

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.3940 and 3941 of 2012
and
M.P.Nos.1 and 1 of 2012**

R.Baskaran
M/s.Baskar Electricals,
No.28, New No.4, 16th Street,
Ashok Nagar,
Chennai – 600 083.

.. Petitioner in both the CRPs

Vs.

1.M.K.Thangavelu

.. Respondent in CRP.No.3940/2012 and
1st Respondent in CRP.No.3941/12

2.T.Anandhi

.. 2nd Respondent in CRP.No.3941/2012

3.S.Shanthalakshmi

.. 3rd Respondent in CRP.No.3941/2012

Prayer in CRP.No.3940 of 2012: Civil Revision Petition filed under Section 25(1) of the Tamilnadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amend by Act 23 of 1973), against the decree and judgment dated 27.08.2012 made in R.C.A.No.561 of 2009, on the file of the Rent Control Appellate Authority (the VIII Court of Small

Causes) Chennai, reversing the Decree and Judgment dated 23.01.2009 made in R.C.O.P.No.1539 of 2007, on the file of the Rent Controller (XI Small Causes Court), Chennai.

Prayer in CRP.No.3941 of 2012: Civil Revision Petition filed under Section 25(1) of the Tamilnadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amend by Act 23 of 1973), against the decree and judgment dated 27.08.2012 made in R.C.A.No.90 of 2007, on the file of the Rent Control Appellate Authority (the VIII Court of Small Causes) Chennai, reversing the Decree and Judgment dated 01.10.2010 made in R.C.O.P.No.1840 of 2004, on the file of the Rent Controller (XIII Small Causes Court), Chennai.

(In both the CRPs)

For Petitioner : M/s.S.L.Kalavathy

For Respondents : Mr.T.P.Kathiravan

COMMON ORDER

The tenant is the Civil Revision Petitioner before this Court, challenging the order in RCA.No.561 of 2009, on the file of the learned VIIIth Judge, Small Causes Court, Chennai (Rent Control Appellate Authority).

2.It is the case of the respondent/landlord is that the respondent has let out the petition premises to the petitioner in the year 1991, the petitioner who is the tenant in the petition premises for Non-residential purpose a portion of the Ground floor on monthly rent of Rs.850/- from 16.07.1991 and the petitioner has paid a sum of Rs.15,000/- as advance amount for the tenancy portion. Later on, the rent amount was enhanced to Rs.1,800/-.

3.It is the further case of the landlord is that the tenant has been making payment of rental amount of Rs1,800/- per month with electricity charges Rs.30/- per month till may 2004 accepting the respondent is the landlord and the lawful owner of the petition premises. The landlord has filed the Rent Control Proceedings in RCOP.No.1840 of 2004 for eviction against the tenant under Sections 10(2)(i) 10(2)(vii) and 10(3)(a)(iii) of the Act, but the said RCOP.No.1840 of 2004 was dismissed on the ground that the petition premises has notified as slum area as the landlord should have taken prior permission from the Tamil Nadu Sulm Clearance Board before filing RCOP as per tanant's contention. After the dismissal of the RCOP.No.1840 of 2004, the landlord has verified the fact from the

Tamil Nadu Slum Clearance Board and came to know that the petition premises was not notified as slum area by the Tamil Nadu Slum Clearance Board and therefore, the landlord has filed an appeal in RCA.No.90 of 2007 and the same is pending.

4.The tenant has filed a Rent control proceedings in RCOP.No.1208 of 2004, under Section 9(3) of the Act against the landlord disputing the landlord and the tenant relationship. When the said RCOP.No.1208 of 2004 was dismissed on 22.11.2004 by the learned XIIIth Judge, Small causes Court, Chennai, holding that the respondent is a landlord and the petitioner is the tenant and the said order, the learned XIIIth Judge, directed the tenant to pay the rental arrears since June 2004 onwards and thereafter the tenant has sent a cheque on 08.08.2005 for a sum of Rs.21,600/- towards the rental arrears from June 2004 to may 2005.

5.It is the further case of the landlord is that the tenant asked the landlord to deduct the advance amount of Rs.15,000/- for the month of June to December 2005 along with the electricity Bill charges and the same were also adjusted, thereafter, the tenant has sent a cheques for the period from January 2007 to July 2007 at the rate of

Rs.1830/- The respondent's daughter, who is one of the owner of the petition premises has sent letters on 22.01.2007, 19.02.2007, 22.03.2007, 30.04.2007, 31.05.2007, 20.06.2007 and 27.07.2007 with the rental receipts mentioning the default of rental arrears for the last 12 months and the same was received by the tenant, but there is no reply has been given till date.

6.It is further case of the landlord is that the tenant has sent one empty cover by RPAD on 08.08.2007 for which the landlord has told over by phone about the empty cover sent to the landlord, there is no proper reply from the tenant and informed the landlord to take the legal action against him. The landlord further states that the tenant has sent a letter dated 11.01.2007 alleging that the tenant has paid a sum of Rs.35,000/- as pagadi to the petition premises at the time of lease out the premises and the landlord has adjusted the same form the rental arrears. The landlord has replied on 22.01.2007, that no pagadi amount received by the landlord except the advance amount of Rs.15,000/- and the same was adjusted towards the rental arrears as per request made by the respondent, but there was no re-joinder from the tenant with documentary evidence as on date.

7.The landlord further states that on 23.08.2007, the tenant has issued a cheque for Rs.1,830/- which including Electricity charges by way of RPAD along with reply to the respondent's daughter dated 27.07.2007 and 11.08.2007. Therefore, the tenant has committed willful default in payment of rental arrears amount of Rs.1,830/- per month for the period from September 2006 to July 2007. Therefore, the land lord has filed the RCOP.No.1539 of 2007 for eviction of the tenant.

8.On receipt of the notice in the above RCOP.No.1539 of 2007, the tenant has filed his counter by denying the entire allegations set out in the petition.

9.The tenant states that the petition property in RCOP.No.1539 of 2007 was leased out to the tenant by the respondent's wife Smt.Saroja, who is the original allottee of the Tamil Nadu Slum Clearance Board. At that time of leasing the property, the tenant has paid an advance amount of Rs.15,000/- and a pagudi of Rs.35,000/- to the respondent's wife on an understanding that the same will be refundable without interest. Hence, the tenant denied that the petition property leased out by the respondent was utter false hood. The

tenant further states in his counter that the respondent Mr.Thangavelu, who is not the owner of the property and according to the respondent, he executed a settlement deed in favour of his daughter without retaining any life interest. Therefore, he cannot maintain the RCOP.No.1539 of 2007. Accordingly the tenant also denied Para 3 to 19 of the petition.

10.Further it is the case of the tenant is that the tenant did not accept the respondent as his landlord and he admitted that the petition in RCOP.No.1208 of 2004 filed under Section 9(3) of the Act was dismissed, but, against the said order, the appeal filed by the respondent's wife and the same is pending. Apart from this, the tenant also states that a Civil Suit in O.S.No.6602 of 2004 was filed by the respondent's other daughters for declaration against the petitioner and the same is pending. Therefore, altogether 11 proceedings initiated by the respondent against the tenant, which is nothing but harassment.

11.It is further case of the tenant is that the dispute between the respondent and his wife Smt.Saroja, the petitioner/tenant thought it is better to adjust the advance and pagudi at the earliest, the respondent started to adjust the advance and pagudi amount. The adjustment was

made till November 2006, In the month of January 2007, the respondent personally met the petitioner and requested him to pay the rents from the month of January 2007 onwards, as he has some commitments, obliging him, the petitioner started to pay the rent from 22.01.2007 by way of cheque along with the covering letters that would be proved that there was no default much less willful default on the part of the petitioner as alleged in the petition.

12.The tenant also states that the petition premises is under the control and supervise of the Tamil Nadu Slum Clearance Board and hence in any area falling under the said Act, eviction can be sought after obtaining permission as per Section 29 of the Act and hence the petition is bereft of any merits and the same is liable to be dismissed. Therefore, the tenant prayed for dismissal of the RCOP with exemplary cost.

13.Considering both side cases, the learned Rent Controller namely XIth Judge, Small Causes Court, Chennai, by order dated 23.01.2009 dismissed the RCOP.No.1539 of 2007 and the learned Judge states that as per Section 2(6) of the Tamil Nadu Building Lease and Rent Control Proceedings Act, the petitioner/landlord has not

having any rights or locus-standi to file the Rent Control Petition. The Learned Judge has also further states that as per the evidence of the petitioner/landlord it made clear that the petitioner/landlord himself has admitted in his evidence that he had settled the petition mentioned property in favour of his daughters and also stated that in his cross examination that he has filed the petition in RCOP.No.1539 of 2007 in the capacity of Power Agent of his daughter. On verification by the correctness of the said evidence, the learned Rent Controller have verified the documents which was marked by the petitioner as Ex.P2 the General Power of Attorney, which was executed in respect of petition premises, it empowers the petitioner/landlord only to negotiate sale consideration and to deal with the said property to sell that same. But the said power of Attorney Ex.P2 does not gave any right to fix-up the tenant and to collect rent or to maintain the property.

14.The learned judge also states that all the documents, which was marked as Exs.P20 and P21 on the side of the petitioner/Landlord, which is rental receipts and it made clear that on verification made by the learned judge, he found that the signature of one Anandhi was mentioned as landlord. Therefore, the learned judge states that when

the Court considered that the petitioner/landlord has settled the petition property in favour of his daughter Anandhi, without retaining any life interest over the property, has filed the RCOP in the capacity of the owner of the property. The petitioner/landlord who alleged that the power of Attorney to file the case has no right to maintain the Rent Control proceedings or he is the absolute owner of the petition property by stating that he is the landlord. Therefore, the learned Rent Controller also states that the present petitioner namely Mr.Thangavelu, does not have any manner of right or power to file the case either in the capacity of the landlord or in the capacity of the owner of the owner of the petition premises.

15.The learned Rent Controller also states that the claim period from September 2006 to July 2007. The learned Judge also states that as per statement of the tenant at the time of entering into the inception of the tenancy, the tenant has paid the advance amount of Rs.15,000/- and pagadi amount of Rs.35,000/- by totally he was paid Rs.50,000/- and he asked to adjust towards monthly rent form June 2005 to November 2006 as such even after the adjustment of the above said monthly rental payments, still there is a balance amount of advance is lying in the hands of the petitioner/ landlord at

Rs.17,060/-. As per the request made by the landlord, the tenant has paid the rental payments by way of cheques along with covering letter from the month of January 2007 onwards and the cheque payment was adjusted and accounted by the petitioner/landlord towards the monthly rents for the period from September 2006 onwards and the said facts was admitted by the petitioner/landlord through his affidavit filed in support of Section 11(3) application filed by him in RCOP.No.1860 of 2004, which was marked as Ex.R1. Therefore, the question of default in payment of arrears of rent does not arise. Hence, the learned Rent Controller namely the XIth Judge, Small Causes Court, Chennai, dismissed the said RCOP. Challenging the said order in RCOP.No.1539 of 2007, the landlord has filed an appeal before the learned Appellate Court namely the VIIIth Judge, Small Causes Court, Chennai.

16.Considering the case of the Appellant/Landlord the learned Appellate judge, allowed the rent control appeal in RCA.No.561 of 2009, on the ground that as per the Ex.P2, the General Power of Attorney wherein the daughters of the petitioner by namely Anandhi and Santhanalakshmi given power to their father Mr.Thankavelu to do certain acts, but the trial Court without going fully through Ex.P2

arrived into a conclusion that the power is given only to negotiate the sale consideration and through power no right was given to the petitioner to collect the rent or to maintain the property. The learned Appellant Judge also states that the trial Court have considering the claim of the land lord that the tenant has committed default from September 2006 to July 2007, since the main question is when the rents are paid for the month of September 2006 on 10.09.2007 and for October 2006 rent was paid on 12.10.2007. Therefore, there was a default and hence, the Rent Control Appeal in RCA.No.561 of 2009 is allowed. Challenging the said order dated 27.08.2012, the tenant has filed the present Civil Revision Petition.

17.I heard M/s.S.L.Kalavathy, learned counsel appearing for the petitioner and Mr.T.P.Kathiravan, learned counsel appearing for the respondent in both the Civil Revision Petitions and perused the entire records.

18.Admittedly, the petitioner who is not at all a landlord has filed the present Rent Control Proceedings in RCOP.No.1539 of 2007. As per Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is defined that who is the landlord includes the person who is

receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.

19.As per the above Section 2(6) of the Act, the petitioner Mr.Thangavelu is comes under the definition of landlord. As per the provision 2(6), the landlord includes the person, who has received a rent of building whether on his own account or on behalf of another or on behalf of himself and others or as an agent, etc. Therefore, as per the definition, the Rent control appeal states that being the power agent of the petitioner's daughters Anandhi and Santhanalakshmi, the petition is maintained to proceed the case.

20.On fair reading of the petition in RCOP.No.1539 of 2007, it made clear that it is nowhere stated by the petitioner that he is the power agent of his daughters namely Anandhi and Santhanalakshmi, in Para 11 it is stated that the petitioner's daughter, who is one of the owner of the petition premises has sent a letter on 22.01.2017, 19.02.2007, 22.03.2007, 30.04.2007, 31.05.2007, 20.06.2007 and

27.07.2007 with rental receipts. Therefore, when the petitioner namely Mr.Thangavelu has not come up with the correctness of the possession of the landlord or whether he is the power agent of his daughters, if not, he has no right to maintain the Rent Control proceedings.

21.As per his deposition in the chief examination in RCOP.No.1539 of 2007 and also in the cross examination by the tenant, the petitioner states that as per the power of attorney, which is marked as Ex.P2 executed by his daughters namely Anandhi and Santhanalakshmi, the respondent has filed the RCOP.No.1539 of 2007. Therefore he filed the petition in RCOP.No.1539 of 2007 in the capacity of power agent of his daughter then, if the version of the respondent is as power agent then he has to seek permission as per the Civil Procedure Code from the Court and thereafter, only he has to file the Rent Control Proceedings.

22.Order 3 Rule 1 of CPC prescribe the recognition of the power agent and provision states as follows:

"1. Appearances, ect, may be in person, by recognized agent or by pleader:- Any appearance, application or act in or to any Court, required or

authorized by law to be made or done by a party in such Court may, except where otherwise express provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader (appearing, applying or acting, as the case may be,) on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person."

23. Admittedly, in this case, this petitioner has not obtained any permission from the Court for filing the Rent Control Proceedings as Power Agent of the original owner against the tenant. Therefore, there is no landlord and tenant relationship between the petitioner and the respondent.

24. It is the further case of the tenant is that at the time of inception to tenancy, the petitioner's wife Smt. Saroja, has leased out the petition premises to the tenant and at that time, he paid a sum of Rs.15,00,000/- as advance and Rs.35,000/- as pagadi, by total amount of Rs.50,000/- were lying with the petitioner's wife.

25.The petitioner himself has admitted in his petition in Para-10 of the petition in RCOP.No.1539 of 2007, that the respondent has asked the petitioner to deduct the advance amount of Rs.15,000/-for the month of June to December 2005, includes the electricity charges. In the same Para-10, the petitioner also mentioned that he has received the cheques from the tenant on 22.01.2007 to 27.07.2007 for the period from January 2006 to July 2006.

26.It the petitioner has received the cheques for the period of January 2006 to July 2006, from 22.01.2007 to 27.07.2007 why he has received the cheques for that period. When the petitioner is not the landlord of the petition premises, he has no locus standi to maintain the RCOP.No.1539 of 2007. Since the petitioner Mr.Thangavelu, who given statement in the Court, he has filed the RCOP.No.1539 of 2007 in the capacity of power agent, when he has obtained the permission from the Court and the order of the learned Rent Controller is well consider order that the petitioner Mr.Thangavelu is not the owner of the property and he is not comes under the capacity of the landlord.

27.The petitioner himself has admitted and filed an affidavit in RCOP.No.1840 of 2004 filed by the tenant under Section 11(3) application; the petitioner mentioned and admitted in the said application that the default rents claimed from the period from September 2006 to July 2007 was received by the petitioner as per the details of payment mentioned in the said affidavit. Thus being the case, there is no question of default arose in this case, since it is the case of the landlord is that the tenant has not paid the arrears of tenancy from September 2006 to July 2007, the said affidavit has been marked as Ex.R1 on behalf of the tenant which clearly proved that on his own affidavit of the petitioner, Mr.Thangavelu admitted that the arrears of rent from September 2006 to July 2007 was received by the petitioner, then there is no question of default arising out of in this case. Therefore, the order of the learned Appellate Judge is totally against the law and the same is liable to be set aside. Accordingly the same is set aside.

28.In the result, both the Civil Revision Petitions are allowed by setting aside the order passed in RCA.Nos.561 of 2009 and 90 of 2007, dated 27.08.2012 respectively, on the file of the learned Rent Control Appellate Authority (The VIII Court of Small Causes) Chennai,

reversing the Decree and Judgment dated 23.01.2009 and 01.10.2010 made in R.C.O.P.Nos.1539 of 2007 and 1840 of 2004, on the file of the Rent Controller (XI Small Causes Court) and (XIII Small Causes Court), Chennai respectively. Consequently, connected miscellaneous petitions are closed. No. Costs.

23.10.2017

Note: Issue order copy on 26.10.2017
vs

Index: Yes
Speaking Order

To

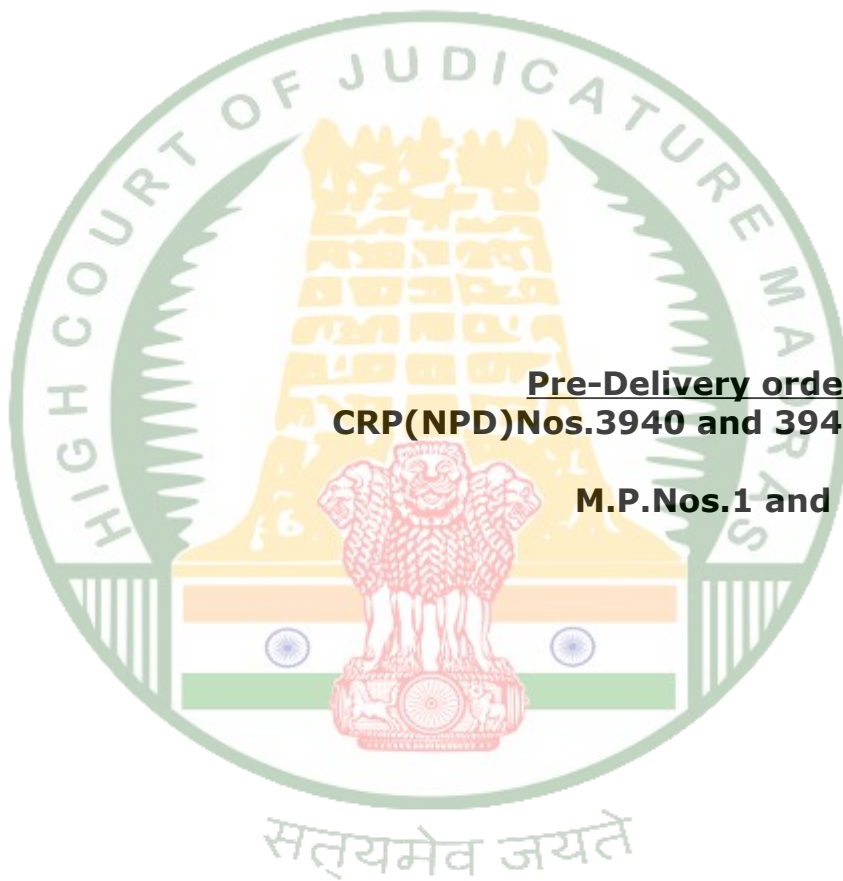
1. The Rent Control Appellate Authority,
(VIII Court of Small Causes) Chennai.
2. The Rent Controller,
(XI Small Causes Court), Chennai.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)Nos.3940 and 3941 of 2012
and
M.P.Nos.1 and 2 of 2012

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23.10.2017