

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.916 to 922, 2176 and 2177 of 2014
and M.P.Nos.1 to 1 of 2014 (9 Mps.)

K.R.Sreenivasan ..Petitioner in C.R.P.No.916 of 2014

Kundandoss & Co.
Represented by its Partner
K.Tahalram
Carrying on business at
Shop No.8, ground floor
Door No.66, Godown street
Chennai-600 001. ..Petitioner in C.R.P.No.917 of 2014

T.Venkatakrishna ..Petitioner in C.R.P.No.918 of 2014

K.S.Rajendran ..Petitioner in C.R.P.No.919 of 2014

Rajkumar ..Petitioner in C.R.P.No.920 of 2014

Noorjahan Yousuf ..Petitioner in C.R.P.No.921 of 2014

M.Mohammed Yousuf ..Petitioner in C.R.P.No.922 of 2014

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Vs.

A.M.Jain College,
Rep. By its Secretary and Correspondent,
Sri.M. Sardarmull Chordia
Meenambakkam, Chennai-114. .. Respondent in
C.R.P.Nos.916 to 922 of 2014

PRAYER IN C.R.P.Nos.916 to 922 of 2014: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the order dated 11.06.2012 passed in M.P.Nos.484 to 488, 491 and 492 of 2011 in R.C.O.P.Nos.1828, 1831, 1833 to 1835, 1913 and 1918 of 2010 by the XII Small Causes Court at Chennai.

C.R.P.(PD)Nos.2176 & 2177 of 2014

Murlidhar Malpani(Deceased)
S/o.Himatrampi Malpani,
Represented by his legal heir
Pramod Kumar Malpani

..Petitioner

Vs.

1. A.M.Jain College,
Rep. By its Secretary and Correspondent,
Sri.M. Sardarmull Chordia
Meenambakkam, Chennai-114.
2. Kishorilal Malpani
3. Krishnan Kumar Malpani
4. Rai Kanwar Bhootra

.. Respondents

(Cause title accepted vide order of Court dated 22.04.2014 made in M.P.Nos.1,1 of 2014 in C.R.P.SR.Nos.17685 and 17694 of 2014.)

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COMMON PRAYER : Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the order dated 11.06.2012 passed in M.P.Nos.489 and 490 of 2011 in R.C.O.P.Nos.1837 and 1911 of 2010 by the XII Small Causes Court at Chennai.

In all C.R.Ps.

For Petitioners : Mr.M.Aravind Subramaniam

For Respondents : Mr.Ashok Menon

COMMON ORDER

C.R.P.Nos.916 to 922 of 2014 are filed against the order dated 11.06.2012 passed in M.P.Nos.484 to 488, 491 and 492 of 2011 in R.C.O.P.Nos.1828, 1831, 1833 to 1835, 1913 and 1918 of 2010 by the XII Small Causes Court at Chennai.

C.R.P.Nos.2176 and 2177 of 2014 are filed against the order dated 11.06.2012 passed in M.P.Nos.489 and 490 of 2011 in R.C.O.P.Nos.1837 and 1911 of 2010 by the XII Small Causes Court at Chennai.

2. In all the nine Civil Revision Petitions, issues are one and the same and hence, they are disposed of by this common order.

3. The petitioners are tenants and respondent college is landlord. The respondent college filed R.C.O.P.Nos.1828, 1831, 1833 to 1835, 1913, 1918, 1837 and 1911 of 2010 on the file of

the XII Small Causes Court at Chennai, for fixation of fair rent. The respondent college has stated various advantages of the petition premises and commercial value of the petition premises and claimed for fixation of fair rent. The petitioners/tenants filed separate counter statements and are contesting the R.C.O.Ps. The trial commenced and the respondent college let in evidence and R.C.O.Ps. were posted for cross-examination of Engineer examined by the respondent college. At that stage, the petitioners/tenants filed M.P.Nos.484 to 488, 491, 492, 489 and 490 of 2011, for appointment of Civil Engineer for inspection of the petition premises, to measure the same and to file report with regard to prevailing condition of the buildings and its surroundings.

4. In the affidavit, the petitioners have made various averments on merits and sought for an appointment of Advocate Commissioner. In the prayer portion, the petitioners sought for appointment of Civil Engineer for inspection of the petition premises and to take measurement of the same.

5. The respondent college filed separate counter affidavits in all the M.Ps. and denied various allegations made by the petitioners

and contended that there is no provision for appointment of Civil Engineer in Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 and it is open to the petitioners to appoint Engineers of their own choice, if they so desire and prayed for dismissal of the M.Ps.

6. The learned Rent Controller considering the averments made in the affidavit, counter affidavit, nature of the relief sought for by the petitioners, averments made in the affidavit for appointment of Advocate Commissioner and praying for appointment of Civil Engineer and the stage of the R.C.O.Ps., dismissed all the M.Ps. holding that appointment of Engineer by Court or party will not make any difference in filing the report and it is open to the petitioners to appoint Engineers of their own choice and order of dismissal of M.Ps. will not be a bar for the petitioners for appointment of their own Engineers.

7. Against the said order of dismissal dated 11.06.2012 made in M.P.Nos.484 to 488, 491, 492, 489 and 490 of 2011, the petitioners filed R.C.A.Nos.613, 615, 614, 610, 609, 612, 611, 607 and 608 of 2012.

8. The said R.C.As. were pending for more than two years. Subsequently, the petitioners on 07.01.2014 made an endorsement that the said R.C.As. may be dismissed as withdrawn. The learned Appellate Authority after extracting the contention of the parties recorded the endorsement made by the counsel for the petitioners and held that all the R.C.As. are dismissed as withdrawn.

9. The petitioners/tenants filed C.R.P.Nos.916 to 922 of 2014 against the order dated 11.06.2012 passed in M.P.Nos.484 to 488, 491 and 492 of 2011 in R.C.O.P.Nos.1828, 1831, 1833 to 1835, 1913 and 1918 of 2010 and filed C.R.P.Nos.2176 and 2177 of 2014 against the order dated 11.06.2012 passed in M.P.Nos.489 and 490 of 2011 in R.C.O.P.Nos.1837 and 1911 of 2010.

10. The learned counsel for the petitioners made submissions on merits with regard to maintainability of R.C.O.Ps. and reiterated various averments made in the counter statement, in the affidavit filed in the said M.Ps. and contentions raised in the grounds of revisions. The learned counsel for the petitioners contended that only the Chartered Engineer can assess the age of the building, nature of construction and amenities available in the petition

premises. The learned Rent Controller should have called for the names of the Chartered Engineers, even when there is no panel of Chartered Engineers available in the Court. In support of his contention, he relied on the following judgment reported in **1982**

LW 340 (M.P.Appulu v. A.Fatima Zohra and another):

"11. ... The appeal filed against the order confirming the report of the Commissioner only to the petition premises was maintainable, and hence, the revision petition is liable to be dismissed. It is now open to the parties to ask for a qualified Engineer to be appointed as Commissioner, so that, the report secured could enable the Rent Controller to correctly decide about the condition of the building. Even otherwise, the Advocate Commissioner will have to submit his report on the entire building, as asked for by the landladies. "

11. The learned counsel for the respondents contended that the respondent college has examined its Engineer and R.C.O.Ps. were posted for cross-examination of his Engineer by the counsel for the petitioners. At that stage, the petitioners have come out with

the present M.Ps. only to drag on the proceedings and prayed for dismissal of the revisions.

12. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

13. The respondent college has filed all the above R.C.O.Ps. for fixation of fair rent. The petitioners filed counter statement and are contesting R.C.O.Ps. The trial commenced and respondent college has examined its Engineer as P.W.1 and R.C.O.Ps. were posted for cross-examination by the counsel for the petitioners. At that stage, the petitioners filed present M.Ps. for appointment of Chartered Engineer. The said petitions are devoid of merits and they are not maintainable. The respondent college has appointed the Engineer, who has inspected the suit property and prepared the report. The respondent college has examined the said Engineer and their witnesses. Similarly, it is open to the petitioners to appoint their own Engineers to inspect the building and examine the Engineers with regard to the nature of the building, amenities available and other particulars. There is no necessity for the Court to appoint an Engineer for this purpose. It is for the petitioners to

prove various allegations made by them by letting in evidence. The petitioners cannot collect evidence by appointment of Engineer by the order of the Court. It is also pertinent to note that the petitioners have filed R.C.As. before the learned Appellate Authority challenging the order of the learned Rent Controller passed in M.Ps. and withdrew the said appeals after two years. This clearly shows the intention of the petitioners is only to drag on the proceedings.

14. The learned Rent Controller has considered all the materials on record in proper perspective and dismissed the M.Ps. by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 11.06.2012. The judgment relied on by the learned counsel for the petitioners does not advance the case of the petitioners as the said judgment is not applicable to the facts of the present case.

15. In the result, the Civil Revision Petitions are dismissed. It is open to the petitioners to appoint their own Engineers, file report and examine them. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

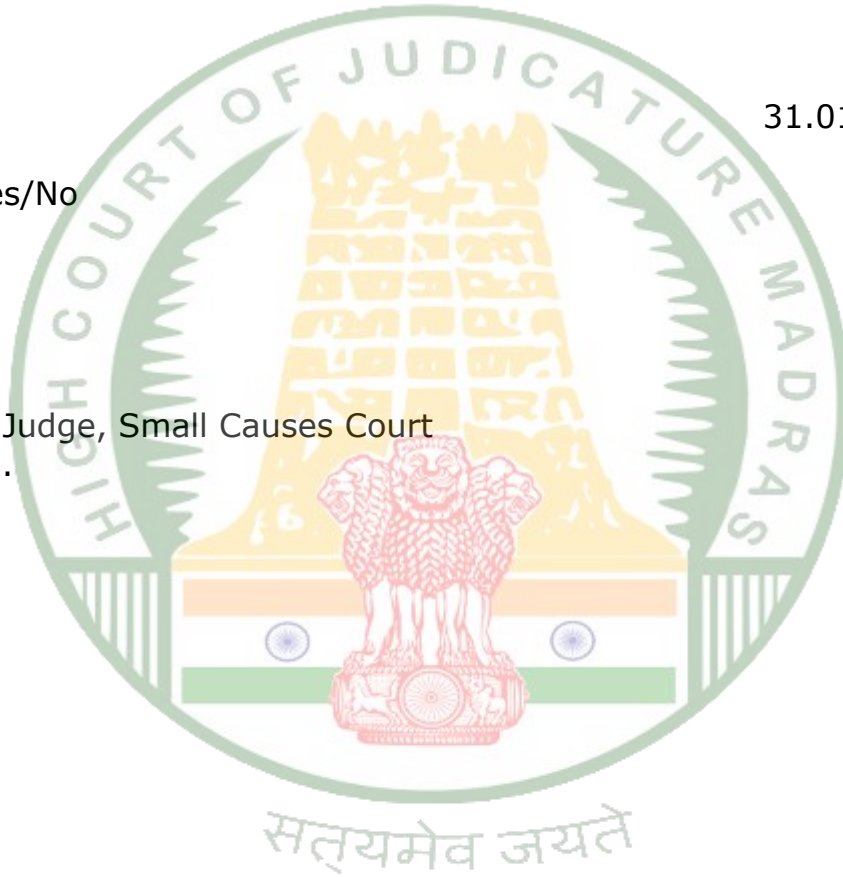
As the R.C.O.Ps. are of the year 2010, the learned Rent Controller is directed to dispose of R.C.O.Ps. within a period of three months from the date of examination of the Engineers. No costs. Consequently, connected Miscellaneous Petitions are closed.

31.01.2018

Index:Yes/No

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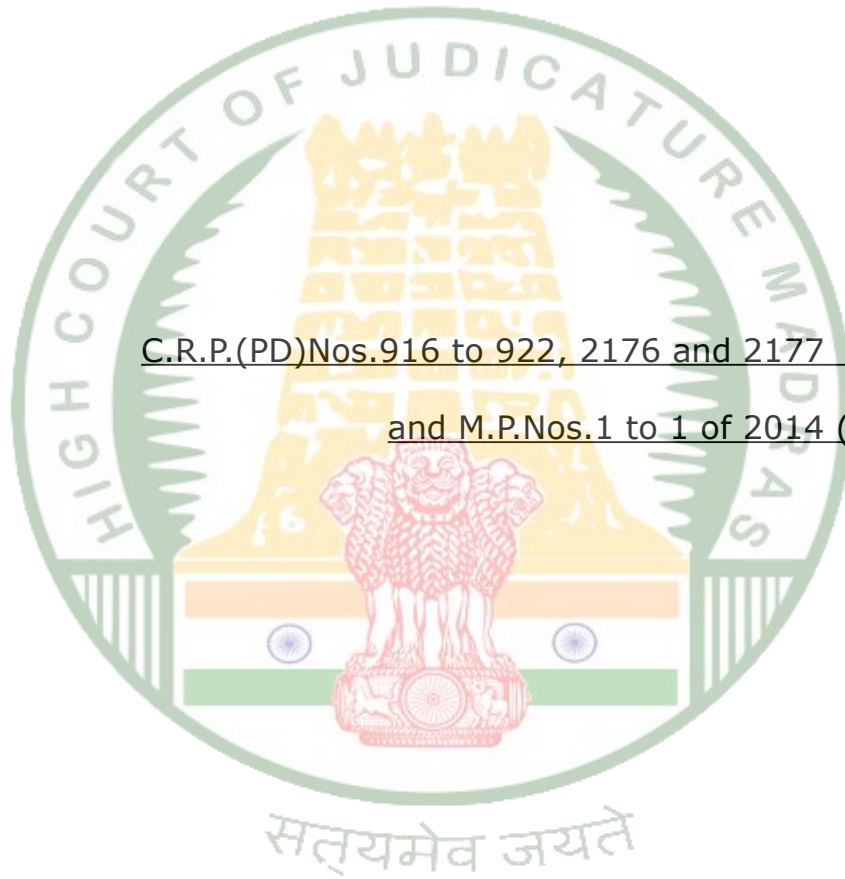
To
The XII Judge, Small Causes Court
Chennai.



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V.M.VELUMANI,J.

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C.R.P.(PD)Nos.916 to 922, 2176 and 2177 of 2014
and M.P.Nos.1 to 1 of 2014 (9 Mps.)

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