

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANIC.R.P.(NPD)Nos.2646, 2736, 2748 and 4387 of 2015
and M.P.Nos.1,1,1,1 of 2015

<i>Orders Reserved on</i>	<i>Orders Pronounced on</i>
23.11.2017	03.01.2018

C.R.P.Nos.2646 and 2748 of 2015

C.Sekar

.. Petitioner
in C.R.P.No.2646 of 2015Kavitha Medical Centre
represented by A.K.Sethuraman
Door No.15, Jones Road,
Saidapet,
Chennai 600 015... Petitioner
in C.R.P.No.2748 of 2015

Vs. सत्यमेव जयते

T.Narayanan (Deceased)

1.Arulmigu Prasanna Venkatesa
Perumal Devasthanam
Rep. by its Managing Trustee
Perumal Koil Street,
Saidapet, Chennai-15.2.T.Ramachandran
3.N.Prema

4.N.Laxmi
 5.P.Saraswathi Pattabiraman
 6.D.Devi Devanand
 7.M.Usha Magesh

(N.Nithya,D/O.T.Narayanan, deceased) .. Respondents
 in C.R.P.Nos.2646 and 2748 of 2015

(R3-R7 Lrs of deceased Narayanan added
 as per order in M.P.Nos.6 and 621/2008 dated
 31.01.2008 by IX Judge, Small Causes
 Court, Chennai)

(R3 to R7 on record as legal heirs
 of deceased Nithya as per order
 dated 10.08.2012 made in M.P.Nos.291 and
 289 of 2012 by IX Judge, Small Causes
 Court, Chennai)

C.R.P.Nos.2736 and 4387 of 2015

C.Sekar .. Petitioner
 in C.R.P.No.2736 of 2015

Kavitha Medical Centre
 represented by A.K.Sethuraman
 Door No.15, Jones Road,
 Saidapet,
 Chennai 600 015. .. Petitioner
 in C.R.P.No.4387 of 2015

T.Narayanan (Deceased) vs.

1.N.Prema
 2.N.Laxmi
 3.P.Saraswathi Prabhakaran
 4.D.Devi Devanand
 5.M.Usha Magesh

WEB COPY

(N.Nithya, D/O.T.Narayanan, deceased) .. Respondents
in C.R.P.Nos.2736 and 4387 of 2015

(R1 to R5 amended as per M.P.Nos.441,442/2007
dated 02.11.2007)

PRAYER in C.R.P.Nos.2646 and 2748/2015: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 as amended by Act 23 of 1973, against the judgment and decree dated 22.01.2015 made in R.C.A.Nos.285 and 284 of 2014 on the file of IX Judge, (Rent Control Appellate Authority), Small Causes Court, Chennai, confirming the fair and decretal order dated 27.02.2014 made in R.C.O.P.Nos.2986 and 1377 of 1997 on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

PRAYER in C.R.P.Nos.2736 and 4387/2015: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 as amended by Act 23 of 1973, against the judgment and decree dated 22.01.2015 made in R.C.A.Nos.299 and 286 of 2014 on the file of IX Judge, (Rent Control Appellate Authority), Small Causes Court, Chennai, confirming the fair and decretal order dated 27.02.2014 made in R.C.O.P.Nos.187 and 189 of 1997 on the file of the XI Judge, (Rent Controller), Small Causes Court, Chennai.

In C.R.P.Nos.2646 and 2748 of 2015:

For Petitioners : Mr.V.Ayyadurai, Senior Counsel
for Mr.A.C.Kumaragurubaran

For R1 and R2 : Not ready in notice

For R3 to R7 : Mr.V.B.Thirupathikumar

In C.R.P.Nos.2736 and 4387 of 2015:

For Petitioners : Mr.V.Ayyadurai, Senior Counsel
for Mr.A.C.Kumaragurubaran

For R1 to R5 : Mr.V.B.Thirupathikumar

COMMON ORDER

In all the four Civil Revision Petitions, the petitioners are tenants and the respondents are landlords. For the sake of convenience, the parties are referred to as 'landlords' and 'tenants'. The issues in all the four Civil Revision Petitions are inter linked and therefore, they are disposed of by this common order.

WEB COPY

C.R.P.(NPD)No.2646 of 2015:

The tenant/C.Sekar filed R.C.O.P.No.2986 of 1997 under Section 9(3) of the Rent Control Act, on the file of the XI Small

Causes Court, Chennai, for permission to deposit the monthly rent of Rs.225/- from the month of May 1992 in respect of the petition premises before the authority. The learned Rent Controller by fair and decretal order dated 27.02.2014, dismissed the said R.C.O.P. Against the same, the tenant/C.Sekar filed R.C.A.No.285 of 2014 on the file of the IX Small Causes Court, Chennai. The learned Appellate Authority by judgment and decree dated 22.01.2015 dismissed the appeal confirming the fair and decretal order of the learned Rent Controller. Against the same, C.R.P.No.2646 of 2015 is filed by the tenant/C.Sekar.

C.R.P.(NPD)No.2748 of 2015:

The tenant/Kavitha Medical Centre filed R.C.O.P.No.1377 of 1997 under Section 9(3) of the Rent Control Act, on the file of the XI Small Causes Court, Chennai, for permission to deposit the monthly rent of Rs.300/- from the month of May 1992 in respect of the petition premises before the authority. The learned Rent Controller by fair and decretal order dated 27.02.2014, dismissed the said R.C.O.P. Against the same, the tenant/Kavitha Medical Centre filed R.C.A.No.284 of 2014 on the file of the IX Small Causes Court, Chennai. The learned Appellate Authority by judgment and

decree dated 22.01.2015 dismissed the appeal confirming the fair and decretal order of the learned Rent Controller. Against the same, C.R.P.No.2748 of 2015 is filed by the tenant/Kavitha Medical Centre.

C.R.P.(NPD)No.2736 of 2015:

The landlords filed R.C.O.P.No.187 of 1997 against the tenant/C.Sekar, respondents 1 and 2 in C.R.P.Nos.2646 and 2748 of 2015, for eviction of the tenant/C.Sekar on the ground of wilful default, on the file of XI Small Causes Court, Chennai. The learned Rent Controller by fair and decretal order dated 27.02.2014 allowed the said R.C.O.P. and ordered eviction. Against the same, the tenant/C.Sekar filed R.C.A.No.299 of 2014 on the file of IX Small Causes Court, Chennai. The learned Appellate Authority by judgment and decree dated 22.01.2015 dismissed the appeal confirming the fair and decretal order of the learned Rent Controller. Against the same, C.R.P.No.2736 of 2015 is filed by the tenant/C.Sekar.

C.R.P.(NPD)No.4387 of 2015:

The landlords filed R.C.O.P.No.189 of 1997 against the tenant/Kavitha Medical Centre, for eviction on the ground of wilful

default, on the file of XI Small Causes Court, Chennai. The learned Rent Controller by fair and decretal order dated 27.02.2014 allowed the said R.C.O.P. and ordered eviction. Against the same, the tenant/Kavitha Medical Centre filed R.C.A.No.286 of 2014 on the file of IX Small Causes Court, Chennai. The learned Appellate Authority by judgment and decree dated 22.01.2015 dismissed the appeal confirming the fair and decretal order of the learned Rent Controller. Against the same, C.R.P.No.4387 of 2015 is filed by the tenant/Kavitha Medical Centre.

2. The facts of the case are as follows:

The landlords filed two R.C.O.P.Nos.187 and 189 of 1997 for eviction of the tenants on the ground of wilful default stating that the tenants paid rent till April 1992 and thereafter, failed to pay rent and committed wilful default. Pending R.C.O.Ps., the landlord by name T.Narayanan died and his legal heirs were brought on record as per the order dated 02.11.2007 in M.P.Nos.441 and 442 of 2007 in R.C.O.P.Nos.187 and 189 of 1997. The legal heirs stated that they are the owners and landlords of the premises at Door No.25/15, Jones road, Saidapet, Chennai-15. C.Sekar and Kavitha Medical Centre are the tenants under the landlords in respect of the

shop Nos.3 and 15 respectively for non residential purpose situated in the front portion of the premises. The tenants paid rent till April 1992 and subsequently, they did not pay the rent. The landlords filed R.C.O.P.Nos.1402 and 1403 of 1992 against the tenants herein, on the file of the XV Small Causes Court, Chennai, for eviction on the ground of wilful default. The said R.C.O.Ps. were dismissed on 23.11.1993 and subsequent to that, the tenants stopped paying rent to the landlords at the ill advice of others from April 1992 till date and the tenants committed default in payment of rent. In the circumstances, the landlords have filed present R.C.O.P.Nos.187 and 189 of 1997 for eviction of the tenants on the ground of wilful default.

3. The tenants filed counter statements and submitted that there is a dispute with regard to ownership of the property. The brother of the landlord/deceased Narayanan, by name Ramachandran, claimed 1/6th share in the rental income and an advocate by name S.K.Sundaram issued notice stating that if the tenants pay the rent to the landlords, it will not bind on the Arulmigu Prasanna Venkatesaperumal Devasthanam/temple. O.S.No.8304 of 1992 filed by Ramachandran/brother of landlord

Narayanan, with regard to petition premises is pending. In view of the bonafide doubt about the ownership, the tenants are not paying the rent from May 1992. The landlords earlier filed R.C.O.P.Nos.1401 to 1403 and 1437 of 1992 for eviction of the tenants herein and other tenants namely, Krishnan and Babu, on the very same ground. The said R.C.O.Ps. were dismissed. Challenging the same, the landlords filed R.C.As. and Civil Revision Petitions and the same were also dismissed. In view of the dismissal of earlier R.C.O.Ps. filed by the landlords, the present R.C.O.Ps. are not maintainable. The petition premises belongs to the temple and one Radhakrishna Chetty, who was the trustee of the temple took the land on lease and put up superstructure and let out the same for rents to various third parties. The said Radhakrishna Chetty gave the rental income to the temple. He executed a Will dated 20.09.1986 bequeathing the property to his wife Chittibai Ammal for her lifetime and thereafter, to the temple.

4. The tenants/C.Sekar and Kavitha Medical Centre filed R.C.O.P.Nos.2986 and 1377 of 1997 respectively, under Section 9(3) of the Rent Control Act, on the file of the XI Small Causes Court, Chennai, for permission to deposit the monthly rent of

Rs.225/- and Rs.300/- respectively, from the month of May 1992 in respect of the petition premises before the authority. The landlord/Narayanan died and his legal heirs were brought on record vide order dated 10.08.2012 in M.P.Nos.291 and 289 of 2012. The said R.C.O.Ps. were filed on the same grounds raised in the counter statement filed in R.C.O.P.Nos.187 and 189 of 1997 filed by the landlords. In addition to that, the tenants have stated that after the death of Radhakrishna Chetty, the landlord/Narayanan was collecting the rent on behalf of Chittibai Ammal. The said Chittibai Ammal was of unsound mind and taking advantage of unsound mind of Chittibai Ammal, the landlord Narayanan obtained documents from her as though the property was sold to him on 25.05.1997. After knowing the above facts, the relatives of Chittibai Ammal made arrangements to cancel the alleged sale deed on the next day itself.

5. The landlord/Narayanan filed counter statement and denied various allegations made by the tenants for deposit of rent and submitted that there is no bonafide dispute with regard to the title of the petition premises. He further submitted that Chittibai Ammal died in the year 1993 itself and therefore, it is false to state that

Chittibai Ammal executed a sale deed on 25.05.1997 in favour of the landlord/Narayanan. He was collecting rent as a owner of the property not as the agent of Chittibai Ammal.

6. The temple/Arulmigu Prasanna Venkatesaperumal Devasthanam and T.Ramachandran, who is the brother of the landlord/Narayanan were impleaded as respondents 2 and 3 in the R.C.O.Ps filed by the tenants. The temple filed counter statement stating that the temple is not the owner of the superstructure. The superstructure belongs to the landlord/Narayanan. The landlord and his legal heirs are having lease hold right over the land in respect of the petition premises. The brother of the landlord by name Ramachandran has no lease hold right over the petition premises. The temple is not a necessary party. The landlord and tenants unnecessarily dragged the temple into the proceedings.

7. The brother of the landlord Ramachandran filed counter statement and submitted that the landlord/Narayanan is not absolute owner of the petition premises and he is having 1/6th share in the rental income.

8. All the above four R.C.O.Ps. along with other R.C.O.Ps. filed by the landlords against other tenants and R.C.O.Ps. filed by the other tenants were also taken together and a joint trial was held.

9. Pending R.C.O.Ps., landlord Narayanan died and his legal heirs were brought on record as respondents 3 to 7 in R.C.O.P.Nos.2986 and 1377 of 1997 filed by the tenants and petitioners 2 to 6 in R.C.O.P.Nos.187 and 189 of 1997 filed by the landlords.

10. Before the learned Rent Controller, Prema, who is the first respondent in C.R.P.Nos.2736 and 4387 of 2015 and third respondent in C.R.P.Nos.2646 and 2748 of 2015 was examined as P.W.1 and marked 20 documents as Exs.P1 to P20. The tenant/C.Sekar was examined as R.W.1, one Kesavaraman was examined as R.W.2 and Ramachandran, brother of the landlord/Narayanan was examined as R.W.3 and marked 21 documents as Exs.R1 to R21.

11. The learned Rent Controller considering the pleadings, oral and documentary evidence allowed R.C.O.P.Nos.187 and 189 of

1997 filed by the landlords and dismissed R.C.O.P.Nos.2986 and 1377 of 1997 filed by the tenants.

12. Against the said order of dismissal dated 27.02.2014 made in R.C.O.P.Nos.2986 and 1377 of 1997, the tenants/C.Sekar and Kavitha Medical Centre filed R.C.A.Nos.285 and 284 of 2014 respectively. Against the order dated 27.02.2014 made in R.C.O.P.Nos.187 and 189 of 2014, the tenants/C.Sekar and Kavitha Medical Centre filed R.C.A.Nos.299 and 286 of 2014 respectively.

13. The learned Appellate Authority independently considering the materials on record and order of the learned Rent Controller, dismissed all the four R.C.A.Nos.299, 285, 286 and 284 of 2014 filed by the tenants.

14. Against the judgment and decree dated 22.01.2015 made in R.C.A.Nos.299 and 285 of 2014 confirming the fair and decretal order dated 27.02.2014 made in R.C.O.P.Nos.187 and 2986 of 1997, the tenant/C.Sekar filed two C.R.P.Nos.2736 and 2646 of 2015.

15. Against the judgment and decree dated 22.01.2015 made in R.C.A.Nos.286 and 284 of 2014 confirming the fair and decetal order dated 27.02.2014 made in R.C.O.P.Nos.189 and 1377 of 1997, the tenant/Kavitha Medical Centre filed two C.R.P.Nos.4387 and 2748 of 2015.

16. The learned Senior Counsel appearing for the tenants contended that the R.C.O.Ps. filed by the landlords for eviction are not maintainable in view of the dismissal of earlier R.C.O.P.Nos.1401 to 1403 and 1437 of 1992 filed by the landlords on the very same ground. The landlords have taken a different stand for the present R.C.O.Ps. than that of the stand taken in the earlier R.C.O.Ps. In the earlier R.C.O.Ps. filed by the landlords, they stated that originally the property belonged to Radhakrishna Chetty and subsequently, by the Will dated 20.09.1986, the said Radhakrishna Chetty bequeathed the said property to Chittibai Ammal and landlord/Narayanan got vested interest in the property. In the present R.C.O.Ps. filed by the landlords, they are claiming title based on Ex.P3/settlement deed, dated 28.01.1988. The landlords have not mentioned about Ex.P3 in the earlier R.C.O.Ps. filed by them. The landlords have taken steps to evict the tenants at any

costs and have also filed separate R.C.O.Ps. for eviction on the ground of owners occupation. The learned Rent Controller having dismissed R.C.O.Ps. filed by the landlords for eviction on the ground of owners occupation, ought to have dismissed the present R.C.O.Ps. filed by the landlords on the ground of wilful default also. The Courts below failed to see that earlier R.C.O.Ps. filed by the landlords on the ground of wilful default were dismissed holding that there exist bonafide dispute with regard to the ownership. O.S.No.8304 of 1992 filed by Ramachandran/brother of landlord Narayanan with regard to the petition premises is even now pending. In view of the rival claim with regard to right to receive rent, the Courts below erred in holding that the tenants have committed wilful default. The tenants to show their bonafide that they are willing to pay rent, have filed R.C.O.P.Nos.2986 and 1377 of 1997 respectively, under Section 9(3) of the Rent Control Act, for permission to deposit the rent. The authority with whom the rent has to be deposited are notified by the Government only on 25.01.2001 by G.O.Ms.No.43, Housing and Urban Development (Audit Department). No cause of action has arisen for the landlords to initiate the present R.C.O.Ps. in view of the dismissal of earlier R.C.O.Ps. filed by them. The landlords are not owners of the petition

property and the property belongs to the temple. The learned Senior Counsel for the tenants in support of his contention relied on the following judgments:

(i) 1998 (2) LW 524 (Kannan and another v. Tamil Talir Kalvi Kazhagam);

"13. In the background of this case, the way the suit culminated without adjudication of the rights between the parties, on dismissal of the suit for default and period for setting aside still subsisting even on the date when the said notice was sent, in such circumstances it cannot be said that there could not be any doubt in the mind of the tenants or earlier doubt stands removed. If submission for the respondent is accepted, the very object of the Act and protecting interest of tenant under subsection (3) of Section 9 would be defeated. It would be against the very spirit and the objective of the Act which is to prevent the unreasonable eviction of tenants. It is not a case that he has not tendered the rent. He is a tenant in the demised premises since the year 1969. He has never defaulted and is paying the rent regularly. He has continued to pay the rent even after dispute arose after waiting for some time and after making

an application under Section 9(3) before the Rent Controller.

14. When two or more interpretations are possible, the one which subserves to the object should be accepted. We find sub-section (3) of Section 9 contemplates deposit of rent in case of bona fide doubt or dispute. This is to salvage tenant from eviction. However, this would depend on the facts of each case. Thus, where there are two possible interpretations, the one which prevents a tenant from unreasonable eviction be accepted."

(ii) **1998 (II) CTC 498 (M.Singaperumal and three others v. Government of Tamil Nadu, represented by its Secretary, Home Department, Madras-9 and five others);**

"8. In the absence of any Authority prescribed by the first respondent with regard to deposit of rents as per section 9(3) of the Act and in the light of the earlier decision of this Court referred to above. I am constrained to accept the argument of the learned counsel appearing for the petitioners. Accordingly, the writ petition is allowed. No costs. There shall be a direction to the first

respondent to prescribe the Authority to whom the deposit of rents has to be made under section 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, expeditiously. Inasmuch as absence of such Authority is a lacuna, this Court hopes that the Government will come forward with necessary notification as early as possible."

(iii) **(2006) 2 M.L.J. 554 (Duraishamy and others V. R.Sureshlal and another);**

"10. In such an event, only remedy available for the tenants is in depositing the rent either under Sec.8(5) or under Sec.9(3) of the Rent Control Act. Sec.8(5) can be invoked if the landlord has refused to receive the rent. That is not the contingency here. The other provision is Sec.9(3). That may be implemented by the tenants only if there is available authority as contemplated therein. But the authority mentioned in the above proviso came into existence in much later date in January 2001, which was not in existence at the time these rent control original petitions were filed. By virtue of G.O.Ms.No.43, Housing and Urban Development (Audit) Department dated 25.01.2001, the authority was clothed with power. Till such time, the tenants had no remedy under Secs. 8(5) and 9(3) of the

Rent Control Act for the reasons mentioned supra. It is in this manner, the default becomes not wilful. Hence, on this ground, eviction cannot be ordered and the findings given by the Rent Control Appellate Authority are liable to be interfered with.”

17. Per contra, the learned counsel for the landlords submitted that the earlier R.C.O.Ps. filed by the landlords and subsequent proceedings initiated by them, were dismissed on technical grounds. The present R.C.O.Ps. filed by the landlords are for wilful default committed by the tenants for the subsequent period. There is no bonafide dispute with regard to the ownership of petition premises. The land belongs to the temple and superstructure belongs to Chittibai Ammal. The said Chittibai Ammal by the settlement deed dated 28.01.1988 marked as Ex.P3 settled the property in favour of the landlord/Narayanan. The said settlement deed is not challenged by anybody and the same is in force. The tenants claimed that the superstructure also belongs to the temple. On the other hand, the temple has filed counter statement and categorically stated that the landlords are lessees of the land and owners of the superstructure. The temple has stated that they are not owners of superstructure.

The landlords have paid land rent and other statutory dues to the authorities. All the receipts are in the name of the landlord/Narayanan and subsequent to his death, all the receipts are in the name of other legal heirs. The said O.S.No.8304 of 1992 had been filed by one Doraikannu Chettiar against Chittibai Ammal, Narayanan, Ramachandran and others not with regard to petition premises. The landlord/Narayanan was fifth defendant in the said suit. The property mentioned in the suit in respect of the landlord/Narayanan is not petition premises. It relates to house and ground in premises bearing Old No.19/2, New No.15, West Jones Road, Saidapet, Chennai-15. Whereas the petition premises are shops situate in the same door number. The said suit was dismissed for default on 16.10.1998. The plaintiff therein did not take any further proceedings for restoration of the suit and dismissal of suit has become final. In spite of dismissal on 16.10.1998, the tenants are claiming that the said suit is still pending. The tenants have not taken any steps to verify the nature of the relief sought for and the property which is the subject matter of the said suit. The tenants have not produced alleged notice issued by Ramachandran, brother of landlord/Narayanan, claiming share in the property. Notice issued by advocate Mr.S.K.Sundaram was not addressed to the tenants.

The present R.C.O.Ps. filed by the landlords for claiming rent from May 1992 onwards. The tenants themselves admitted that they have paid rents to the landlord/Narayanan till April 1992 and hence, under Section 2(6) of the Rent Control Act, the said Narayanan is the landlord of the petition premises.

18. The Will dated 20.09.1986 executed by Radhakrishna Chetty does not relate to the petition premises and it relates to four houses. The said Will is not probated and the same cannot be relied on. The tenants did not file R.C.O.P. under Section 9(3) of the Rent Control Act, immediately, when they entertained a doubt about the dispute of ownership. After five years only after the landlord filed R.C.O.Ps. for eviction, the tenants have filed petitions under Section 9(3) of the Rent Control Act. The contention of the learned Senior Counsel for the tenants that the authority under Section 9(3) of the Rent Control Act was notified only on 25.01.2001 by G.O.Ms.No.43, Housing and Urban Development (Audit Department) and therefore, there is no delay in filing R.C.O.Ps. under Section 9(3) of the Rent Control Act and there is no wilful default, is untenable.

19. The tenants intentionally and deliberately failed to pay the rent and it amounts to supine indifference in payment of rent and it amounts to wilful default. The tenant/C.Sekar has sublet the petition premises rented out to him to the third parties. Both the tenants were earlier paying rent to the landlords for more than 9 ½ years and suddenly, without any reason, deliberately failed to pay the rent, which amounts to wilful default. The landlord has produced documents to show that the tenants paid rent to the landlord earlier and marked the same as Exs.P1 and P4. Earlier R.C.O.P.Nos.1401 to 1403 and 1437 of 1992 filed by the landlord for wilful default were for the period of default from February 1992 to April 1992. In support of his contention, the learned counsel for the landlords relied on the following judgments:

(i) 2013 (1) MWN (Civil) 245 (Sulochana v. R.Pangajam and others);

"4. It is submitted by the learned counsel for the revision petitioner that under the provisions of Section 9(3) of the Rent Control Act, in case of doubt and dispute regarding ownership of the property, the Tenant can deposit the rent before the authority as prescribed under the Act and

admittedly, no authority has been prescribed before whom the rent has to be deposited and therefore, the Tenant has no other option to file the Application before the Rent Controller seeking permission of the Rent Controller to deposit the rent and that was not properly appreciated.

5. I am unable to accept the contention of the learned counsel for the Revision Petitioner. It is the specific case of the Revision Petitioner that she was paying rent originally to Rukmani Ammal and thereafter to Devaraj and lastly to Ravi. It is also her case that till August 1997, Ravi was collecting rent and thereafter, he has not come to collect the rent. It is also admitted by her that a case was pending between the owners for partition and she is aware of the same. She also admitted receipt of notice issued by the Respondent calling upon her to pay the arrears of rent. Though in the notice, the Respondents have not stated as to how they derived title over the suit property, even after receipt of notice, no attempt was made by the Revision Petitioner to enquire about the true owner and without making such attempt she filed application to deposit the rent after the Respondents filed application for eviction. Further, the conduct of the Revision Petitioner in resorting

to file application under Section 9(3) cannot be said to be bona fide and the Petition is also not maintainable under Section 9(3) of the Act.

.. ..

.. ..

9. If really, the Revision Petitioner had entertained a bona fide doubt regarding the title of the Respondents to the property, she would have definitely called upon the Respondents to explain their source of title or would have asked Mr.Ravi about the claim made by the Respondents. Admittedly, she has not done anything and she has also admitted that she was aware of the Partition Suit pending between the parties and also the Suit filed by the Respondents restraining Ravi and others from interfering with their possession and enjoyment of the property."

(ii) 1987 (100) LW 809 (K.V.Nayak v. S.Ganapathy

Rao);

WEB COPY

"5. It is patent from the allegations contained in the said eviction petitions that they were filed on the basis of wilful default committed by the petitioner during various periods. It is relevant to point out in this

connection that the question of wilful default for a particular period will depend upon various circumstances. Such circumstances cannot be the same for all time to come. Taking note of the various circumstances which resulted in the filing of the earlier eviction petitions on the ground of wilful default, the authorities below comes to the conclusion that there was no default during the period. Therefore, it cannot be stated now that because of the said decision in the earlier petitions, the landlord cannot seek to evict the tenant, on the ground of wilful default thereafter. If such a contention is to be accepted, it would only mean that the landlord can never file a petition on the ground of wilful default in future.

.....As I have already stated earlier, the cause of action on the basis of wilful default is different for each petition and it cannot be said that the cause of action is one and the same for all these petitions. In view of this position the said contention of the learned counsel for the petitioner has got to be rejected."

20. **Points for consideration:**

- (1) Whether the tenants committed wilful default or there is bona fide dispute with regard to the ownership of petition property?
- (2) Whether filing of R.C.O.Ps. under Section 9(3) of the Rent

Control Act by tenants would show that the intention of tenants is not to commit any default?

21. Point No.1

The landlord/Narayanan claims right to collect rent from the tenants on the ground that he is the owner of the superstructure. It is an admitted fact that the land belongs to the temple. According to the landlord, after taking land on lease, Chittibai Ammal put up superstructure and let out the petition premises and other properties on rent to various third parties. Subsequently, as per Ex.P3 settlement deed dated 28.01.1988, the property was settled on the landlord/Narayanan by Chittibai Ammal. Per contra, the tenants have claimed that one Radhakrishna Chetty, husband of Chittibai Ammal took the land on lease from temple and put up superstructure and let out the same to the third parties. He also executed a Will dated 20.09.1986 bequeathing the property to his wife Chittibai Ammal for her life and thereafter to the temple. According to the tenants, one Advocate by name S.K.Sundaram issued notice dated 12.02.1992 marked as Ex.R13 to the tenants informing them that any rent paid to the landlord/Narayanan will not be binding on the temple. According to the tenants, the said

advocate met them in person and asked them not to pay the rent to the landlord/Narayanan.

22. Ex.R13 notice dated 12.02.1992 is not addressed to the tenants. The tenants have not produced any evidence to show that the said advocate met them in person and asked them not to pay any rent to the landlord. The tenants have not produced any evidence to substantiate their claim. Further, the Will dated 20.09.1986 cannot be applied to the facts of the present case on two grounds. Firstly, it relates to four houses belonging to Radhakrishna Chetty situate in different street and not relating to the petition premises situated in Jones Road, Saidapet. Secondly, the Will was not probated and therefore, it cannot be relied on. In addition to that, the temple which was impleaded as second respondent in R.C.O.Ps. filed by the tenants, filed counter statement categorically stating that landlord/Narayanan was lessee of the land belonging to the temple and that temple is not owner of the superstructure. Only the landlord/Narayanan is owner of the superstructure and after his death, his legal heirs have become lessees of the land and owner of the superstructure. In view of the above categorical statement coupled with the fact that the tenants

have not taken any steps to verify the nature of the relief sought for in O.S.No.8304 of 1992 and the properties involved in the suit, it cannot be held that there is bonafide and genuine dispute with regard to ownership of the petition premises.

23. According to the tenants, Ramachandran/brother of the landlord/Narayanan claimed 1/6th share in the rent payable by the tenants. The tenants have not produced the alleged notice sent by the said Ramachandran. In cross-examination of said Ramachandran/R.W.3, he has not stated that as to how he is entitled to 1/6th share in the rental income. He has only stated that Chittibai Ammal promised to settle the petition premises to him and due to her mental illness, she did not settle the property on him. He has not produced any evidence to substantiate his claim. Chittibai Ammal did not settle the petition premises on Ramachandran, but settled the petition premises on landlord Narayanan by settlement deed Ex.P3. The tenants contended that by Ex.P3, the petition premises were not settled on Narayanan and property behind the petition premises only was settled on Narayanan. The learned Rent Controller considering Ex.P3/settlement deed rejected this claim of R.W.3 as there is no length and breadth in the settlement deed. This

finding of the learned Rent Controller was confirmed by the learned Appellate Authority.

24. It is pertinent to note that the tenants even after notice dated 12.02.1992 issued by Advocate S.K.Sundaram, paid rent in the month of February and March 1992 to the landlord/Narayanan and they stopped paying rent from April 1992. Earlier R.C.O.P.Nos.1401 to 1403 and 1437 of 1992 filed by the landlords relates to wilful default in payment of rent for the month of April and May 1992. The present R.C.O.P.Nos.187 and 189 of 1997 filed by the landlords is for subsequent period. The cause of action for the present R.C.O.Ps. is different from cause of action that arose from earlier R.C.O.Ps. The decision reported in **1987 (100) LW 809 (K.V.Nayak v. S.Ganapathy Rao)** is squarely applicable to the facts of the present case. The Courts below have considered this aspect and held that the present R.C.O.P.Nos.187 and 189 of 1997 filed by the landlords for eviction are maintainable. For the above reason, point No.1 is answered against the tenants confirming the findings of the Courts below that the tenants have committed wilful default and there is no bonafide dispute with regard to the ownership of the petition premises.

25. Point No.2:

From the materials on record, it is seen that the tenants were paying rent till March 1992. According to the tenants, Ramachandran claimed 1/6th share in the rent and one S.K.Sundaram, advocate claimed that any rent paid to the landlord/Narayanan will not be binding on the temple. Further, according to the tenants, suit O.S.No.8304 of 1992 was pending with regard to suit property. Therefore, they did not pay the rent to the landlord as there is dispute with regard to the ownership. According to the tenants, they came to know about the dispute in February 1992. But they did not ascertain who is the real owner of the petition premises, the nature of the suit or the properties, which are subject matter of the suit. They also have not taken any steps to ascertain the stage of the suit.

26. At the time of argument in the Civil Revision Petitions also, the learned Senior Counsel for the tenants contended that the suit is still pending, whereas the learned counsel for the landlords has produced the extract of the suit register in O.S.No.8304 of 1992 on the file of the City Civil Court, Chennai. From the said Extract, it is seen that the said suit was dismissed as early as on 16.10.1998 for

default. The contention of the tenants is that Ramachandran/second respondent in C.R.P.Nos.2646 and 2748 of 2015 filed suit claiming title to the suit property. On the other hand, from the additional typed set of papers filed by the legal heirs of the landlord, it is seen that the said suit was filed by one Doraikannu Chettiar and Ramachandran/brother of the landlord/Narayanan is only eighth defendant in the said suit. Item Nos. 4 and 5 in the schedule to the plaint to the said suit relates to house and ground in old No.19/2, New No.15, West Jones Road, Saidapet, Chennai-15, Block No.7, T.S.No.13 and the land belonging to the temple is in the Rangabashyam Chetty street and Door No.54, Kavarai street, Saidapet, Madras-15. The petition premises, which are shops, are not subject matter of the said suit. However, the tenants have not filed petitions under Section 9(3) of the Rent Control Act immediately when they came to know that the bonafide dispute with regard to ownership of the property. Admittedly, they have filed said petitions only in the year 1997 after five years of non payment of rent and after landlord filed R.C.O.Ps. for eviction.

27. The contention of the learned Senior Counsel for the tenants that authority under Section 9(3) of the Rent Control Act

was notified only in the year 2001 by G.O.Ms.No.43, Housing and Urban Development (Audit Department) and therefore, they could not file application under Section 9(3) of the Rent Control Act and could not deposit the rent earlier, is without merits. According to the learned Senior Counsel for the tenants, authority under Section 9(3) of the Act was notified only in the year 2001, whereas the tenants have filed R.C.O.P.Nos.2986 and 1377 of 1997 under Section 9(3) of the Rent Control Act only in the year 1997. They have not explained as to why they did not file the said R.C.O.Ps. in the year 1992 itself or the reason for filing R.C.O.Ps. in the year 1997, even though as on the date also, authority under Section 9(3) of the Rent Control Act was not notified.

28. In view of the above facts, it is clear that the tenants have committed wilful default. The finding of the learned Rent Controller that after five years of entertaining bonafide dispute about the ownership and failure to ascertain real owner, it is clear that the intention of the tenants is not to pay the rent only, is valid and based on proper appreciation of facts. The decisions relied on by the learned Senior Counsel for the tenants do not advance the case of the tenants. The decision reported in **2013 (1) MWN (Civil) 245**

(Sulochana v. R.Pangajam and others) relied on by the learned counsel for the landlords is squarely applicable to the facts of the present case. For the above reason, point No.2 is answered against the tenants.

29. The Courts below have considered all the materials on record in proper perspective and by elaborate order and judgment have ordered eviction of the tenants and dismissed R.C.O.P.Nos.2986 and 1377 of 1997 filed by the tenants for permission to deposit the rent before the authority by giving cogent and valid reason. There is no perversity or failure to appreciate the facts in proper perspective warranting interference by this Court.

30. In the result, the four Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

03.01.2018

Index:Yes/No

Speaking/Non-speaking Order

kj

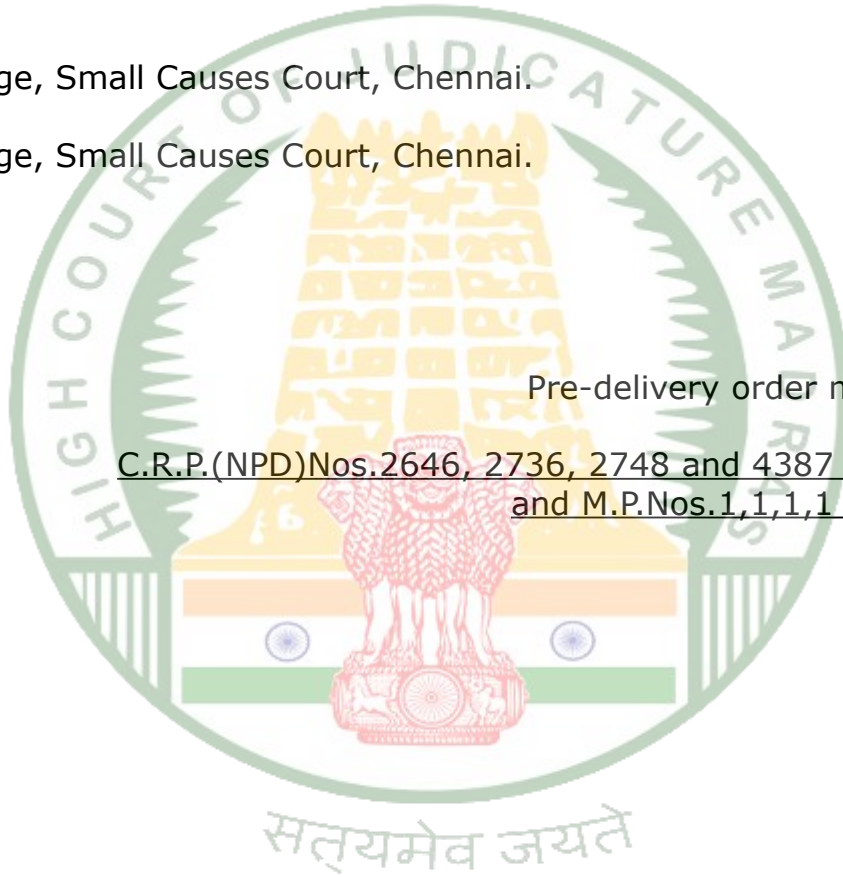
V.M.VELUMANI,J.

Kj

To

1.XI Judge, Small Causes Court, Chennai.

2.IX Judge, Small Causes Court, Chennai.



Pre-delivery order made in

C.R.P.(NPD)Nos.2646, 2736, 2748 and 4387 of 2015
and M.P.Nos.1,1,1,1 of 2015

WEB COPY 03.01.2018