

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2018
Delivered on : 05.09.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.1378 of 2004
and C.M.P.No.13017 of 2004

P. Balakrishnan ... Petitioner

Vs

1.Kailasammal
2.S.Jeevanantham
3.S.Kudiarasu ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 30.06.2004 in M.P.No.271 of 2004 in R.C.O.P.No.1242 of 2003 on the file of the learned XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.S. Mahaveer Shivaji

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned XIV Judge, Small Causes Court, Chennai, in M.P.No.271 of 2004 in R.C.O.P.No.1242 of 2003, in and by which, the petition filed by the petitioner herein under Section 151 of the Code Civil Procedure read with Sections 29 and 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, (hereinafter to referred to as the Slum Areas Act) to decide the maintainability of the rent control petition and the jurisdiction of the Small Causes Court to adjudicate as a preliminary issue, was dismissed.

2.The facts in brief are as follows:

The respondents herein had filed R.C.O.P.No.1242 of 2003 on the file of the learned XIV Judge, Small Causes Court, Chennai, seeking to evict the respondent from the scheduled premises on the ground of wilful default and denial of title. It is the case of the respondents that the petition premises was

originally purchased as a vacant site by the 1st respondent's husband in the year 1962 and the building was constructed by him on this vacant site. Thereafter, the petitioner herein was inducted as a tenant in the year 1991 on a monthly rent of Rs.100/- which was gradually increased. In the year 1997, the rent stood at Rs.300/- per month. It is the further case of the respondents that from the middle of 1991, the petitioner herein started defaulting in the payment of rents. The respondents herein, who are illiterates, did not know how to evict the petitioner from the premises and was ill-advised to approach the Police and during such enquiry in July 2000, the petitioner informed the Police that he was the owner of the property since the Slum Clearance Board had transferred the petition premises in his name. The respondents would contend that the property does not belong to the Slum Clearance Board and by denying the title the petitioner had committed default and made himself liable to be evicted from the premises.

3.The petitioner herein countered the statement of the respondents by contending that the land in question belonged to the Tamil Nadu Slum Clearance Board and he was allotted land by order dated 12.05.1999 after paying necessary charges and he had constructed the building upon the land and the house property tax and electricity connection also stood in his name. The petitioner herein contended that the respondents have come forward with the false case. The petitioner herein further contended that he is the absolute owner of the land and therefore, there is no question of the respondents being the landlord and the rent control petition is liable to be dismissed.

4.Pending the rent control proceedings, the petitioner herein had filed M.P.No.271 of 2004 to decide the maintainability of the RCOP and the jurisdiction of the Court to adjudicate the rent control proceeding as a preliminary issue under Section 151 of the Code of Civil Procedure read with Sections 29 and 65 of the Slum Areas Act. In the affidavit filed in support of the petition, the petitioner had contended that VOC Nagar, Chennai-12 has been declared as a Slum vide G.O.Ms.No.1117, (Housing and City Improvement Department) dated 27.06.1979 and once again confirmed in G.O.Ms.No.1100, (Housing and City Improvement Department). Therefore, the petitioner had contended that the rent control proceeding was not maintainable.

5.The respondents herein filed a counter stating that the land did not come under the slum area and was a vacant site belonging to the Corporation of Chennai and the building has been constructed in a promboke land. They further contended that the petitioner had initially paid rents and thereafter, started defaulting and therefore, he was estopped from

questioning the landlord and tenant relationship.

6.The learned XIV Judge, Small Causes Court, Chennai, after hearing parties dismissed the said petition on the ground that the main petition was filed on the ground of wilful default and denial of title and the petitioner herein had initially paid rent and therefore, he had recognized the respondents as a landlord. Since the main relief against the petitioner was under Section 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, which can be looked into only after oral evidence was let in by both sides. With these observations, the learned Judge has dismissed the petition. Aggrieved by this order, the petitioner has preferred the above Civil Revision Petition.

7.Heard Mr.Balan Haridas, learned counsel appearing for the petitioner and Mr.S. Mahaveer Shivaji, learned counsel appearing for the respondents and perused the material available on record.

8.Before discussing the correctness of the order under revision, it is necessary to extract the provisions of Sections 29 and 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 as follows:

"29. Proceedings for eviction of [occupants] not to be taken without permission of the prescribed authority:-(1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of prescribed authority-

(a) institute, after the commencement of this Act any suit or proceedings for obtaining any decree or order for the eviction of 1 [an occupant] from any building or land in such area:
or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of 3[an occupant] from any building or land in such area, execute such decree or order.

(2)Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the prescribed authority in such form and containing such particulars as may be prescribed.

(3)On receipt of such application, the prescribed authority after giving an opportunity to the parties of being heard and after making such

summary enquiry into the circumstances of the case as it thinks fit shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant permission under sub-section (3), the prescribed authority shall take into account the following factors, namely:-

(a) Whether alternative accommodation within the means of the 4[occupant] would be available to him if he were evicted:

(b) Whether the eviction is in the interest of improvement and clearance of the slum area; (c) such other factors, if any, as may be prescribed.

(5) Where the prescribed authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant."

65. 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."

9. A reading of the aforesaid Sections makes it very clear that insofar as any matter which the prescribed authority was empowered to do, no Civil Court or other authority could exercise the jurisdiction thereon.

10. Section 29 starts with a non obstante clause which prescribes that without the previous permission in writing of the prescribed authority, no suit or proceedings for obtaining any decree or order of eviction of the occupant from any building or land in a slum area can be instituted.

11. The documents produced by the petitioner would show that the property in question is situate in a slum area and therefore, amenable to the provisions of the slum Areas Act.

12. Once the premises is within the ambit of the Slum Areas Act, the provision of Sections 29 and 65 would automatically come into play.

13. The learned XIV Judge, Small Causes Court, Chennai, has not addressed any reasoning on the aforesaid contentions of the petitioner.

14.The learned counsel appearing for the petitioner would rely on the Judgment of the Division Bench of this Hon'ble Court reported in 1980 (2) MLJ 83 [Parthasarathy and another v. Kupppammal), wherein the Division Bench has observed as follows:

"6.A conjoint reading of all the subsections of Section 29 of the Act would clearly Indicate that the Legislature intends to impose a restriction on the owner of the land either executing the decree obtained earlier or instituting a suit for eviction against an occupant of slum area by imposing a pre-condition that the owner of the slum area should get the permission of- the requisite authority either for filing the suit for eviction or for executing the decree that had already been obtained. Section 29, in express terms, prohibits the owner of the slum area from instituting a suit for eviction or executing a decree obtained earlier against an occupant without such permission."

15.Yet another Judgment of this Court has been reported in 2009 (7) MLJ 551 [T. Nithyanandhan v. Chandra], the learned Single Judge of this Court, while dealing with the appeal in respect of the land situate in slum Area had proceeded to set aside the concurrent findings of the Courts below only on the ground that the suit was barred by provisions of Sections 29 and 65 of the Act. The learned Single Judge has held that the

object for enacting these Sections was to ensure that no illegal eviction was made in a slum area. Even an encroacher was entitled to the benefits of Section 29 since the term used in Section 29 is "eviction of an occupant" and the definition of an occupier under Clause 2(8) of the Act included even a trespasser.

16.The Slum Areas Act itself provides the procedure for eviction under Section 57. Therefore, a conjoint reading of Sections 29, 65 and 57 of the Slum Areas Act makes it very clear that no proceedings or suit can be instituted in respect of property situate in slum Area without the prior written permission of the prescribed authority. Admittedly, in the instant case, no such permission has been obtained by the respondents. Therefore, the very institution of the rent control proceeding is without jurisdiction and therefore, liable to be dismissed.

For the reasons stated above, the Civil Revision Petition is allowed. The order of the learned XIV Judge, Small Causes Court, Chennai, in M.P.No.271 of 2004 in R.C.O.P.No.1242 of 2003 is set aside and the Rent Control Original Petition is held to

be not maintainable without the prior written permission of the prescribed authority and the Rent Control Original Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mps

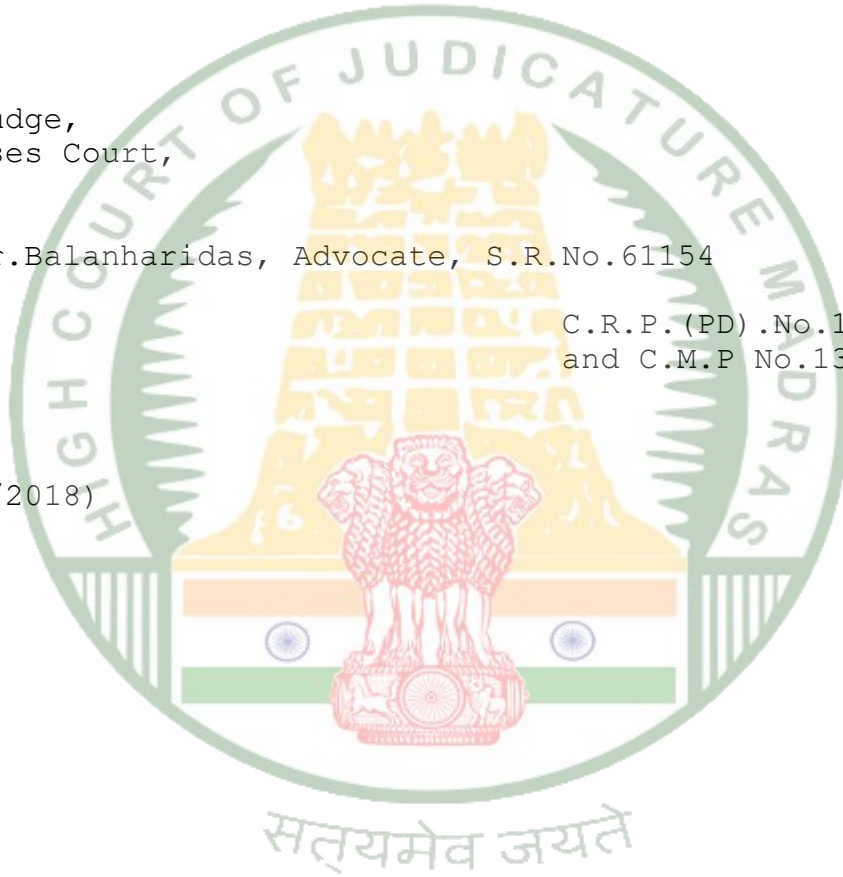
To

The XIV Judge,
Small Causes Court,
Chennai.

+1cc to Mr.Balanharidas, Advocate, S.R.No.61154

C.R.P.(PD).No.1378 of 2004
and C.M.P No.13017 of 2004

MG(CO)
GSP(25/09/2018)



WEB COPY