

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.3428 and 3429 of 2012 and
M.P.Nos.1 and 1 of 2012 and
CMP.Nos.2787 and 2788 of 2016**

S.Karthikeyan

.. Petitioner in both the CRPs

Vs.

P.Jawahar

Represented by His Power agent

D.Paulraj

.. Respondent in both the CRPs

Common Prayer: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Judgment and Decree passed in R.C.A.Nos.384 and 385 of 2006 respectively, dated 13.07.2012 on the file of the VIII Small Causes Court / Rent Control Appellate Court, Chennai, confirming the Judgment and Decree in R.C.O.P.Nos.1370 and 1872 of 2004, dated 23.03.2006, on the file of the XIII Small Causes Court/ Rent Control Court, Chennai.

(In both the CRPs)

For Petitioner : Mr.P.Satheesh Kumar

For Respondent : Mr.K.S.Kumar

COMMON ORDER

The petitioner has filed this Civil Revision Petition against the Judgment and Decree passed in R.C.A.Nos.384 and 385 of 2006 respectively, dated 13.07.2012 on the file of the VIII Small Causes Court / Rent Control Appellate Court, Chennai, confirming the Judgment and Decree in R.C.O.P.Nos.1370 and 1872 of 2004, dated 23.03.2006, on the file of the XIII Small Causes Court/ Rent Control Court, Chennai.

2.These Civil Revision Petitions are arising out of the common, concurrent orders passed by the Rent Controller and the Appellate Authority respectively.

3.The petitioner herein was inducted as a tenant in a portion of the ground floor at the premises bearing door No.48, II Trust Main Road, Mandavelipakkam, Chennai-600 028 by the respondent herein on 01.03.1992. The respondent herein filed a R.C.O.P.No.1370 of 2004 on the file of the XIII Judge of Court of Small Causes (Rent

Control), Chennai seeking eviction of the petitioner herein from on the ground that the petitioner herein committed willful default in making the payment of monthly rents from January, 2004 onwards. The present monthly rent for the petition premises is at a sum of Rs.1550/-. The petitioner herein filed counter averring that the present rent is at Rs.600/- per month. He also denied the ownership of the landlord by alleging that the petition premises belonged to The Tamil Nadu Slum Clearance Board. This led the respondent herein to file another eviction petition in R.C.O.P.No.1872 of 2004 on the file of the XIII Judge of Court of Small Causes (Rent Control), Chennai on the ground of Denial of Title. The petitioner herein filed counter statement in that petition also. Both the petitions were tried together and a common order dated 23.03.2006 was passed by the learned Rent Controller ordering eviction on the ground of willful default in payment of rent in the 1st eviction petition and on the ground of denial of title in the 2nd eviction petition.

4. Aggrieved by the common order of the learned Rent Controller, the petitioner herein preferred two Rent Control Appeals in R.C.A.Nos.384 and 385 of 2006 before the learned Rent Controller Appellate Authority and the Appellate Authority by a common order

dated 13.07.2012 in R.C.A.No.384 of 2006 and R.C.A.No.385 of 2006 confirmed the orders of evictions. As against these common, concurrent orders, the petitioner/tenant has filed these Civil Revision Petitions before this Court.

5.Before the Rent Controller, the Respondent herein/Landlord examined his father on his side who represented the respondent even at the time of filing of the petition by a Power of Attorney dated 22.01.1996. The respondent herein marked 24 documents. On the side of the petitioner herein/ tenant, he examined himself as witness and marked 3 documents.

6.Based on the oral and documentary evidence, the learned Rent Controller and the Appellate Authority came to the conclusion that the petitioner herein committed willful default in payment of monthly rent and also his denial of title is not bonafide. Admittedly, the petition premises belongs to The Tamil Nadu Slum Clearance Board and the same are borne out by the documents submitted by the respondent herein, including the writ petition filed by him before this Court. Initial allotment was made in the name of one Alphonse and on his demise; it was changed in the name of his wife Annamery. Though the said property cannot be transferred, the respondent

herein was able to get a settlement deed dated 20.04.1988 for the hut and the lease hold right over the land belonging to Tamil Nadu Slum Clearance Board. The petitioner herein came as a tenant under the respondent herein.

7.The petitioner herein after the filing of this Civil Revision Petitions filed Civil Miscellaneous Petitions for raising additional grounds. The said petitions were not objected by the learned counsel appearing for the respondent herein as the said grounds are only on the point of law.

8.The learned counsel for the petitioner was not much canvassed either on the point of the Landlord Tenant relationship or on the point of willful default in payment of rent. His main contention is that as per Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971, there is a clear bar for instituting any suit or proceeding for the eviction of an occupant from any building or land in slum area. He also relies Section 2 (g) of the above act which defines the occupier as "any person who for the time being is paying or is liable to pay to the owner the rent or any portion of rent of the land or building in respect of which such rent is paid or payable".

9.He also relied on the Judgment of the Hon'ble Supreme Court in the case of ***Neelakantan & Ors. v. Mallika Begum*** reported in **2002 (1) CTC 439**, wherein the Hon'ble Apex Court in paragraph 3 of the above Judgment has accepted the above contention and held that no proceeding can be initiated for eviction of an occupant for any building or land in the slum clearance area except with the previous permission of the prescribed authority. In the present case, it is admitted that the premises situated in slum clearance area and the land still belongs to Tamil Nadu Slum Clearance Board and the same is yet to be allotted in favour of anyone. The petitioner herein seemed to have filed a Writ Petition in W.P.No.40855 of 2015 for the allotment of the petition premises in his favour and the said writ petition is pending before this Court. The Learned Counsel for the petitioner also further placed reliance on the decision of this Court in the case of ***Ambika and another v. M.Shamshad and another*** reported in **2015 (4) CTC 159** on the same point.

10.Per contra, the Learned Counsel for the respondent herein contented that since the landlord tenant relationship is proved and the decision relied by the petitioner's Counsel only relates to eviction proceedings in suit, sought for the dismissal of the above civil revision petitions. He further contended that the above Judgments

are applicable only to suits and not to rent control matters. The learned counsel appearing for the respondent herein also relied on the decisions laid down by the Hon'ble Apex Court that once landlord tenant relationship is proved, the court cannot travel beyond that to find out the ownership.

11.I have heard Mr.P.Satheesh Kumar, learned counsel appearing for the petitioner and Mr.K.S.Kumar, learned counsel appearing for the respondent and perused the relevant records and the decisions relied by them. In the instant case it is admitted that no prior sanction is obtained from the competent authority as contemplated under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1927. The petitioner herein did not raise these objections about the maintainability of the petition either before the Rent Control Court or Before the Appellate Authority. However, I find that the plea raised before this Court is a pure question of law and the same can be entertained at any stage. It is a settled legal principle that there is no estoppel against the point of law. It is seen from the records of this court that at the time of admission of these revision petitions, the admitted arrears of rent based, on the conditional order of this court has been paid by complied with the order of this court. Apart from that though it is the

concurrent findings given by the learned Rent Controller and the learned Appellate Tribunal, this court as the Revision Court is having every power to intervene in the findings when the question of law has not been considered.

12. It is the admitted case that the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1927 is a self contained act and it is imperative in observing the mandatory provision of prior permission to be obtained from the competent authority. Once, it is found that there is violation of law then all the action taken by the respondent against the Revision Petitioner would be a nullity. Apart from that reading of Section 29 of the said would say that for instituting any suit or proceeding for the eviction of an occupant from any building or land in slum area ... any suit or proceeding would also includes the proceedings instituted under the Rent Control Act. Hence, the application of section 29 of the said Act would also be applicable to the instant proceedings taken by the respondent.

Moreover, Section 2 (b) of the said Act defines building which includes a house, out house, stable latrine, shed, hut, wall and any other... structure whether of Masonry, Bricks, Wood, Mud, Metal or any other materials what so ever, does not include, Plant or Machinery,

comprised in a Building. In the instant case, the building in question would also come under the definition of the Act.

13. The judgments produced by the petitioner in the case of

(I) ***Neelakantan & Ors. v. Mallika Begum*** reported in **2002**

(1) CTC 439. The Hon'ble Apex Court clearly held as follows:

"3. Later on however, in the year 1984, tenants filed four suits separately in the City Civil Court, Madras against the landlady with a prayer for declaration that the Super-structure standing on the suit property, belongs to the tenants and further prayed for grant of permanent injunction restraining her from disturbing their possession. The case of the tenant plaintiffs has been that the Suit Property situated in Survey No. 1303/1, has been declared as slum area under the provisions of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971, (for short 'Act'). Section 3 of the Act provides that the State Government, on being so satisfied, may declare any area as slum area. Section 29 of the Act inter-alia, provides that no proceeding can be initiated for eviction of an occupant from any building or land in the slum area except with the prior permission of the prescribed

authority. The land-lady, namely, the defendant in all the suits, pleaded that the case of the tenant plaintiff to the effect that the super structure belongs to them is false. It was also pleaded that the property lay in Survey No. 1301/13 which was not been declared under the provisions of Section 3 of the Act, as slum area. The plaintiffs are not entitled for the relief of injunction since no prior permission was necessary before initiating any proceedings for their eviction.

(II) ***Ambika and another v. M.Shamshad and another*** reported in **2015 (4) CTC 159**. This Court has clearly held in paragraphs 18, 19 and 20, which reads as follows:

“18. Section 29, occurs in chapter VII of the Act under the heading protection of occupants in slum areas from eviction. The marginal note of the section is "Proceedings for eviction of occupants not to be taken without permission of the prescribed authority". That section says that notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the prescribed authority, where any Decree or Order is

obtained in an suit of other proceedings instituted before such commencement for the eviction of the occupant from any building or land in a slum area, exercise such a Decree or Order. It also prohibits an owner of a land from instituting a suit for eviction of an occupant from any building or land from the slum area after the commencement of the Act, sub-section (2) of section 29 provides for an application for obtaining the permission from the prescribed authority.

“19. A conjoint reading of all sub-sections of section 29 of the Act would clearly indicate that the Legislature intends to impose a restriction on the owner of the land either executing the Decree obtained earlier or instituting a suit for eviction against an occupant of slum area by imposing a pre-condition that the owner of slum area should get the permission of the Requisite Authority either for filing the suit for eviction or for executing the Decree that had already been obtained. Section 29, in express terms, prohibits the owner of the slum area from instituting a suit for eviction or executing a Decree obtained earlier against an occupant without such permission. One of the facts to be taken into account by

the prescribed authority for granting the sanction under sub-section (4) is whether alternative accommodation within the means of the occupant would be available to him if he was evicted. The above restriction is only to safeguard the interests of the occupant by securing him an alternative accommodation within his means, if a suit for eviction or execution of a Decree for eviction is to be permitted. Therefore, it is clear that the object and purpose of the Act is to give protection to the occupants in slum areas from eviction and the same cannot be overlooked or ignored.

“20. In the instant case, it is not in dispute that no permission has been obtained from the Competent Authority under section 29 of the Act by the Respondents/Plaintiffs prior to the initiation of the legal proceedings. In view of the pre-condition of permission from the prescribed Authority as per section 29 of the Act, it is clear that persons like the respondents/plaintiffs herein, cannot claim the right in their favour”.

14. Further, Section 2 (g) (1) of the said Act defines occupier which includes that any person who for the time being is paying or is

liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable, the very same act in sub-section (j) of Section 2 defines prescribed authority means any authority or a person authorized by the Government in this regard by notification.

15.The respondent herein admitted that the land of the petition premises still vested with the Slum Clearance Board and no permission is obtained from the prescribed authority for the initiation of the legal proceedings till date. Viewed in the above perspective, this court has no hesitation to come to the conclusion that the findings given by the learned Rent Control Tribunal and the learned Appellate Authority are liable to be interfered with.

16.In fine, since I find that the landlord and tenant relationship is established and in view of the bar under Section 29 of the Tamil Nadu Slum Clearance Board read with Section 3(g)(i) of the said Act, the petitioner herein has made out a case for allowing the Revision petitions by setting-aside the orders passed by the learned Rent Control Tribunal and the learned Appellate Authority.

17.In the result, both the civil revision petitions in

CRP.Nos.3428 and 3429 of 2012 are allowed and the orders and decrees passed by the R.C.A.Nos.384 and 385 of 2006 dated 13.07.2012 by the VIII Small Causes Court/ Rent Control Appellate Court, Chennai, confirming the Judgment and Decree in R.C.O.P.Nos.1370 and 1872 of 2004 dated 23.03.2006 on the file of the XIII Small Causes Court/ Rent Control Court, Chennai are set aside. There is no orders as to cost. The connected miscellaneous petitions are closed.

22.03.2017
(2/2)

Index:Yes
Internet:Yes

vs

To

- 1.The VIII Small Causes Court /
Rent Control Appellate Court, Chennai.
- 2.The XIII Small Causes Court/
Rent Control Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)Nos.3428 and 3429 of 2012 and
M.P.Nos.1 and 1 of 2012 and
CMP.Nos.2787 and 2788 of 2016**

**22.03.2017
(2/2)**