

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP (NPD) No. 4587, 4588 of 2011 and
CRP(NPD).No.1206, 1207 of 2012 and
M.P.No.1 + 1 of 2011
C.M.P.No.13528 of 2018

In CRP No.4587 of 2011 and CRP (NPD) No.4588 of 2011

N.Gnanasekar ... Petitioner

Vs.

1. B.Annamalai Narayanan
2. B.Sarojini
3. M.Vijayalakshmi

... Respondents

CRP (NPD) No. 1206 of 2012

1. B.Annamalai Narayanan
2. B.Sarojini

... Petitioners

Vs.

N.Gnanasekar

... Respondent

CRP (NPD) No. 1207 of 2012

1. B.Annamalai Narayanan
2. B.Sarojini
3. M.Vijayalakshmi

... Petitioners

Vs.

N.Gnanasekar

... Respondent

Prayer in CRP (NPD) No.4587 of 2011: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23 of 1973 and Act No.1 of 1980 against the orders dated 05.09.2011 passed in RCA No.704 of 2006 by the VIII Judge, Court of Small Causes, Chennai upholding the orders dated 03.07.2006 passed in RCOP No.248 of 2005 by the XIV Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.4588 of 2011: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23 of 1973 and Act No.1 of 1980 against the orders dated 05.09.2011 passed in RCA No.524 of 2007 by the VIII Judge, Court of Small Causes, Chennai upholding the orders dated 13.08.2007 passed in RCOP No.1543 of 2006 by the XIV Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.1206 of 2012: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23 of 1973 against the orders dated 05.09.2011 passed in RCA No.827 of 2007 by the VIII Judge, Court of Small Causes,

Chennai upholding the orders dated 13.08.2007 passed in RCOP No.1543 of 2006 by the XIV Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.1207 of 2012: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23 of 1973 against the orders dated 05.09.2011 passed in RCA No.524 of 2007 by the VIII Judge, Court of Small Causes, Chennai upholding the orders dated 13.08.2007 passed in RCOP No.1543 of 2006 by the XIV Judge, Court of Small Causes, Chennai.

In CRP (NPD) No.4587/2011, 4588/ 2011

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.V.Jagadeesan

For Respondents : Mr.K.V.Sundararajan

In CRP (NPD) No.1206/2012 and 1207/2012

For Petitioners : Mr.K.V.Sundararajan

For Respondent : Mr.R.Singaravelan, Senior Counsel

for Mr.V.Jagadeesan

COMMON ORDER

Civil Revision Petitions in CRP 4587/2011 and 4588/ 2011 are filed by the tenant in the premises bearing door No.2/94, Walltax Road, Chennai against the orders passed in RCA No.704 of 2006 and RCA No.524 of 2007 by the VIII Judge, Court of Small Causes, Chennai.

Civil Revision Petitions in CRP 1206/2012 and 1207/2012 are filed by the landlords against the orders passed in RCA No.524 of 2007 and RCA No.827 of 2007 by the VIII Judge, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as landlords/petitioners and tenant/respondent.

3. The respondent N.Gnanasekaran was inducted as a tenant in the petition mentioned premises for running a lorry service, during the year 1990 by the landlords' father. Subsequent to the death of the landlords' father, the present landlords/petitioners continued to receive rents from the respondent/ tenant. According to the landlords, the monthly rent was Rs.3000/- and that an earlier petition in RCOP No.994 of 1998 filed by them

to evict the respondent/tenant from the petition mentioned premises was dismissed. Their further contention is that the tenant/respondent did not pay rents for the period from August 2004 to December 2004 and had committed willful default in payment of rents. Therefore, the landlords/petitioners filed RCOP No.248 of 2005 before the XIV Judge, Court of Small Causes, Chennai for eviction of the respondent/tenant under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The landlords filed another RCOP No.1543 of 2006 for fixation of fair rent for the petition mentioned premises. The RCOP No.248 of 2005 was allowed by the XIV Judge, Court of Small Causes, Chennai vide her fair and decreetal order dated 03.07.2006. Aggrieved over the same, the respondent/tenant filed RCA No.704 of 206 before the VIII Judge, Court of Small Causes, Chennai and the same was dismissed vide orders dated 05.08.2011. Now the present revision petition in CRP No.4587 of 2011 is filed by the tenant against the orders passed in RCA No.704 of 2006.

3. In the RCOP No.1543 of 2006 filed by the landlords for fixation of fair rent, the trial court fixed the fair rent as Rs.8,129/- per month. Aggrieved over the orders passed by the learned Rent Controller, the landlords filed RCA No.827 of 2007 before the VIII Judge, Court of Small

Causes, while the tenant filed RCA No.524 of 2007. The learned VIII Judge, Court of Small Causes, Chennai in his common orders dated 05.08.2011, fixed fair rent for the tenanted premises as Rs.8,129/- per month and upheld the findings recorded by the trial court. Aggrieved over the same, the CRP 1206/2012 and 1207/2012 are filed by the landlords and the CRP 4588 of 2011 is filed by the tenant.

4. Now, the point for consideration in the present revision petitions are

1. Whether both the courts below are right in concluding that the tenant has committed willful default in payment of rents?

2. Whether the orders passed by both the courts below fixing the fair rent for the tenanted premises at Rs.8,129/- per month is right?

5. POINT No.1

Mr.R.Singaravelan, learned Senior Counsel, appearing for the respondent/tenant contended that the respondent/tenant had paid a sum of Rs.1,35,000/- as security deposit to the landlords and that the tenants have not committed willful default in payment of rents. His further contention is that the landlords had started residing at Salem without any intimation to

the tenant and all the attempts made by the tenant/respondent to pay monthly rents became futile and therefore, immediately after filing of the RCOP No.248 of 2005, the respondent/tenant paid a sum of Rs.16,500/- by way of Demand Draft to the counsel for the landlords and the same was also received by him. He also relied on the decision in **Rashik Lal and Others Vs. Shah Gokuldas** reported in (1989) 1 Supreme Court Cases 542 and contended that while concluding that the default in payment of rents is willful, the court should look into the conduct of the landlords in receiving the rents in lump sum. He drew the attention of this court to the letters dated 14.05.2014, 15.07.2017 and 2.5.2018 addressed to the landlords by the tenant and contended that these letters would go to show that the landlords had the habit of receiving rents in lump sum. His specific contention is that the default in payment of rents, cannot be construed as willful, in the facts and circumstances of the case and both the courts below had concurrently erred in holding that the tenant has committed willful default in payment of rents.

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6. His next contention is that subsequent to the filing of the RCOP, during the year 2009, a show cause notice in ep/k/c/J/e/f/vz;/vy;/,4/- 5002-2000 was sent by the Corporation of Chennai under Section 4 of the

Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act directing both the landlords and tenant to vacate the premises within 10 days from the date of receipt of the notice and that another letter dated 23.11.2009 was issued by the Corporation of Chennai, directing them to pay a sum of Rs.2,11,520/- towards "damages fee for use and occupation" and accordingly, the said amount was paid by the tenant.

7. He also raised the following points.

(i) The tenant filed CMA No.24 of 2010 before the Principal Judge, City Civil Court, Chennai against the proceedings dated 21.10.2009 passed in ep/k/c/J/e/f/vz;/vy;/,4/-5002-2000 under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act passed by the Commissioner and Estate Officer, Corporation of Chennai.

(ii) The learned Principal Judge, City Civil Court, Chennai allowed the appeal and remitted back the case to the Corporation of Chennai for further proceedings, subject to a condition that the appellant should deposit a sum of Rs.2,11,520/- and accordingly, the tenant paid a sum of Rs.2,11,520/-

(iii) Though the copy of the proceedings in ep/k/c/J/e/f/vz;/vy;/,4/-5002-2000 was marked to the landlords, they did not take steps against the Corporation of Chennai to protect the petition mentioned property.

(iv) Since the lease in favour of the landlords in respect to the land measuring 1000 sq.f.t in S.No.1275/3 part, Veppery, in which the tenanted premises was constructed, was terminated by the Corporation of Chennai, the landlords are not the owner of the premises as on date. He stressed that the subsequent events that took place after filing of the RCOP No.248 of 2005 should be taken into consideration by this court.

8. Per contra, the Mr.K.V.Sundararajan, learned counsel appearing for the landlords/ petitioners contended that the Corporation of Chennai had sent a letter to the tenanted premises at No.294, Walltax Road, Chennai, in which the tenant is running a business and the tenant failed to inform the same to the landlords. He also contended that CMA 24 of 2010 was filed by the tenant without impleading the landlord as a party to the proceedings and that only in CMA No.56 of 2018, he was shown as a respondent. It is further contended by him that in CMA No.56 of 2018, a counter was filed in which it is clearly mentioned by the landlords that though the Commissioner of Corporation of Chennai had sent a notice of

eviction under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, the same was not communicated by the respondent/tenant. According to him, after filing of CMA 56 of 2018, the landlords are taking steps to protect the property. The further contentions are

(i) The respondent/tenant did not adduce any evidence to show that he paid a sum of Rs.1,35,000/- towards rental advance

(ii) During the period from August 2004 to December 2004, no rents were paid and the letters Ex.P3 to Ex.P5 would clearly go to show that the landlords were residing only at No.23/11, SMP Koil Street, Triplicane, Chennai and not in Salem, as alleged by the respondent/tenant.

(iii) The tenant has been irregular in paying rents and even after filing of the RCOP, they have been making payments in lump sum and therefore, both the courts below are right in concluding that the respondent/ tenant had committed willful default in payment of rents.

10. The tenant did not produce any receipt showing payment of Rs.1,35,000/- towards rental advance. Further more, there is no proof for payments of rents for the period from August 2004 to December 2004 . The contention of the learned counsel appearing for the respondent/tenant that the landlord was not in the habit of issuing rent receipts for payment of

rents and therefore, the tenant could not produce the rental receipts showing payment of rents, cannot be accepted, because, it is settled law that it is the duty of the tenant to ask the landlords to issue receipt whenever rents were paid. If the landlord refuses to issue receipt, the tenant should issue notice to the landlord, requesting him to specify the bank account, in which he can deposit the rents. In the instant case, the tenant did not do so. Further more, the relationship between the landlords and the tenant had been strained and this is clear from the earlier rent control proceedings in RCOP No.994 of 1998 initiated by the landlords against the tenant under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent) Act. When the relationship of landlord and tenant has become strained, the tenant should have been more careful in paying monthly rents. The conduct of the tenant before and after filing of the RCOP clearly shows supine indifference on his part in paying rents to the landlords. Both the courts below had rightly analysed the evidence on record and had come to a conclusion that the tenant has committed willful default in payment of rents. All the observations made by both the courts below are perfectly in order.

11. As far as the subsequent events are concerned, it is seen from the typed set of papers that the land on which the tenanted premises constructed was leased out to the landlords by the Corporation of Chennai and subsequently, a notice under Section 4(1) and 5(1) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act in ep/k/c/J/e/f/vz;/vy;/,4/-5002-2000 dated 30.07.2009 was issued by the Commissioner and Estate Officer, Corporation of Chennai to the landlords directing them to vacate the land within 10 days from the date of receipt of notice and also directed them to pay a sum of Rs.2,11,520/- for use and occupation for the period from 01.04.1989 to 31.03.2009. Subsequently, the Commissioner and Estate Officer of the Corporation of Chennai in his proceedings dated 21.10.2009, directed the landlords to vacate the land and also to pay a sum of Rs.2,11,520/- towards use and occupation of the leasehold property. This letter was addressed to door No.294, Walltax Road, Chennai. The tenant had filed CMA No.24 of 2010 before the Principal Judge, City Civil Court, Chennai, against the proceedings of the Commissioner and Estate Officer, in which the landlords were not made as parties to the said proceedings. The learned Principal Judge, City Civil Court, Chennai allowed the appeal filed by the tenant and directed the tenant to deposit a sum of Rs.2,11,520/- and accordingly, the tenant had deposited the amount.

12. The tenant did not produce any evidence to show that he sent a copy of the proceedings issued by the Corporation of Chennai addressed to the tenanted premises to the landlord, especially, when the address indicated in all the letters and proceedings is No.294, Walltax Road, Chennai, which is the tenanted premises. Therefore, the contention of the learned counsel appearing for the tenant that the landlords did not take steps to protect their property, cannot be accepted. Further more, only in CMA No.56 of 2018, the tenant has shown the landlord as 2nd respondent. In CMA 56 of 2018, the tenant had filed CMP No.917 of 2018 to grant interim stay of operation of the proceedings ep/k/c/J/e/f/vz;/vy;/,4/-5002-2000 dated 09.08.2019, in which the landlords filed a counter. In paragraph No.5 of the counter, the landlords stated that the tenant has suppressed the proceedings from his knowledge and only during the proceedings before the High Court, they came to know about the issuance of notice by the Corporation of Chennai to them. Though the land belonged to the Corporation of Chennai, as is seen from the records, the premises was admittedly constructed by the landlords/petitioners. Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act defines the term ' landlord '. In fact, the term ' landlord ' is very wide and it includes various persons in the category of landlord. It is relevant to extract Section 2(6) of the Tamil Nadu Buildings (Lease and Rent

Control) Act.

" landlord " includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant ;

13. The tenant admits that he was inducted as a tenant by the father of the landlords and he is duty bound to pay rents to the landlords for the tenanted premises and he cannot deny the title of the landlords in respect of the petition mentioned premises. As already observed, since the respondent/tenant has committed willful default in payment of rents, he is liable to be evicted from the petition mentioned premises.

14. POINT No.2

As far as the fixation of fair rent is concerned, the arguments advanced by the learned counsel appearing for the tenant is that the learned VIII Judge, Court of Small Causes, Chennai, without assigning any reason,

fixed the land value at Rs.35,00,000/- per ground, especially, when the landlords had filed Ex.P3, a certified copy of the sale deed dated 02.02.2006, which clearly shows that the market value of the property measuring 1713 sq.ft. during the year 2006 is Rs.5,02,573/-. His contention is that, the appellate authority also confirmed the same, without assigning proper reasons. He therefore, would contend that based on Ex.P3, the value of the land per ground should be fixed at Rs.53,30,400/-. It is pertinent to point out that through Ex.P3, only small area measuring 1713 sq.ft. was sold for Rs.38,04,573/- and therefore, it cannot be the sole basis for fixing land value at Rs.53,30,400/-. The landlords/ petitioners did not adduce any other evidence to show the actual market value of the property per ground. In the absence of the same, fixing of the market value at Rs.35,00,000/- per ground by the courts below, cannot be found fault with. Both the courts below had correctly arrived at the fair rent for the premises at Rs.8,129/- per month and all the observations made by both the courts below are well founded and therefore, I do not see any reason to interfere with the findings recorded by the courts below.

15. In the result, the civil revision petitions in CRP (NPD) No.4587 of 2011, 4588 of 2011 and CRP (NPD) No.1206 of 2012, 1207 of 2012 are dismissed with costs. Consequently, connected civil miscellaneous petition is closed. The orders dated 05.09.2011 passed in RCA No.704 of 2006, RCA No.524 of 2007 and RCA No.827 of 2007 by the VIII Judge, appellate authority, Court of Small Causes, Chennai are upheld.

02.07.2019

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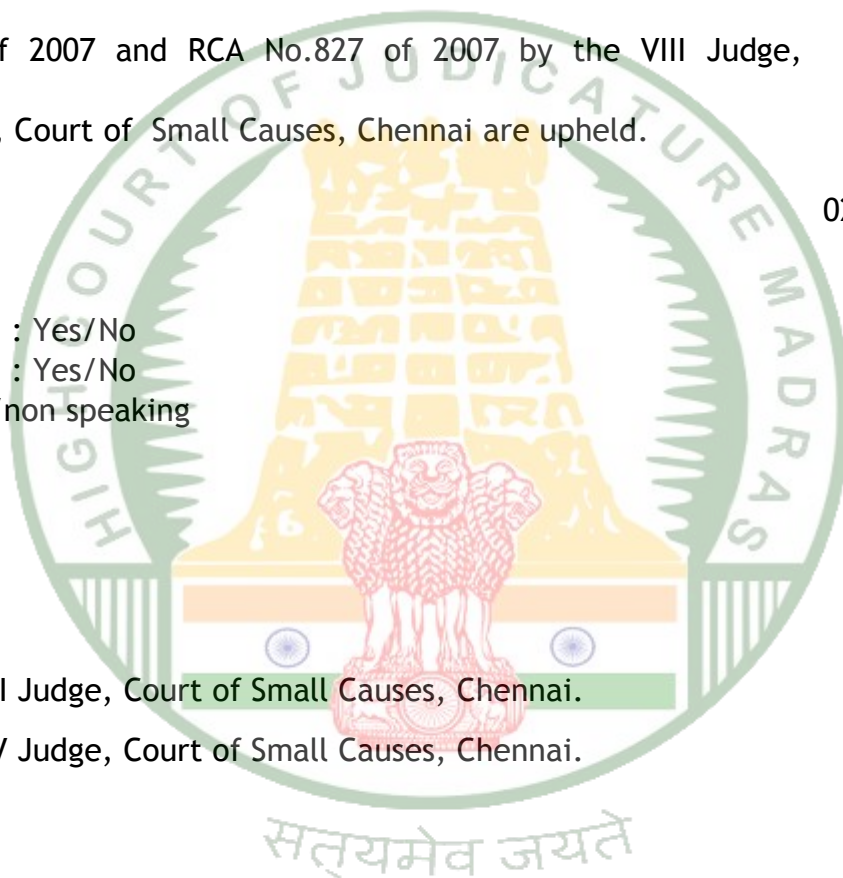
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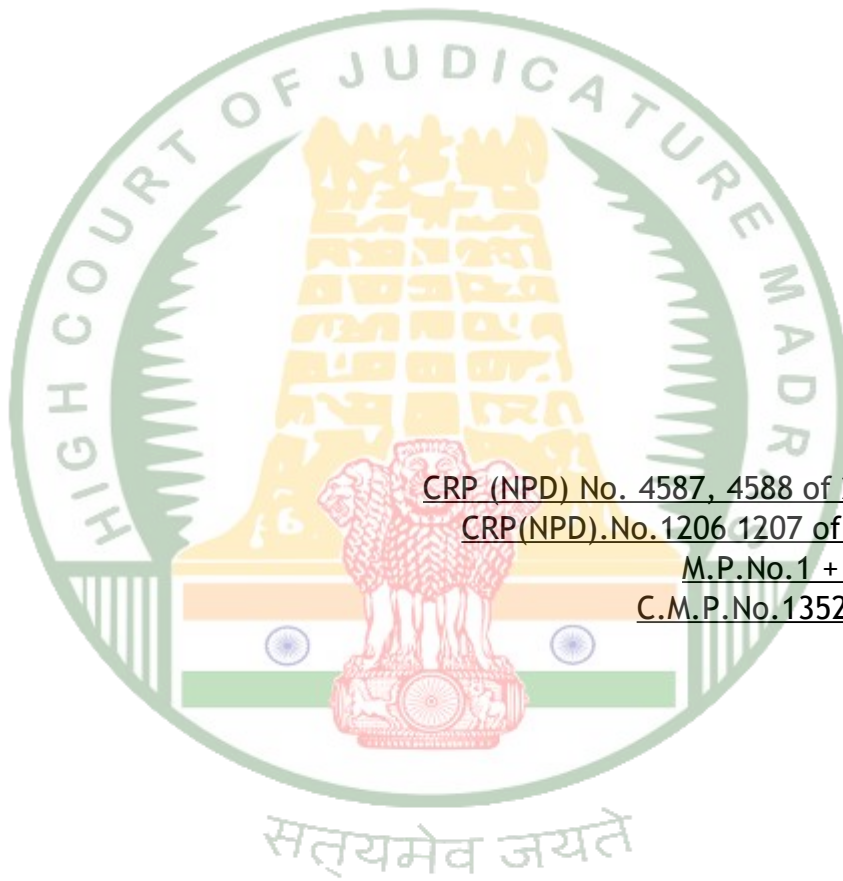
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