

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.918 of 2011 and
M.P.Nos.1 to 3 of 2011 and
CMP.Nos.19781 to 19783 of 2016**

Gopal

.. Petitioner

Vs.

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

2.Zulekha Bi

Nizar Ahmed (deceased)

3.Farida

.. 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.30 of 1992 dated 18.01.2011 passed by the Sub Court, Vellore, confirming the Judgment and Decree in RCOP.No.41 of 1981, dated 07.08.1992 passed by the Rent Controller, Vellore.

For Petitioner : Mr.P.Seshadri

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

ORDER

The instant Civil Revision Petition is preferred as against the judgment and decree passed in Rent Control Appeal No.30 of 1992 dated 18.01.2011 confirming the judgment and decree passed in R.C.O.P.No.41 of 1981 dated 07.08.1992 wherein eviction was ordered in the petition filed by the Respondent herein that is Sri.Thirunavukarasar Swamygal Madam, Vellore against the Revision Petitioner on the ground of default in payment of rent, the act of subletting the property in dispute and also the denial of ownership of the petition property.

2.It is to be noted here that the connected C.R.P.(NPD)No.2444 of 2011 has been decided by fixing the fair rent, as the application of the Rent Control Act is applicable to the said Sri Thirunavukarasu Swamygal Madam as private trust. As far as the instant Civil Revision Petition is concerned that it is arising out of R.C.A.No.30 of 1992 and the said Rent Control Appeal No.31 of 1992 has arisen out of judgment and decree passed in R.C.O.P.No.48 of 1981 on the file of the learned

Rent Controller, Vellore.

3.The learned counsel for the revision petitioner would submit that the judgment and decree passed in R.C.O.P.No.41 of 1981 is against the available evidence and the petition filed under section 10(2) (1), 10(2) (A), 10(2) (vi) of the Rent Control Act, ought to have been dismissed for the reason that the properties in D.No.4, 4/1, and 4/2 was taken for rent as vacant site. The superstructure was constructed by the respective tenants alone. Though there was a rent arrears but that was not intentional but adjusted towards the payment out for tax to the Vellore Municipality. At the sametime, it was admitted in the counter affidavit itself that there was due in payment of rent with respect of March 1980. Further, the 5th Respondent in the original petition who is the Revision Petitioner herein filed additional counter stating that Sri Thirunavukarasu Swamigal Madam was not duly represented by a proper Trustee and the present Trustee cannot defend the math. Before the trial Court on the side of the landlord, 3 witnesses were examined and 48 exhibits were marked. On the side of the tenant, 4 witnesses were examined and 130 exhibits were marked. By considering the totality of the case the trial Court allowed the Rent Control Original Petition and directed the tenants to vacate the petition

property within two months.

4. Feeling aggrieved, over the judgment and decree passed in Rent Control Original Petition, the Rent Control Appeal was filed but the same was dismissed. But both the Courts below, according to the learned counsel for the revision petitioner, have not considered the facts and circumstances of the case as proper manner. So, the grounds raised in the Civil Revision Petition are to be taken into consideration and the same is to be allowed.

5. Per contra, the learned counsel for the 1st Respondent/ Petitioner that is Sri Thirunavukarasu Swamigal Madam has submitted that the judgment and decree passed by both the Courts below are perfectly correct and no interference is required that too in the revisional jurisdiction. He also pointed out that the conduct of the Revision Petitioner shall not be appreciated as he has procrastinated the proceedings for more than 30 years. Apart from that both the Courts below have rejected the pleas taken by the revision petitioner and he is not entitled to pray this Court for the re-appreciation of evidence.

6.I heard Mr.P.Seshadri, learned counsel appearing for the petitioner and Mr.A.U.Ilango, learned counsel appearing for the 1st respondent and perused the materials available on record.

7.The case of landlord/petitioner before trial Court is that the Tenants/Respondents concerned entered into the rent agreement with one Vajravelu Mudhaliar since 1963. According to the Landlord/Petitioner, rent was not paid since July 1979. For the non-payment of the rent, legal notice was issued on 18.03.1980. Even after receipt of the legal notice, no reply was given and no rent was tendered. On the other hand knowing the conditions very well that the property shall not be subletted, it was done and the property was subletted to the 2nd Respondent in the Rent Control petition. Apart from that the super structure was available in the premises since 1900, the Tenants/Respondents cannot say that the super structure was constructed by them.

8.However, when the evidence let in on either side is perused, it is clearly proved that according to exhibit P-27 the premises was taken out on rent including the super structure. This factual aspect was clearly proved through the evidence of PW-2. Whereas on the side of

the Tenants/Respondents though they claimed they had constructed the super structure, but no acceptable evidence was produced. So, the finding of trial Court that the superstructure was not constructed by the tenants is based on records. However, an ironical stand was taken by the Tenants/Respondents that as to whether the trust was public or private trust for the application of the Rent Control Act. However, it is brought to the notice of this Court that the order passed in C.R.P.No.2207 of 1991 of the High Court ascertained the character of the trust as a private trust. At the same time it has not brought to the notice of this Court that C.R.P.No.2207 of 1991 was taken up for challenge before the Hon'ble Supreme Court. So, finding of the Courts below that the aforesaid Sri Thirunavukarasu Swamygal Madam is a private trust is acceptable and the application of the Act is very well applicable to the math. Moreover, it cannot be taken up such a stand after the lapse 15 years by the tenant about the character of the trust this cannot be appreciated in any manner. Moreover, before the trial Court, it is categorically proved that the signature found in the rental agreement dated 05.08.1970 marked as P-27 was proved that the same was the signature of one Munusamy Mudhaliar who is the father of the revision petitioner, by examined PW-2. Moreover, no ground is raised herein to disbelieve the evidence of PW-2. At the same time it

could be easily presumed that the stand taken by the Revision Petitioner as if the property was taken out without any construction is untenable.

9. Further, as per the evidence of PW-1 it is elucidated that the property was subletted as against the terms of the rental agreement and without the consent of the landlord. That apart it is ascertained from the evidence of PW-1 that since July 1979 to April 1981 the rent was not regularly paid. However, the procedures laid down under the Rent Control Act as to when the rent is to be deposited in the bank have not been followed. Rent cannot be deposited either in the bank account or in the Court unless it is proved by the Tenants/Respondents that steps have been taken by requesting the landlord to furnish his bank account and on his refusal the same was sent through money order and on denial to receive the payment through money order alone would entitle the tenant to deposit the rent. Here the revision petitioner has not proved that these procedures have been complied with by him. So, it is ascertained that the monthly rents were not regularly paid by the tenants.

10. It is also ascertained from the records that all the grounds

raised before the trial Court have been proved by the landlord and the grounds raised herein by the revision petitioner are not supported by any oral or documentary evidence by the Revision Petitioner.

11.In the result, for foregoing discussion the Revision Petitioner has not substantiated his case that the Judgment and decree passed in R.C.A.No.30 of 1992 is to be interfered with. Hence, this Civil Revision Petition fails, accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2017
(1/2)

vs

Index: Yes
Speaking order

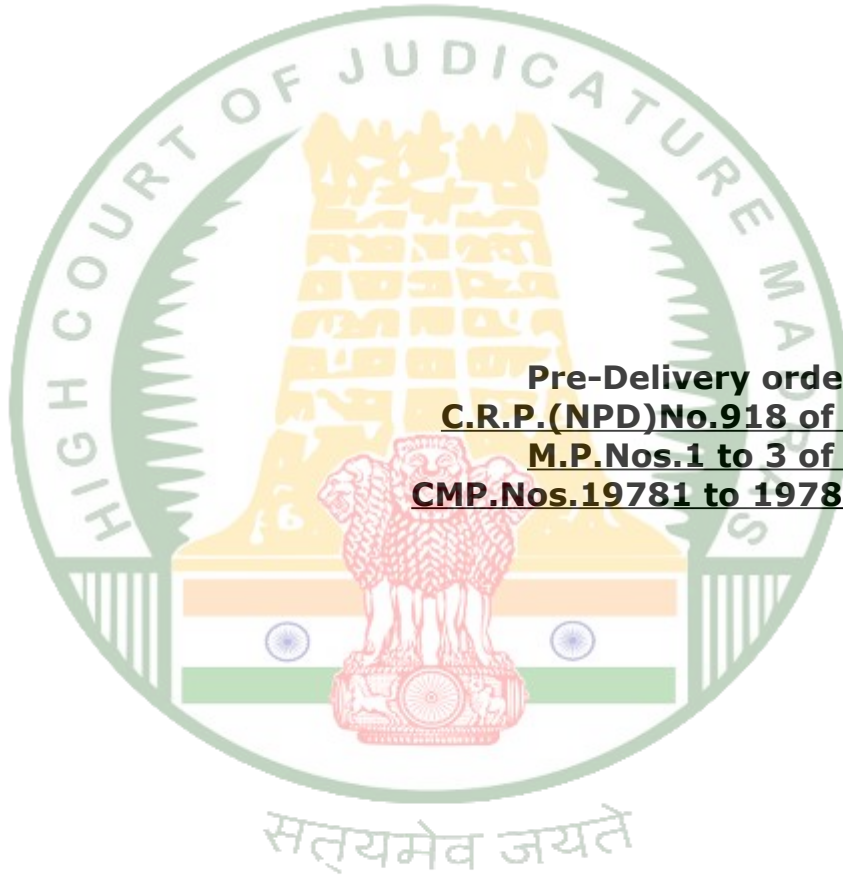
To

The Sub Court,
Vellore.

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M.V.MURALIDARAN.J.,

VS



**Pre-Delivery order made in
C.R.P.(NPD)No.918 of 2011 and
M.P.Nos.1 to 3 of 2011 and
CMP.Nos.19781 to 19783 of 2016**

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(1/2)**