

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2018

Pronounced on : 28.08.2018

Coram

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.R.P.(NPD) No.328 of 2004
and C.M.P.No.2736 of 2004

Tamil Nadu Slum Clearance Board,
Rep. By Chairman,
No.5, Kamarajar Road,
Chennai ... Petitioner

Vs.

Tmt.S.Kumari ... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying against to set aside the order of arrest dated 20.10.2003 passed in the E.P.No.1574 of 2002 in O.S.No.979 of 1999 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Siva Kumar

For Respondent : Mr.V.Govardharan
for M/s.Row & Reddy

O R D E R

The above Civil Revision Petition is filed challenging the order passed in E.P.No.1574 of 2002 by the X Assistant City Civil Court, Chennai, ordering the arrest of the Chairman of the Revision Petitioner Board.

2. The facts in brief are as follows:

The respondent herein had filed a suit for a mandatory injunction directing the revision petitioner to handover the vacant possession of the reallotted tenement G.14, Sathiyamoorthy Nagar, Scheme 2, Chennai or any other tenement. It was her case that she had been allotted the tenement bearing

A.47, Sathiyamoorthy Nagar, by the proceeding of the revision petitioner dated 15.02.1991. Pursuant to the above, the respondent had remitted the requisite charges and the revision petitioner have aggrieved to deliver vacant possession. However, contrary to the assurance the revision petitioner did not come forward to put the respondent in possession of the said tenement, by stating that some third parties was in occupation of the same. Thereafter, by proceedings dated 27.11.1997, the revision petitioner had agreed to re-allot another tenement bearing No.G-14 in the same area. Once again this assurance was observed in the breach and the revision petitioner once again contended that there was another lady in occupation of the tenement and that they were taking steps to vacate her. The respondent kept waiting for the allotment but the same did not materialise constraining her to issue the legal notice dated 27.11.1998. Despite receipt of this notice, there was no word or action on the side of the revision petitioner thereby constraining the respondent to file the suit.

3. The defense of the revision petitioner was that they were not in a position to allot and put the respondent in possession as there was an unauthorized occupant and that they were taking steps to evict her. They had also contended that the suit is not maintainable under Section 65 of the Tamil Nadu Slum Areas [Improvement and Clearance Act hereinafter referred to as: Slum Areas Act]. Though, this defence was raised, it was not canvassed during the trial nor was an issue framed in this regard. The suit was decreed by the XVI Assistant City Civil Court, Chennai by its order dated 22.09.1999.

4. Thereafter, since the revision petitioner did not comply with the decree, the respondent filed E.P.No.1574 of 2002 on the file of the X Assistant City Civil Court, Chennai for arrest of the Chairman of the Revision petitioner board. A detailed counter was filed in which the revision petitioner has narrated the reasons for their failure to evict the existing unauthorised tenant from the tenement allotted to the revision petitioner and stating that there was no fault on the part of the revision petitioner.

5. The learned X Assistant City Civil Judge, Chennai by order dated 20.10.2003 ordered the execution petition and directed the arrest of the Chairman of the revision petitioner, since being the executing Court he was bound by the judgment and decree passed in the suit. This order has been challenged in the present revision petition.

6. Heard Mr.R.Siva Kumar for the revision petitioner and Mr.V.Govardharan appearing on behalf of the M/s. Row and Reddy for the respondent.

7. This Court wanted the counsel for the respondent to convince the Court as to how the suit itself was maintainable in the light of Section 65 of the Slum Areas Act which reads as follows:-

Bar of jurisdiction of civil courts:- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is, empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

8. As already discussed earlier though this defence was taken in the suit, the same has not been perused to its logical end and it appears that this defence was given up by the revision petitioner. However, in the light of this express bar, the suit and consequently the execution proceedings are not maintainable. However, considering the fact that the respondent was diligently contesting the case all these years and the revision petitioner having promised an allotment to the respondent the suit and consequent execution proceedings are struck off from the file and the respondent is given the liberty to move appropriate proceedings for enforcing the order of allotment granted by the revision petitioner in proceedings No.G-7/10344/97 dated 27.11.1997.

9. In the result, the Civil Revision Petition is disposed of on the above lines. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is also closed, if any.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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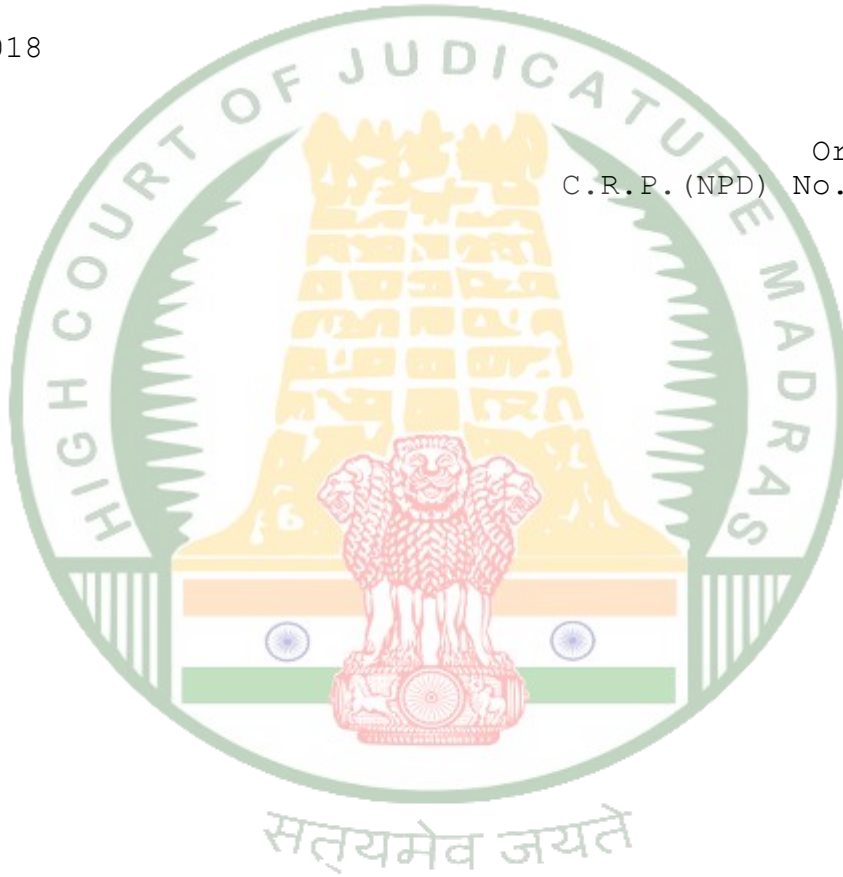
To

1. The X Assistant Judge, City Civil Court, Chennai.
2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Road,
Chennai.

+lcc to M/s.Row & Reddy, Advocate SR.No.59057

GP(CO)
sm:10.9.2018

Order made in
C.R.P. (NPD) No.328 of 2004



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