

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (NPD) Nos.65, 1942 & 2964 of 2014
and M.P.Nos.1 & 1 of 2014**

Judgment reserved on 02.02.2018	Judgment pronounced on 06.04.2018
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R.V.Gurupatham ... Petitioner in CRP Nos. 65 & 1942/2014 &
Respondent in CRP No.2964 of 2014

Vs

1. Mrs.Taiba Khanum

2. Dhanasekara Natarajan

Rep. By his Power of Attorney

N.Dinakaran

... Respondents in CRP Nos.65 & 1942/2014 &
Petitioners in CRP No.2964 of 2014

Prayer in CRP (NPD) No.65/2014 : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the order and decreetal order made in RCA No.257 of 2006 dated 22.10.2013 on the file of VII Court of Small Causes as confirmed by the order and decreetal order dated 29.12.2005 made in RCOP No.440 of 2005 on the file of the XV Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.1942/2014 : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent

Control Act) 1960 to set aside the order and decretal order made in RCA No.156 of 2005 dated 22.10.2013 on the file of VI Judge, Court of Small Causes, Chennai as modified by the order and decretal order dated 07.01.2005 made in RCOP No.431 of 2004 on the file of the XII Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.2964/2014 : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 to set aside the judgment and decree dated 22.10.2013 in RCA No.157 of 2005 on the file of VII Court of Small Causes, Chennai reversing the judgment and decree dated 07.01.2005 in RCOP No.432 of 2004 on the file of the XII Court of Small Causes, Chennai.

For Petitioner
in CRP 65 & 1942/2014
and Respondent in : Mr.R.Thiagarajan
CRP No.2964 of 2014

For Respondents : Mr.Doraisamy,
in CRP 65 & 1942/2014 Senior Counsel
and Petitioners in for M/s.A.Bharathi
CRP No.2964 of 2014

COMMON ORDER

The parties are referred to as per their rank in the RCOPs before the learned Rent Controller.

2. The landlady filed the above RCOPs against the tenant on the following grounds -

- (i) RCOP No.432 of 2004 – Wilful default and owner's occupation.
- (ii) RCOP No.440 of 2005 – Denial of Title
- (iii) RCOP No.431 of 2004 – Fixation of fair rent

2 (a) According to the landlady, she is the owner of the petition premises bearing Old No.23, New No.45, Vedanthadesika Street, palathope, Chennai – 4 and the same was rented out to the tenant on a monthly rent of Rs.100/-. The tenancy is for residential purpose. The tenant has not paid the rent from October 1995 to December 2003 totalling to Rs.9,900/-. The tenant has also not paid the rent for the month of January 2004 and committed default, which is wilful default. The petition premises was required by the landlady for her own use and occupation who was residing earlier in Ambur and now settled in Chennai. The place where she was residing earlier at Ambur does not belong to her and she does not own any other building of her own either in Ambur or in Chennai other than the petition premises. The landlady requested the tenant to vacate and handover the vacant possession of the building but

the tenant having promised to vacate and handover the possession, failed to keep up his promise. Hence, the landlady filed RCOP No.432 of 2004 for eviction of the tenant on the ground of wilful default and owner's occupation.

2 (b) The petition premises which was let out to the tenant was required by the landlady for her own use and occupation and also the tenant has not paid the rent and was in arrears of rent from October 1995 to December 2004. Hence, the landlady filed RCOP No.432 of 2004 against the tenant on the ground of wilful default and owner's occupation. Without care or caution and unmindful of the consequence, the tenant in defence to the application for own use and occupation and wilful default has taken the stand that his father was a tenant and thereafter he was continuing to be a tenant in respect of the land only and his father had put up the superstructure which assertion on the part of the tenant is contrary to truth and untenable too. The tenant has wilfully asserted title to the superstructure and such assertion amounts to denial of title. Hence, the landlady filed RCOP No.440 of 2005 against the tenant for eviction on the ground of denial of title.

2(c) The landlady filed RCOP No.431 of 2004 against the tenant for fixation of fair rent. According to the landlady, the petition building is situated in a very busy through fare wherein several Banks, Hospitals, Marriage Halls, Schools, Temples, Mosques, Churches and Shopping Complexes, Railway Station and High Rise Buildings are situated. The locality is a very important business area wherein even an inch of land is very costly and many buses ply. The market value of the land is Rs.50,00,000/- per ground and the guideline value is Rs.65,00,000/- per ground. The petition property is 50 yards away from the Mylapore Tank Road, commanding all civic amenities. The structure is aged about 28 to 30 years. The extent of property is 615 sq.ft. The cost of construction of the building is Rs.995/- per sq.ft. The building consists of ground floor and a portion in first floor and prayed for fixation of fair rent at Rs.9,299/- per month.

3. The tenant filed counter statements in all the RCOPs denying the averments made in the petitions.

3(a) According to him, he is a tenant in respect of the land for the past five decades since his father was living. He put up the superstructure and landlady is not the owner of building. Originally

the rent was collected by Jalal Balquis Bi Saiba and the present monthly rent is Rs.100/-. Since no one came to collect the rent for the month of April 1995, he sent the same by money order but it has been returned. The rent sent for the months of May and June were returned. On 07.01.1995, the landlady sent a legal notice stating that under a oral family arrangement dated 05.01.1995, the petition property has been allotted to her and claimed rent for the month of April, May and June 1995. The tenant sent the rent for the months of April to July 1995 by way of Demand Draft and it was received by the landlady but no receipt was sent. The tenant denied that he is a chronic defaulter in payment of rent from October 1995 to December 2003 to the tune of Rs.9,900/-. The landlady has not sent any notice claiming the arrears of rent or requires the building for her own occupation. The tenant is ready and willing to pay the rent since the earlier counsel refused to receive the same.

3(b) On 18.09.1995, the tenant sent the rent for the month of August 1995 by way of demand draft and requested the documents conferring title in favour of the landlady since the two claimants namely Ismail and Shabira Kanam demanding rent from the tenant. On 24.10.1995, the tenant sent a legal notice to the landlady through his counsel requesting to send the documents confirming

title over the property in order to avoid rival claim. Alongwith the letter, the tenant sent the rent for the month of September 1995. However, the landlady failed and neglected to send the copy of title deeds and neglected to send the rental receipt. The rival claimants are threatening the tenant that they will file eviction petition for default in payment of rent. Because of the failure on the part of the landlady in producing the document of title, the tenant has a bonafide doubt and there is a dispute between the landlady and other claimants to receive the rent for the petition premises. The tenant filed RCOP No.2892 of 1995 to deposit the rent into Court from October 1995 and the same was allowed. The landlady is living at North Arcot District and the tenant has been paying the rent to her earlier counsel. The electricity connection obtained by his father to the petition premises is in the name of Mr.K.Raguramaiah. Water bill stands in his wife's name and it is surreptitiously changed by the landlady. The landlady is not the owner since she is not able to produce the document of title.

3(c) The tenant had spent Rs.25,000/- for renovation of the building of the petition premises and erected water service pipes to the petition premises since the pipe were getting corroded. The building has no value since it is more than 65 years old. During

rainy season, the rain water enters into the house to the knee deep and the tenant suffered like anything since the landlady never repaired the building inspite of his incessant request.. The respondent has paid only the land rent and since he has renovated the building periodically and all the taxes paid by him stands in his name. The landlady often sends rowdy elements and threatened him with dire consequences and forced him to vacate the petition premises illegally. Since the tenant had renovated the building and further he is a tenant for the land, the landlady cannot claim any enhancement of fair rent of Rs.9,299/- per month. It is false to state that several Banks, Hospitals, Marriage Halls, Schools, Temples Churches and shopping complexes, Railway Stations are situated nearby the petition premises. The petition premises is situated in a narrow lane. The premises is situated in a Cul-de-sac and there is no basic amenities available in the petition premises. The building is a very old building and if the tenant has not done the renovation work, the petition premises would have been in a dilapidated condition. There is no basic amenities available in the petition premises and hence 15% amenities cannot be added and prayed for dismissal of the RCOPs.

4. Before the learned Rent Controller, in RCOP No.432 of 2004, one K.Abdul Rahman was examined as PW1 on the side of the landlady and marked three documents as Exs.A1 to A3. Tenant examined himself as RW1 and marked twelve documents as Exs.R1 to R12. In RCOP No.440 of 2005, one Abdul Ravoof was examined as PW1 on the side of the landlady and marked four documents as Exs.A1 to A4. Tenant examined himself as RW1 and marked nine documents as Exs.R1 to R9. In RCOP No.431 of 2004, one Katheef Ahamed, Engineer was examined as PW1 on the side of the landlady and marked one document as Ex.A1. Tenant examined himself as RW2 and two engineers were examined as RWS1 & 3. Four documents were marked as Exs.R1 to R4. One Sundari was examined as court witness. Xerox copies of guideline value register was marked as Ex.C1.

5. The learned Rent Controller, considering the pleadings, oral and documentary evidence, passed the following orders -

- (i) By order dated 07.01.2005, allowed RCOP No.432 of 2004 with regard to wilful default and dismissed the same on the ground of owner's occupation.

(ii) By order dated 29.12.2005, allowed RCOP No.440 of 2005 with regard to denial of title and ordered eviction of the tenant.

(iii) By order dated 07.01.2005, allowed RCOP No.431 of 2004 fixing fair rent at Rs.7,027/- payable by the tenant to the landlady.

6. Against the order dated 07.01.2005 made in RCOP No.432 of 2004, the tenant filed RCA No.157 of 2005. The learned Appellate Authority, considering the materials and facts and order of the learned Rent Controller, by order dated 22.10.2013 allowed the RCA reversing the order of the learned Rent Controller.

6(a) Against the order dated 29.12.2005 made in RCOP No.440 of 2005, the tenant filed RCA No.257 of 2006. The learned Appellate Authority, independently considering the materials and facts and order of the learned Rent Controller, by order dated 22.10.2013 dismissed the RCA confirming the order of the learned Rent Controller.

6(b) Against the order dated 07.01.2005 made in RCOP No.431 of 2004, the tenant filed RCA No.156 of 2005. The learned Appellate Authority, considering the materials and facts and order of

the learned Rent Controller, by order dated 22.10.2013 partly allowed the RCA modifying the order of the learned Rent Controller fixing the fair rent at Rs.6,586/-.

6(c) Against the judgment dated 22.10.2013 made in RCA No.157 of 2005, CRP No.2964 of 2014 is filed by the landlady before this Court.

6(d) Against the judgments dated 22.10.2013 made in RCA Nos.257 of 2006 and 156 of 2005, C.R.P. Nos.65 of 2014 & 1942 of 2014 are filed by the tenant before this Court.

CRP (NPD) NO.65 OF 2014 filed by the tenant

7. The learned counsel for the tenant contended that the landlady has not stated the relationship to the erstwhile owner. She claims to be the owner of the petition premises. Two other persons by name Ismail and Shabira Kanam were also claiming rent from the tenant and threatened the tenant that they will file eviction petition against the tenant. The tenant requested the landlady to produce the documents of title showing her as owner. She did not produce any document and therefore the tenant filed RCOP No.2892

of 1995 under Section 9 (3) of Tamil Nadu Buildings (Lease & Rent Control) Act to deposit the rent into Court from October 1995 and the said RCOP was allowed. The tenant's father as tenant under the erstwhile owner for more than five decades and he has put up superstructure. Electricity connection was obtained by his father and the same is in the name of Raghuramaiah. Water bill stands in the name of tenant's wife. The tenant can be evicted on denial of title only when the said denial is malafide. When the tenant has genuine doubt about the ownership and title of landlady, the tenant should not be evicted on the ground of denial of title.

7(a) The learned counsel for the petitioner, in support of his contention, relied on the following judgments -

(i) 2009 (2) ALT 103 [Khursheed Sultana and Ors. v. Mir Asif Ali and Ors.]

26. The ratio of Majati Subbarao's case (supra) as well as Hyderabad Polimer's case (supra), however clearly supports the legal plea of the learned Counsel for the landlords that even if the tenants deny the title of the landlords malafide in the counter in the eviction petition, the same furnishes a ground for eviction. In the aforesaid decisions, it has been authoritatively held in Majati Subbarao's case (supra) that the denial need not be anterior to the eviction petition and any such denial in the very said proceedings itself, can be taken note of and on that ground eviction can be ordered. However the

decisions before the Supreme Court in *Majati Subbarao's* case (supra) and in the decision of this Court in *Hyderabad Polimer's* case (supra), on facts, it was noticed, that the tenant had resorted to Section 9 and was found not depositing the rent therein and the very filing of Section 9 petition there, was found to be total unjustified. However, on the facts of our case, it cannot be denied that the tenants were confronted with three conflicting claims and as held above, they were justified in entertaining the bonafide doubt and it has also been held as above that the tenants petitions under Section 9 were rightly allowed by the lower appellate Court. As consequence, therefore, it cannot be said that the order of eviction is warranted on the ground of malafide denial of title by the tenants, esp, when the said ground though available was not raised by the landlords in the eviction petitions. The said contention of the landlords is therefore, rejected.

(ii) 2002 (3) SCC 98 [J.J.Lal Pvt. Ltd. and Ors. v. M.R.Murali and another.]

19 . For several reasons, we are of the opinion that a decree on the ground of denial of landlord's title by tenant and such denial being not bona fide could not have been a ground for directing eviction of tenant in the present case. Firstly, the application for eviction filed by the landlord does not plead such a cause of action, setting out material facts and as providing a ground for relief of eviction. The plea taken by the defendant-tenants in their additional counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. The basic question was whether the landlords themselves treated the plea taken by the tenants in their additional counter as denial of their title and if that be so the landlords should have amended their application for eviction incorporating the averment that the said additional counter amounted to denial of title of the landlords and such denial was not bona fide. Thereupon the tenants would have had an opportunity of explaining the facts and circumstances in which the additional counter, alongwith the pleas raised therein, came to be filed and if that amounted to denial of landlords' title then how did they propose to justify such denial as bona fide. Such pleas could have been subject matter of trial and

evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the landlords as a ground for eviction.

(iii) 2002 (3) SCC 375 [Sheels and Ors. v. Firm Prahla Rai Prem Prakash]

16. After the creation of the tenancy if the title of landlord is transferred or devolves upon a third person the tenant is not estopped from denying such title. However, if the tenant having been apprised of the transfer, assignment or devolution of rights acknowledges the title of transferee either expressly or by paying rent to him, the rule of estoppel once again comes into operation for it is unjust to allow tenant to approbate and reprobate and so long as the tenant enjoys everything which his lease purports to grant how does it concern him what the title of the lessor is [See *Tej Bhan Madan Vs. II Additional District Judge and Ors.* (1988) 3 SCC 137]. A denial of title which falls foul of the rule of estoppel contained in [Section 116](#) of Evidence Act is considered in law a malicious act on the part of the tenant as it is detrimental to the interest of the landlord and does no good to the lessee himself. However, it has to be borne in mind that since the consequences of applying the rule of determination by forfeiture of tenancy as a result of denial of landlord's title or disclaimer of tenancy by tenant are very serious, the denial or disclaimer must be in clear and unequivocal terms (See *Majati Subbarao Vs. P.V.K. Krishna Rao (deceased) by Lrs.* (1989) 4 SCC 732, *Kundan Mal Vs. Gurudutta* (1989) 1 SCC 552 and *Raja Mohammad Amir Ahmad Khan*, (supra). We may quote with advantage the law as stated by a Division Bench of Calcutta High Court in *Hatimullah and Ors. Vs. Mahamad Abju Choudhury*, AIR 1928 Calcutta 312. It was held, "the principle of forfeiture by disclaimer is that where the tenant denies the landlord's title to recover rent from him bona-fide on the ground of seeking information of such title or having such title established in a Court of law in order to protect himself, he is not to be charged with disclaiming the landlord's title. But where the disclaimer is done not with

this object but with an express repudiation of the tenancy under the landlord, it would operate as forfeiture".

(iv) 1959 (2) MLJ 513 [Abdul Azeez Khan and Ors.

v. Appachi Goundar]

8. The disability imposed by Section 7-A is against the tenant. In these proceedings the question whether the respondent is a tenant at all of the petitioners, was in issue all through. It is not as if Section 7-A (1) read:

No person against whom an application for eviction also been made etc.

As I said, the disability attaches itself only to a tenant. The eviction of a tenant can be sought on various grounds, the grounds enumerated in Section 7(2) of the Act. In many of these cases the question of tenancy itself may not be in dispute. It may be possible to envisage cases, even under Section 7(2)(vi) of the Act, where the tenancy as such is not in dispute but the title of the person seeking eviction is denied. But where in addition to, or independent of the denial of the petitioner's right as owner to evict, the person sought to be evicted denies his own status as a tenant, it is rather difficult to say he will come within the scope of Section 7-A (1), that is, within the scope of the expression "tenant". If the tenancy is admitted, there can be no difficulty. If the tenancy had already been adjudicated upon and is therefore no longer in issue, the position would be the same. But where the tenancy is disputed, until it is established that the person is a tenant, he cannot be called upon to shoulder the burden imposed by Section 7-A(1) of the Act, In these proceedings, as I said, the status of the respondent as tenant has yet to be adjudicated upon. It is still in issue.

(v) 2002 (5) SCC 337 [A.V.G.P. Chettiar & Sons

and Ors. v. T.Palanisamy Goundar]

25. As we have already noted it was and is the appellants' case that the suit property belonged to and still belongs to a religious trust. This assertion forms the basis not only of their contention that the Act does not apply to the suit property but also of their denial of the respondent's title to it. In the case before us, the Rent Controller did not address himself at all to this basic fact. Consequently, he did not express any view on the question of the applicability of the Act to the suit premises. The Appellate Authority no doubt filled in the lacuna by holding, albeit prima facie, that the suit property belonged to the Trust and that the Act did not apply to the suit premises. The High Court erred in reversing this prima facie view.

39. It is nobody's case that the appellants were inducted by Gowthaman from whom the respondent derived his interest in the property. The High Court noted that "the rent receipts were given originally in the name of E. Venkata Naicker Trust, Erode/E.V. Krishasami Sons (management)". Therefore, the appellants were inducted as tenants by the Trust. If the suit property was part of the Trust, the appellants could validly raise the questions viz. how did the property come to be transferred by the Trust to Gowthaman? What was the validity of the transfer, if any? What was the nature of the interest which Gowthaman had in the suit property? Was it qua trustee or qua owner? If it was that of a trustee, could he have, legally and in terms of the Trust deed, transferred the suit property to the respondent? Yet the Rent Controller refused to go into any of these questions although they were squarely raised by the appellants before him. Instead he decided the title of Gowthaman on the basis of a partition deed between the heirs of Venkata Naicker and rent receipts granted to the appellants by Gowthaman as proprietor. The Rent Controller could have only decided (i) whether there was a dispute regarding the landlord's title raised by the tenant and (ii) whether the dispute was bona- fide the bona fides being established prima facie, by evidence in support of the tenant's stand. The Rent Controller could not have ignored the questions relating to the derivative title of the respondent. He could not have finally decided the issue of title of the respondent to the suit property, nor could he have, on that basis, find that the appellants' denial of the respondents title not bonafide. "To operate against the

tenant as proving a ground for eviction under Section 10 of the Act, a mere denial of the title of the landlord is not enough; such denial has to be "not bona fide". "Not bona fide" would mean absence of good faith or non-genuineness of the tenant's plea".

8. Per contra, the learned Senior Counsel appearing for the landlady contended that tenant has deliberately, with malafide intention denied the title of the landlady to the petition premises. According to the tenant, his father became tenant in respect of land only and his father has put up superstructure. The tenant failed to produce any document to show that his father put up superstructure and his father became the tenant only in respect of the land. Even after admitting that he is a tenant under the landlady, he denied the ownership of landlady. The landlady produced both oral and documentary evidence to substantiate her case that she is the owner of the petition premises. Both the courts below have properly appreciated the pleadings, oral and documentary evidence and held that denial of title of the landlady by the tenant is not bonafide. Both the courts have given valid reason for rejecting the claim of the tenant that landlady is not the owner of the petition premises.

8(a) The learned Senior Counsel for the landlady, in support

of his contention, relied on the following judgments -

(i) 1996 (2) CTC 105 [S.Thangaswamy v. R.Vinayakamurthy]

9. I am unable to countenance any one of the contentions of learned counsel for the petitioner-tenant. Eventhough the petitioner was a party respondent before the Rent Controller, he has not disputed or denied the age of the building. According to the counter filed by the tenant, he has only stated that though the building is old, but not in a bad shape or condition. Except this, he has not stated anything about the nature or condition of the building. Nothing prevented the tenant from requesting the court to appoint a Commissioner in order to show that the building does not require immediate purpose of demolition and re-construction. In this case, the petitioner has specifically stated in his counter that the petitioner's father was a tenant for the past 50 years and after his death, the petitioner has been paying the rent to the landlord. However, the petitioner has been paying the rent to the landlord only by mistake that he has title to the property. I am unable to appreciate the stand taken by the tenant in denying the title of the present landlord. Having paid the rent and having recognised him as the landlord, it is not open to the petitioner herein to deny the title of the landlord, which in my opinion is nothing but wilful.

(ii) 2015 (1) MWN (Civil) 96 [Vellingiri v. T.S.Ravendran & Ors.]

4. So far as the judgment of the learned Rent Control Appellate Authority is concerned, while discussing issue No.2, the learned Appellate Authority has discussed the denial of title made by the tenant during cross-examination of P.Ws.1 and 2 and in the evidence of the tenant also; the examination of R.W.2 which speaks about the issuance of Ex.R-1-rent receipt, which stood in the name of the temple and not in the name of the landlord. The learned appellate authority has considered the fact that the tenant has admitted the relationship as the tenant and landlords in O.S.No.82 of 2000 and also in the reply notice, under Ex.A-3 and despite, the admissions made at several stages, at a later point of time, the tenant has

denied the relationship of landlords and tenant, only with an intention not to pay the rents to the landlords and hence, the tenant is liable to be evicted.

5.1. Moreover, when there is an allegation that the tenant has chosen to deny the title of the landlords only for the purpose of evading payment of the rent, then it is for the tenant to show that there is bona fides in the denial of the title. When the bona fide is not shown, then the inference is that, the denial of title itself was towards denial of payment of rent. Under such circumstances, the finding of the Tribunal below that there is willful default in the payment of rent cannot be said to be unreasonable.

(iii) 2008 (1) CTC 497 [M. Ramachandran and anr.

v. A. Munusamy and anr.]

16. At this juncture, it is pertinent to point out that in a given case, the simple denial of title of the landlord would not be sufficient. The main consideration would be whether it was a bonafide denial of title. In the instant case, the Court is unable to see any strong case or sufficient material to support the plea of denial of title of the landlord. In the instant case, they have well admitted the relationship of landlord-tenant in the form of Plaintiff. In such circumstances, the Court is of the considered opinion that the principle of estoppel is applied and the petitioners are estopped from questioning the title of the landlord.

17. The added circumstance is that learned counsel for the revision petitioners would submit that the property belonged to joint family, wherein they are members. But, nowhere in the counter, it is found that the property belonged to the joint family. It has been stated that they were living jointly in the property. Apart from that, mere averment that they have been living jointly and they have been making contribution for construction and repairs would not serve any purpose. The Court is of the considered opinion that as per the averments made in the Plaintiff in O.S.No.6502 of 1998, which was marked as Ex.P.3 coupled with the evidence of PW1, it is highly difficult to say that there was a bonafide denial of title. All the materials available before the Court would show that it was not the bonafide denial of title. It was only subterfuge

invented for this case. Mere filing of partition Suit cannot be a reason to render or hold that the denial of title made by the tenants in RCOP Nos.91 and 92 of 1999 is bonafide. Such contention has to be rejected.

(iv) 1997 (1) LW 364 [Ammal Pillai and others v.

M/s.Varadarajulu Complex]

15. Even without going into the ground of demolition and reconstruction the tenant are liable to be evicted on another ground. In spite of Ex. A-3, order which concludes the rights of parties, tenants have taken a contention that the superstructure did not belong to the landlords. That amounts to denial of title over the building. Once Ex. A-3 concludes the rights, and in spite of the same, the tenants raise such a contention, which they fully know as false, the said contention can be said to be only lacking in good faith. That by itself is a ground for ordering eviction. The landlords need not be driven to another proceeding for the said purpose. I am supported to take that view in the light of the decision reported in [Majati Subbarao v. P.V.K. Krishna Rao](#) where their lordships said that 'A denial of title in the course of eviction petition constitutes a ground for eviction provided the denial is not bona fide and it is not necessary that in order to constitute a ground for eviction the denial of title must be anterior to the filing of the eviction petition. To insist that a denial of title in the written statement can be taken advantage of only in a subsequent suit to be filed by the landlord would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entitled by the tenant's denial of his character as a tenant in the written statement. Ex. A-3 is an order obtained by the tenants themselves in a proceeding initiated by them, admitting that they are tenants in the building.

CRP (NPD) NO.2964 OF 2014 filed by the Landlady

9. The learned Senior Counsel appearing for the landlady contended that the tenant has not paid rent and he has committed

wilful default. Even after closure of RCOP No.2892 of 1995, he has not paid the rent and committed wilful default. The learned Rent Controller has properly appreciated all the materials on record and allowed the RCOP No.432 of 2004 filed by the landlady with regard to wilful default. The learned Appellate Authority, without properly appreciating the materials on record, allowed the RCA No.157 of 2005 filed by the tenant and prayed for allowing this Civil Revision Petition.

10. Per contra, the learned counsel appearing for the tenant contended that the tenant has not committed any default, much less wilful default. The learned Rent Controller erroneously allowed the RCOP No.432 of 2004 holding that the tenant has committed wilful default. On the other hand, the learned Appellate Authority, on proper appreciation of materials on record, allowed RCA No.157 of 2005 by giving valid reason and prayed for dismissal of this Civil Revision Petition.

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CRP (NPD) NO.1942 OF 2014 filed by the tenant

11. The learned counsel for the tenant contended that the courts below failed to consider that the petition premises is not having any locational advantages and there is no basic amenities and building is very old and the tenant only done the renovation work. The courts below has not properly fixed the value of the land.

12. On the other hand, the learned Senior Counsel for the landlady contended that the petition premises is in busy locality and it is very near to the Mylapore Tank and courts below have properly appreciated all the facts and following the procedure contemplated in the Act, fixed the fair rent and prayed for dismissal of this Civil Revision Petition.

13. Heard the learned counsel for the tenant as well as the learned Senior Counsel appearing for the landlady and perused the materials available on record.

14. As far as CRP No.65 of 2014 is concerned, point for consideration is ***whether the denial of title by the tenant is bonafide or malafide.***

14 (a) The landlady filed RCOP No.432 of 2004 for eviction of the tenant on the ground of wilful default and owner's occupation. The tenant filed counter statement and contended that he has not committed wilful default and requirement of the landlady for owner's occupation is not bonafide. In addition to that, tenant has taken a plea that landlady is not the owner of the petition premises and the tenant is the owner of superstructure. According to the tenant, his father became tenant under erstwhile owner in respect of the land alone. The superstructure was put up by his father and electricity connection was obtained by him and the same stands in the name of the Raghuramaiah. The water bill stands in the name of the tenant's wife. The landlady has not produced any document to show as to how she became the owner of the petition premises on the death of erstwhile owner. Two other persons by name Ismail and Shabira Kanam are also demanding the rent stating that they are owners. In view of the same, there is a bonafide dispute and doubt with regard to ownership of landlady.

14(b) The tenant has not produced any document to show that his father became the tenant only in respect of land and his father put up the superstructure. The tenant has not produced any property tax receipt standing in the name of his father. On the

other hand, the tax assessment is in the name of the landlady and landlady has filed Exs.P2 to P4 to substantiate her claim. According to the tenant, electricity connection was obtained by his father and he has produced Ex.R9, E.B Card. In the said E.B card, the door number is mentioned as 16 whereas the door number of the petition premises is Old No.23 and New No.45. The tenant has not produced any evidence to show that there are rival claimants demanding rent from the tenant and were threatening to file petitions to evict him, if he fails to pay the rent.

14(c) On the other hand, from the impugned judgment of the learned Appellate Authority, it is seen that the tenant has admitted that he is tenant under the landlady. Based on the said admission, RCOP No.2892 of 1995 filed by the tenant under Section 9 (3) was closed by the learned Rent Controller. Even after closure of the said RCOP wherein the tenant admitted ownership of the landlady, the tenant has failed to recognise the landlady as owner of the petition premises. When the tenant examined himself as a witness, he deposed that landlady is not the owner of the superstructure. His father only built up the superstructure and after the death of his father, he became owner.

14 (d) From the judgments relied on by both the learned counsel for the petitioner as well as the learned Senior Counsel appearing for the first respondent, following principles emerge.

(i) The denial of title by tenant can be anterior to filing of petition for eviction or it can be in the averments contained in the objections filed by the tenant ;

(ii) If tenant denies the title of the landlord/landlady, the court has to decide whether the denial of title is bonafide or not ;

(iii) If the court comes to the conclusion that the denial of title is not bonafide, the court must order eviction. If denial is bonafide, the court has to dismiss the petition and it will be open to the landlord/landlady to approach the Civil Court for ejectment of tenant.

(iv) If the tenant claims to be the owner of the property or superstructure and fails to substantiate the said claim, it will amount to denial of title of landlord/landlady is not bonafide.

(v) If the tenant admits the landlord – tenant relationship and pays the rent, but denies the title of the landlord, it will amount that denial of title by tenant is not bonafide.

14(e) In the light of the above well settled judicial pronouncements, the denial of title by the petitioners is not bonafide for the following reasons -

(i) The petitioner has denied the title of landlady over the superstructure claiming that petitioner's father became tenant five decades ago and he has put up superstructure. The petitioner also claim that Electricity Service connection is in the name of his father and water connection is in the name of his wife but the first respondent, without his knowledge, got the same transferred in her name. The petitioner has also stated in the counter statement and deposed that his father only put up superstructure and only for the land, rent is paid. The petitioner has not produced any document to show that his father constructed the superstructure. On the other hand, the first respondent has produced documents to show that the property tax is assessed in her name as owner.

(ii) The petitioner also has stated that two other persons by name Ismail and Shabira Kanam have claimed share

in the petition premises and claimed rent from the petitioner. The petitioner filed RCOP No.2892 of 1995 under Section 9 (3) of the Tamil Nadu Buildings (Lease & Rent Control) Act for permission to deposit rent into court as there is dispute with regard to ownership. The said RCOP was closed as the petitioner agreed to pay rent to the first respondent. Even after closure of RCOP No.2892 of 1995 and paying rent to the first respondent, the petitioner is denying the title of the first respondent. The petitioner has not substantiated his claim that two other persons are also claiming share in the rent. The petitioner is paying rent to the first respondent and claim of the first respondent that the petitioner has committed wilful default had been rejected by the learned Appellate Authority and the said judgment is confirmed by this Court in the common order passed now dismissing CRP No.2964 of 2014 filed by the first respondent/landlady challenging the judgment of the learned Appellate Authority.

14 (f) For the above reasons, denial of title by the petitioner is not bonafide and he has not substantiated his claim that after

death of his father, he became owner of the superstructure. Claiming to be owner of superstructure, the petitioner denied that he is the tenant of the first respondent.

15. The courts below have considered all these evidence in proper perspective and ordered eviction on the ground that denial of title is not bonafide. Both the courts below have given cogent, valid and proper reason for coming to the said conclusion. There is no infirmity in the order or irregularity in the order of the learned Rent Controller and the judgment of the learned Appellate Authority warranting interference by this Court. In the result, **CRP (NPD) No.65 of 2014 is dismissed.** No costs.

16. In view of the dismissal of CRP (NPD) No.65 of 2014, there is no necessity to pass further order in **CRP No.2964 of 2014 and the same is dismissed.** No costs.

17. As far as CRP (NPD) No.1942 of 2014 is concerned, the Courts below have properly appreciated all the facts and materials with regard to the locality of the petition premises, extent of the property, age of the building and locational advantages and fixed the fair rent following the procedures contemplated by the Act.

There is no circumstances warranting interference by this Court with the said finding. In the result, **CRP (NPD) No.1942 of 2014 is dismissed.** No costs.

06.04.2018

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Index : Yes
Speaking/Non-speaking order

To

1.The VII Judge,
Court of Small Causes,
Chennai.

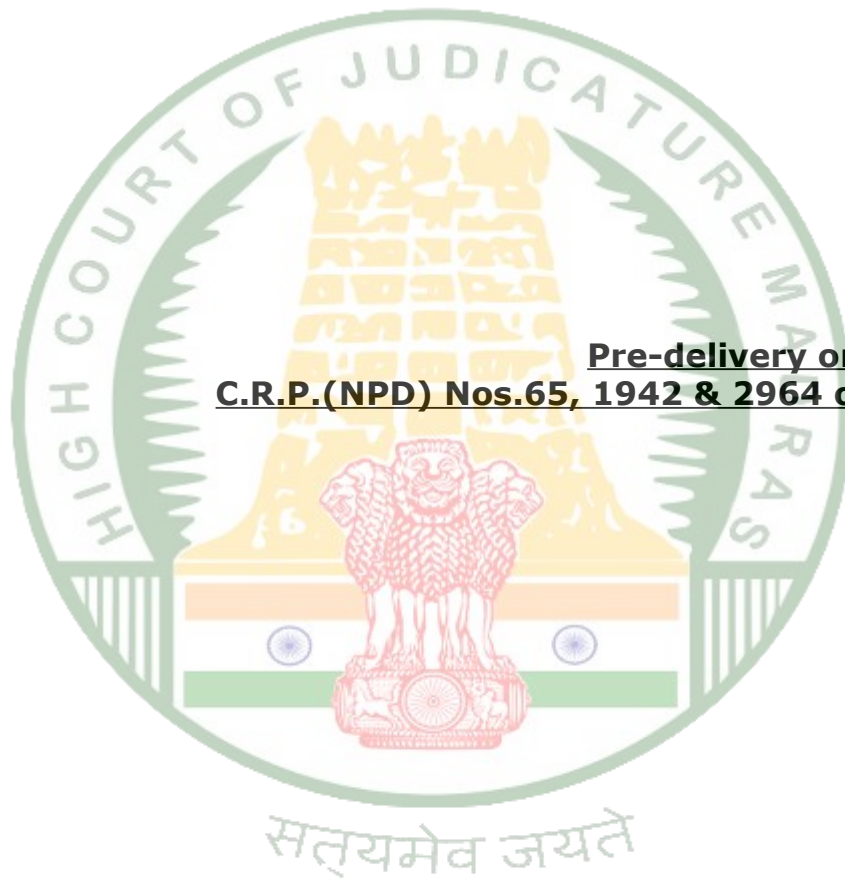
2.The XV Judge,
Court of Small Causes,
Chennai.



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V.M.VELUMANI, J.

rgr



**Pre-delivery order in
C.R.P.(NPD) Nos.65, 1942 & 2964 of 2014**

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06.04.2018

C.R.P NO.65 OF 2014**V.M.VELUMANI, J.**

The Civil Revision Petition is posted today for filing affidavit of undertaking by the petitioner. The learned counsel for the petitioner filed an affidavit of undertaking seeking time till 31.08.2018 for surrendering the vacant possession of the petition premises to the respondent/landlord. The learned counsel for the respondents also received a copy of the said affidavit of undertaking. The affidavit of undertaking is taken on file and the same is recorded. The same shall form part and parcel of this order. The petitioner is directed to vacate and hand over the possession to the respondent/landlord on or before 31.08.2018.

17.04.2018

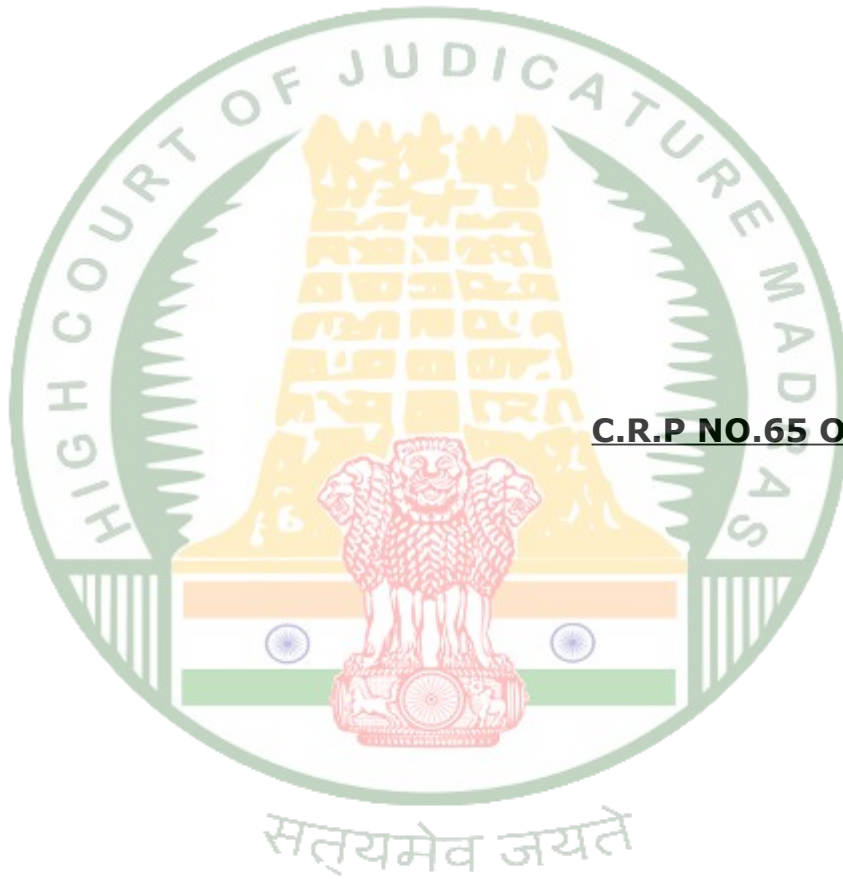
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V.M.VELUMANI, J.

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