents. Therefore, it is made clear that the tenant has not paid the contractual rent and as well as not paid the fair rent of Rs.11,666/- fixed by the Court for the period claimed by the landlords. On perusal of records, as on date of filing the application, the tenant is in due of

the rental arrears of amounts to the tune of Rs.30,37,957/-. Therefore, the well consider order of the learned Rent Control Appellate Authority in M.P.No.548 of 2010 in RCA.No.123 of 1994 dated 18.01.2011, is not warranting any interference by this Court and accordingly this Civil Revision Petition is liable to be dismissed.

20.In the result:

(a) this civil revision petition is dismissed by confirming the order passed in M.P.No.548 of 2010 in RCA.No.123 of 1994, dated 18.01.2011, on the file of the Rent Control Appellate Authority cum VIII Judge, Small Causes Court, Chennai;

(b) the petitioner/tenant is directed to pay or deposit the rental arrears of the petition premises to the tune of Rs.30,37,957/- for the period from May 1984 to July 2010 and subsequent rent period till December 2010 at the rate of Rs.11,666/- per month on or before 31.07.2017, before the Rent Control Appellate Court, failing which further proceedings in the RCA.No.123 of 1992 will be stopped and the learned VIIIth Judge, Small Causes Court, Chennai is at

liberty to pass eviction order under Section 11(4) of the Act.

(c) for compliance, post the matter on 01.08.2017 before the VIIIth Judge, Small Causes Court, Chennai. Consequently, connected miscellaneous petition is closed. No costs.

05.07.2017

Note: Issue order copy on 24.07.2017

Index: Yes

Speaking Order

vs

To

The VIIIth Judge,
Small Causes Court, Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.310 of 2011
and
M.P.No.1 of 2011

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