

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4009/2007 & 42/2008
& M.P.Nos.1/2007, 1/2008

R.Gnanavel

.. Petitioner in
 C.R.P.(NPD)No.4009 of 2007

R.Sankunthala

.. Petitioner in
 C.R.P.(NPD).No.42 of 2008

Vs.

V.Abubakkar Maraicoir Trust
 Nagapattinam rep. by its Trustees
 M.Jayila Nachiar (died)

1. Hameed Hathija Nachiar
2. Sinnatchi ponnu @ M.Hathija Beevi
3. Ponnatchi @ Ummal Hootha

.. Respondents in
 C.R.P(NPD)No.4009 of 2007

(They are added as parties as they
 alleged themselves as trustees
 after the death of Ist Respondent
 Amended as per order Memo dated
 05.10.2007 in R.C.A.No.40/07)

Haji. Kathija Beevi Trust
 Nagapattinam rep. by its Trustees
 M.Jayila Nachiar (Died)
 1. Hameed Hathija Nachiar

2. Sinnatchi ponnu @ M.Hathija Beevi
3. Ponnatchi @ Ummal Hootha

.. Respondents in
C.R.P(NPD)No.42 of 2008

(They are added as parties as they
alleged themselves as trustees
after the death of Ist Respondent
Amended as per order Memo dated
05.10.2007 in R.C.A.No.39/07)

PRAYER in C.R.P.(NPD)Nos.42/2008 & 4009/2007: Civil Revision Petitions filed Under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 against the fair and decreetal orders dated 31.08.2007 made in R.C.A.Nos.39 & 40/2007 respectively on the file of the learned Subordinate Judge, (Appellate Authority) Nagapattinam confirming the decrees and judgments of the Rent Controller - cum - District Munsif, Nagapattinam dated 16.12.2006 made in R.C.O.P.Nos.5 & 6/2005 respectively.

For Petitioners : Mr.V.Raghupathi

For R3 : Mr.Srinath Sridevan

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal orders dated 31.08.2007 made in R.C.A.Nos.39 & 40/2007 respectively on the file of the learned Subordinate Judge, (Appellate Authority) Nagapattinam confirming the decrees and judgments of the Rent Controller - cum - District Munsif, Nagapattinam dated 16.12.2006 made in

R.C.O.P.Nos.5 & 6/2005 respectively.

2. The issue involved in both the civil revision petitions are one and the same and therefore, disposed of by this common order.

3. The petitioners in both the Civil Revision Petitions are tenants. The respondents are the landlords. According to the petitioners, they are the tenants under V.Abubakkar Maraicoir Trust and Haji. Kathija Beevi Trust respectively for a long time and they were paying rent regularly. Subsequently, trustees refused to receive the rent. The petitioners sent rent by money order, which was also refused by the respondents. The petitioners issued notice and filed R.C.O.P.Nos.6 and 5 of 2005 under Section 8(5), Tamilnadu Lease and Rent Control Act to deposit the rent into Court.

4. The first respondent filed counter on 23.06.2005 and submitted that property belongs to Wakf and after enactment of the Waft Act, 1995, the Civil Court has no jurisdiction and the Court constituted under Wakf Act only has jurisdiction to deal with any matter relating to Wakf or properties of Wakf. The Government by G.O.Ms.No.2000, Home dated 16.08.1976, exempted the properties belonging to the Wakf. Therefore, the Tamilnadu Lease and Rent Control Act is not applicable to the facts of the case and R.C.O.Ps are not maintainable.

5. Before the learned Rent Controller, both the petitioners and the respondents have not let in any oral evidence. The petitioner in R.C.O.P.No.5 of 2015 marked 7 documents and respondents marked 2 documents. The petitioner in R.C.O.P.No.6 of 2015 marked 6 documents and respondents marked 1 document.

6. The learned Rent Controller after considering the pleadings, documents filed by the parties, and on hearing the arguments of the parties, dismissed the R.C.O.P.Nos. 6 & 5/2005, holding that the Rent Controller has no jurisdiction to deal with the property of the Wakf, in view of the Section 85 of Wakf Act and as per the judgment of this Court reported in **2005(1) LW 676** only the Tribunal constituted under the Wakf Act, 1995 has jurisdiction.

7. Against that orders of dismissal, the petitioners in both the civil revision petitions filed R.C.A.Nos.39 and 40 of 2007 respectively. The learned appellate authority, considering all the materials on record and orders of the Rent Controller, dismissed both the appeals, confirming the orders of the Rent Controller.

8. Against the said orders dated 31.08.2007 made in R.C.A.Nos.39 & 40 of 2007, the present two civil revision petitions have been filed by the petitioners.

9. The learned counsel appearing for the petitioner submitted that there is no specific bar under the Wakf Act for the Rent Controller to entertain the petition under the Tamilnadu Lease and Rent Control Act. Both the Courts below failed to consider the merits of the case and dismissed the petitions on the question of jurisdiction. Further according to the learned counsel, the Courts below failed to see that the Tamilnadu Lease and Rent Control Act is a Special Act and Wakf Act, 1995 does not prohibit the applicability of the Tamilnadu Lease and Rent Control Act with regard to the properties owned by the Wakf. That apart, as per the Section 2(6) of the Tamilnadu Rent Control Act, a person who receives the rent is a landlord and hence petition filed under Section 8(5) of the Rent Control Act against the trustee of the private trust is maintainable.

10. Besides, the learned counsel appearing for the petitioners submitted that the respondents filed Wakf O.P.No.2/2000 on 22.01.2004, for eviction of the petitioner in C.R.P.No.42/2008 and eviction was ordered and as

against the same, the petitioner in C.R.P.No.42/2008 filed C.R.P.(NPD).No.1481/2003 and the said civil revision petition was dismissed by this Court for default. The petitioner in C.R.P.No.42/2008 filed C.M.P.No.540/2012 to condone the delay in filing the petition to restore the civil revision petition, which is pending.

11. Per contra, the learned counsel appearing for the respondents submitted that by G.O.Ms.No.2000, Home dated 16.08.1976, the provisions of the Rent Control Act are not applicable to the Wakf properties. After the enactment of Wakf Act, 1995, as per the Section 85 of the said Act, only Wakf Tribunal has jurisdiction to entertain and try all the matters relating to the Wakf and Wakf properties. In view of the same, the petition filed under Section 8 (5) of the Rent Control Act is not maintainable to the Wakf property. In support of his contentions, the learned counsel appearing for the respondents relied on the paragraph 17 of the judgment reported in **"2003 (3) CTC 209 in Kishorelal Asera Vs. Haji Essa Abba Sait Endowments, rep. by its Trustees, Ibrahim Sait and others"** which reads as follows:

The Government of Tamil Nadu has granted an exemption to public and charitable trusts. The order of the Government in G.O.Ms.No.2000, Home dated 16.08.1976 is as follows:

"[No. II(2)/HO/4520/76, - In exercise of the

powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960) and in supersession of the Home Department Notification No. II (2)/HO/3811/74, Public, at page 444 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 21st August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the Act."

The above said order came up for consideration before the Supreme Court in S.Kandasamy Chettiar V. State of Tamilnadu, MANU/SC/0353/1984 The Supreme Court, while upholding the power of the Government and the Government Order, held that the buildings belonging to such public religious and charitable trusts clearly fell into a class where undue hardship and injustice resulting to them from the uniform application of the beneficial provisions of the Rent Control Act needed to be relieved and the exemption granted will have to be regarded as being germane to the policy and the purpose of the Act. Their Lordships held that the State Government may have felt that the Trustees of such buildings should be able to have effective eviction without being required to fulfil other onerous conditions which must be complied with by private landlords when they seek eviction by such purpose. Their Lordships also held that the State Government, on materials before it, came to the conclusion that

the fair rent fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from the tenants, reasonable market rent and if that be so, non-eviction without reasonable market rent, if not paid, would be unreasonable. The reference to the judgment of the Division Bench of this Court in P.N.Raju Chettiar V. State of Tamilnadu 1970 (1) M.L.J. 249, wherein their Lordships held that the remedy by way of exemption under Section 29 is not a substitute for the remedies available to a landlord for eviction under the Rent Control Act will not be of any assistance. That was a case where the tenant unsuccessfully challenged the exemption granted by the Government, preferred a writ appeal and their Lordships, on merits found that the Court cannot sit in judgment over the findings and the exercise of power under Section 29 as to the bona fide requirement. As rightly pointed out, the defendants have not challenged the order of exemption granted in the said Government Order.

prayed for dismissal of civil revision petitions.

12. Heard learned counsels appearing on both sides, judgment relied on by counsel appearing for the respondent and perused the materials available on record.

13. The point to be decided in both the civil revision petitions is whether the provisions of the Rent Control Act is applicable to the properties

belonging to the Wakf or as per Section 85 of the Wakf Act, only a Wakf Tribunal has jurisdiction to entertain the petition to deal with the Wakf properties.

14. To decide the issue, it is relevant to refer G.O.Ms.No.2000, Home dated 16.08.1976. By the said G.O., the Government has exempted all the buildings owned by the Hindu, Christian and Muslim religious public trust and public charitable trust from all the provisions of the Tamilnadu Act 18 of 1960.

15. In view of the exemption granted by this G.O., the provision of Tamilnadu Lease and Rent Control Act is not applicable to the buildings owned by the Hindu, Christian and Muslim religious public trust and public Charitable trust. This G.O. was upheld by the Hon'ble Apex Court in the judgment in **"S.Kandaswamy Chettiar Vs. State of Tamil Nadu and another, reported in (1995) 1 SCC 290"**. This judgment was referred to by a Division Bench of this Court in the judgment reported in **"2003 (3) CTC 209 (Kishorelal Asera Vs. Haji Essa Abba Sait Endowments, rep. by its Trustees, Ibrahim Sait and others)"**. Further, as per the Section 85 of the Tamilnadu Lease and Rent Control Act, 1960, only the Tribunal constituted under Wakf Act has got jurisdiction to entertain the matters relating to the Wakf and Wakf properties.

16. In view of the judgment of the Apex Court and Division Bench of this Court and Section 85 of Wakf Act, the contention of the learned counsel appearing for the petitioners that there is no specific bar in the Wakf Act prohibiting from entertaining and deciding the matters under the provisions of the Rent Control Act is without merits. Both the Courts below have properly appreciated the G.O.Ms.No.2000, Home dated 16.08.1976 and also Section 85 of the Act and dismissed both the R.C.O.Ps and R.C.As.

17. The learned counsel appearing for the petitioners submitted that the first respondent filed O.P.No.2 of 2000 before the Wakf Tribunal for eviction of the petitioner in C.R.P.No.42 of 2008 and the said petition was ordered. Against the said order of eviction, the petitioner filed C.R.P(NPD).No.1481 of 2003 and the same was dismissed for default. The petitioner had filed C.M.P.No.540 of 2012 to condone the delay in filing the petition to restore the C.R.P.No.1481 of 2003 and the same is pending.

18. In these circumstances, both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

19. In view of the submissions of the learned counsel for the petitioner, the Registry is directed to list the C.M.P.No.540 of 2012 for hearing, next week.

14.07.2017

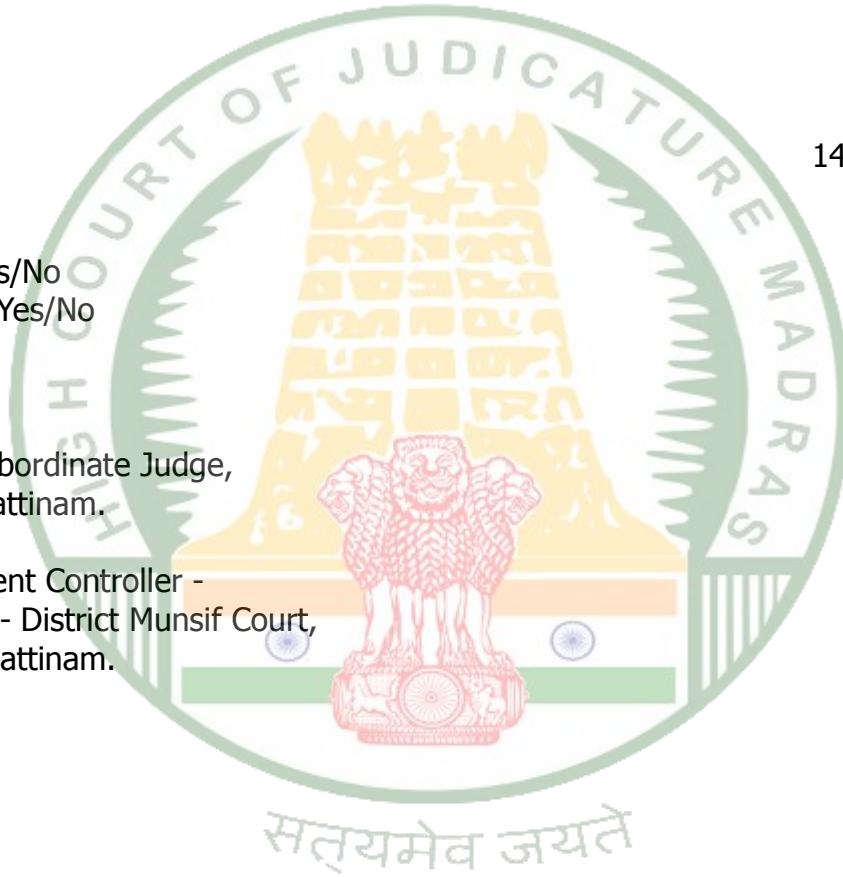
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Index: Yes/No

Internet: Yes/No

To

1. The Subordinate Judge,
Nagapattinam.
2. The Rent Controller -
cum - District Munsif Court,
Nagapattinam.



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V.M.VELUMANI,J.

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& M.P.Nos.1/2007, 1/2008

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