

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.03.2019
Pronounced On	11.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.R.P.(NPD).Nos.1669 & 1670 of 2015
and
M.P.Nos.1 & 1 of 2015**

1.M/s.Zubaidha Stores restd. by its Partners	
2.M.S.M. Habeeb Md. Sadakathullah	
3.M.H.Syed Naziruddin	... Petitioners
Vs.	
K.Ponnuswamy	... Respondent

Prayer in C.R.P.(NPD).No.1669 of 2015 : Civil Revision petition is filed under Section 25 of the TamilNadu Buildings (Lease and Rent Control) Act, 1960, to set aside the Judgment & Decree dated 07.02.2015 made in RCA No.137 of 2011 on the file of 7th Small Causes Judge, Chennai which confirming the Eviction Order and decree dated 23.12.2010 passed in RCOP No.657 of 2007 on the file of 15th Small Causes Judge, Chennai for eviction of the Revision petitioners/Tenants.

Prayer in C.R.P.(NPD).No.1670 of 2015 : Civil Revision petition is filed under Section 25 of the TamilNadu Buildings (Lease and Rent

Control) Act, 1960, to set aside the Judgment & Decree dated 07.02.2015 made in RCA No.139 of 2011 on the file of 7th Small Causes Judge, Chennai which confirming the Eviction Order and decree dated 23.12.2010 passed in RCOP No.658 of 2007 on the file of 15th Small Causes Judge, Chennai for eviction of the Revision petitioners/Tenants.

For Petitioners : Mr.K.M.M.Asan Ali Khan
in both C.R.Ps.

For Respondent : Mr.M.L.Ramesh
in both C.R.Ps.

COMMON ORDER

By this common order both the Civil Revision Petitions are being disposed.

2.These Civil Revision Petitions have been filed to set aside the common judgment and separate decretal order dated 07.02.2015 passed by the Judge, VII Small Causes Court, Chennai in R.C.A.Nos.137 and 139 of 2011.

3.By the impugned orders, common fair and separate decretal order dated 23.12.2010 passed by the XV Small Causes Court, Chennai in R.C.O.P.Nos.657 and 658 of 2007 have been upheld.

4.The petitioners are the tenants of the respondent landlord.

The respondent had filed R.C.O.P.No.656 of 2007 and R.C.O.P.No.658 of 2007 under Section 14(i)(b) of the TamilNadu Buildings (Lease and Rent Controller) Act, 1960, to evict the petitioners on the ground that the leased premises were required for bonafide purpose, albeit demolition and reconstruction.

5.The respondent had also filed separate petition against another tenant in R.C.O.P.No.2107 of 2007 in the same building. These petitions were allowed on 23.12.2007 by the XV Small Causes Court, Chennai.

6.Aggrived by the said orders, the petitioners and other tenants filed RCA.Nos.137, 139 & 413 of 2011. These proceedings culminated in the impugned common judgment and separate decretal order dated 07.02.2015.

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7.Aggrived by the orders in RCA.Nos.137 & 139 of 2011, the petitioners have preferred the present civil revision petitions.

8.Heard the learned counsel for the petitioners and the

respondent and also perused the impugned order passed by the Tribunal and the documents on records.

9.It is the case of the petitioners that the learned Rent Control Appellate Court failed to note that the application filed before the Rent Controller were not bonafide inasmuch as no proceedings have been initiated by the respondent for vacating the other tenants in the same building pending the proceedings against whom also the respondent had obtained eviction order. In fact, the respondent had leased out the property against to the same tenant pending proceeding.

10.It was further submitted that the building was in a good condition and that the petition filed under Section 14(1) (b) of the TamilNadu Buildings (Lease and Rent Controller) Act, 1960 was a mere ruse to oust the petitioners to rent out the premises to third parties to fetch higher rent.

11.The learned counsel for the petitioners therefore submitted that the respondent had no bonafide intentions to put up an actual construction in place of the existing building.

12.The learned counsel also further submitted that the building was in good condition and the respondent has not shown any proof to show that he had taken steps to demolish the building by obtaining necessary permission from the concerned authorities and therefore, the impugned orders passed by the Rent Controller as confirmed by the Rent Control Appellate Authority were liable to be set aside.

13.Per contra, the learned counsel for the respondent submits that the respondent could not take further steps for obtaining planning permission as not only the petitioners but also other tenants refused to vacate the premises and therefore the petitioners had to initiate proceeding before the Rent Controller.

14.It was submitted that though the respondent has also taken steps for executing the orders and E.P was pending, he has been unable to vacate the petitioners and other tenant in view of the present Civil Revision Petition.

15.The learned counsel for the petitioners has relied upon the following decision of this Court :

i. ***K.Srinivasan vs. V.Thangaraju and Ors.*** (1999) 2 MLJ 337

ii. ***V.VairamaniAmmal vs. P.Kalyana Sundaram,***
CRP.906 of 2000

iii. ***P.Ganesan vs. Marimuthu,*** (1999) 3 MLJ 342

16.The learned counsel for the respondent submits that the impugned are valid and do not deserve any interference and has relied upon the following decisions:-

i. ***Ruthramani vs. Deenadhayalu Pillai,*** CRP.(NPD) No.2393 of 2010.

ii. ***Harrington House School vs. S.M.Ispahani and Another,*** (2002) 5 SCC 229;

iii. ***M.GangabaiAmmal vs. M.Saraswathamma***2006 (2) MLJ 711.

17.Three appeals were disposed by the impugned common fair and separate decretal orders. The petitioners submitted that the respondent has not produced sanction plan/permission from the concerned authorities to demolish the building to put up a new construction before filing the R.C.O.Ps.

18.It was further submitted that the respondent had already filed R.C.OP.No. 2190 of 2005 for fixation of fair rent where it was not stated that the building was in a dilapidated condition. The Rent there Controller has fixed a fair rent rent of Rs.19,660/- and suppressing the same the above petitions came to be filed. An appeal was also pending against the said order.

19.It was further submitted that the respondent has also not produced any documents to establish to show that he was having adequate source of put up a new construction.

20.In the present case the respondent landlord has examined three witnesses before the Rent Controller and relied upon 11 documents in support of his plea. It has been stated that the building was a 75 year old weak building and was required to be demolished and reconstructed.Respondent who examined himself as PW 1 has proved his financial status. PW 2 Engineer has deposed that the building was weak.

21.The Rent Controller has concluded that it is not a must that a sanctioned planshould be filed for proving bonafide. The petitioners have also not discharged their burden by rebutting the

evidence produced by the respondent.

22.The petitioners have also not denied the age of the building and the status of the building as depicted in Ex-P 11.

23.The Rent Controller has concluded that the requirement of section 14 (1) (b) was satisfied and that the leased premises was indeed bonafide required by the respondent for the intended purpose.

24.The Rent Control Appellate Court has also affirmed the order of the Rent Controller.

25.Thus, in the light of concurrent findings of the Rent Controller and the Rent Controller Appellate Court, the revision petitioners have an ownerous task in this civil revision petition to set aside the orders.

26.As per the decision of the Hon'ble Supreme Court in ***Hindustan Petroleum Corpn. Ltd. vs Dilbahar Singh, (2014) 9 SCC 78*** it was held that the "*Tamil Nadu Rent Control Act provides*

that the High Court on the application of an aggrieved person may call for and examine the record of the appellate authority to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed therein. The High Court in exercise of its revisional power may modify, annul or reverse the order or decision impugned before it or remit the matter for reconsideration. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law."

27. It further held that, "a finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding

according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

28. In **Sri Raja Lakshmi Dyeing Works vs Rangaswamy Chettiar**, (1980) 4 SCC 259, it was held that "the dominant idea conveyed by the incorporation of the words 'to satisfy itself' under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the

*High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia, J. In **Dattonpant Gopalvarao Devakate vs Vithalrao Maruthirao Janagaval [Dattonpant Gopalvarao Devakate vs Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246]**, 'it is not wide enough to make the High Court a second court of first appeal.'*

29. Thus, the powers of this court though wider than the power under Section 115 of the CPC is yet narrower than that of the power of an appellate Court.

30. On over all consideration of the facts, I do not find any perversity in the finding of fact arrived by the learned Rent Controller in the present case. Therefore, there is no scope to interfere in this revisional petition as far as finding of facts arrived by the learned Rent Controller and affirmed by the Rent Controller Appellate Court.

31. Therefore, the only issue to be examined is whether the learned Rent Controller was correct in passing orders to evict the petitioners in the facts of the case. I do not find any infirmity in the same in view of Section 14 of the Tamil Nadu Rent Act which reads as follows:-

"14. Recovery of possession by landlord for repairs or for reconstruction.—(1) Notwithstanding anything contained in this Act, but subject to the provisions of Sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied—

(a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated; or

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

(2) No order directing the tenant to deliver possession of the building under this section shall be passed—

(a) on the ground specified in clause (a) of sub-section (1), unless the landlord gives an undertaking that the building shall, on completion of the repairs, be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1) for his re-occupation before the expiry of three months from the date of recovery of possession by the landlord, or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow; or

(b) on the ground specified in clause (b) of sub-section (1), unless the landlord gives an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of

three months from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow.

(3) Nothing contained in this section shall entitle the landlord who has recovered possession of the building for repairs to convert a residential building into a non-residential building or a non-residential building into a residential building unless such conversion is permitted by the Controller at the time of passing an order under sub-section (1).

(4) Notwithstanding an order passed by the Controller under clause (a) of sub-section (1) directing the tenant to deliver possession of the building, such tenant shall be deemed to continue to be the tenant, but the landlord shall not be entitled to any rent for the period commencing on the date of delivery of possession of the building by the tenant to the landlord and ending with the date on which the building is offered to the tenant by the landlord in pursuance of the undertaking under clause (a) of sub-section (2).

(5) Nothing in this section shall entitle any landlord of a building in respect of which the government shall be deemed to be the tenant to make any application under this section."

32. From a reading of the above it is clear that Section 14, 15 and 16 of the Act is a complete code for eviction on the ground of bonafide requirement for repair or demolition for putting up a new construction.

33. As per Sub clause (2) to Section 14 of the Act, the Rent Controller may, for reasons to be recorded in writing, allow eviction on the ground specified in clause (b) of sub-section (1) only if the

landlord gives an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow.

34. Thus, there are statutory time limits prescribed for commencing and completing the demolition. It should be commenced not later than one month and completed before the expiry of three months from the date of recovery of possession.

35. In case the landlord or the land lady as the case may be fails to repair or demolish the building as per the order of the Rent Controller, the consequences await such land lord under Section 15 and 16 of the Act. The decisions cited by the learned counsel for the petitioners are not relevant.

36. As far as the decision rendered in **R Srinivasan** vs **V.Thangaraju** cited by the learned counsel for the petitioners is concerned, on facts the court there found the pleading were vague.

There was no attempt was made by the landlord to establish the fact that the tenants were to be evicted for bonafide purpose contemplated as under Section 14 (1) (b) of the Act.

37. There it was found that here was no bonafide requirement for demolition of the building and reconstruction as admittedly the landlord neither had obtained planning permission nor the landlord had income to put construction. He was earning only Rs.1000/- per month and had categorically admitted that he had no other income or deposits worth his name though he had tendered evidence to the effect that he intended to borrow money from his friends and son-in-laws.

38. The court concluded that in absence of any details as to the funds and the cost of construction coupled with the fact that the landlord had only modes income of Rs.1000/-, the eviction ordered under section 14 (1) (b) of the Act could not be upheld.

39. Though, the respondent has not obtained building plan, in my view it is not mandatory to establish his bonafide. Building plans from the authorities may be one of the factor but not the only only

factor to establish bonafide of the land.

40. In fact, as per the decision in **P. Ganeshan vs A Marimuthu Sundaram** referred to *supra* by the learned counsel for the petitioners, this court held that mere obtaining of approval from the municipal authorities or the panchayat or getting it renewed and also getting a sketch ready with the approval for the intended construction of the premise may not be of much help for the landlord since an unreasonable landlord wanting to evict a tenant without reasonable cause can very easily get these documents though he may not actually put up new construction.

41. The court there held actual cause for demolition and reconstruction has to be proved with sufficient and overwhelming evidence by the landlord especially when he wants to evict a tenant who has set up business or trade or profession in the premises in which he is an occupation.

42. There the court further observed that the hardship that is to be undergone by the tenant is not in a small measure and the

authorities below did not to have that factor in the mind while ordering eviction.

43.The above observation of the Court is on an underlying assumption that the landlord can be unreasonable may procure documents for putting up construction without a bonafide intention to actually put up construction. However, such assumption are to be eschewed.

44.The only requirement is whether there is a bonafide requirement for the purpose contemplated under Section 14 (1) (b) of the Act.

45.Therefore, views expressed in **P.Ganeshan vs A Marimuthu Sundaram** referred to *supra* cannot be applied to the facts of the case.

46.Again in **Vairamani Ammal vs P.Kalyana Sundaram**

referred by the learned counsel for the petitioners, on peculiar facts of the case, the court concluded that the other ground for demolishing the building for deepening or expanding the bore well was not made out as it is a common knowledge that bore wells are either erected or deepened only in the hydraulic method making use of powerful tubes from the instruments mounted on a heavy vehicle which need not be taken near to the building and therefore demolishing a building for such deepening or expanding of the existing bore well was not at all necessary and therefore the petition for eviction was to fail. Therefore, the said decision has no relevance.

47. On the other hand in ***M. Gangabai Ammal vs M. Saraswathi*** 2006 (2) MLJ the landlady had already obtained permission from the Corporation for demolishing the building and the landlady and her husband deposed before the Rent Controller as to how they would go ahead in demolishing the building and putting up a new construction. Even though the respondent-landlady had not submitted any report of the engineer, such report was held not necessary when the other evidence let in by her would prove her bona fide requirement of the building for the purposes of demolition and reconstruction.

48. **The Court took judicial cognisance of the fact that the in the present day conditions, banks are advancing loan for the purpose of building construction and therefore it cannot be said that one has not proved the financial condition for doing such work.**

49. **Answering the argument that the intention of the landlady is only to evict the petitioner and there is no bona fides in her requirement the Court held that "** Even assuming that the landlady has thought of this method of demolishing and reconstruction only to get rid of the petitioner, on that ground, it cannot be held that the landlady does not require the building bona fide for immediate purpose of demolition and reconstruction so long as the landlady's intention to demolish and reconstruct is real.

50. The court in **Saraswathi Ammal vs R.S.Mallikarjunun Raja** 1997 (2) MLJ 474 and in a host of other cases it has been held that it is well settled that the building need not be in a dilapidated condition or in a dangerous state of affairs for ordering eviction under aforesaid provision. It has also been held that the landlord need not produce currency as long as he has the financial capability

to put up new construction in place of the existing construction.

51.The decision of the court in **Balasubramaniam vs Waran** (1998) 1 MLJ 496 though relied on the decision rendered in **Vijay Singh vs Vijayalaxmi Ammal** reported in (1997) 1 MLJ (SC) 98 is not relevant.

52.The Honourable Supreme Court in **Vijay Singh vs Vijayalaxmi Ammal** reported in (1997) 1 MLJ (SC) 98 held that for granting permission under section 14 (1) (b) of the Act, the Rent Controller is expected to consider all relevant material for according a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same premises was bona fide or not.For recording of finding that the requirement for demolition was bonafide or not the Rent Controller has to take into account the following:-

- i. bona fide intention of the landlord far from the sole object only to get rid of the tenants;
- ii. the age and condition of the building;
- iii. the financial position of the landlord to demolish an indirect the new building according to the Statutory Requirements of the Act.

53.While enumerating the above, the court also observed that

these are some of the illustrative factors which may be taken into account before ordering eviction under the aforesaid provision and that no court can fix any limit in respect of the age and condition of the buildings.

54. In the present case the evidence is on record that the building was more than 75 years old and was in dire need of demolition. The age and condition of the building also has been held to be not mandatory.

55. The Honourable Supreme Court in **Harrington House School vs Ispahanini and Another** (2002) 5 SCC 229 held that there was nothing to cast a shadow of doubt on the bona fide of the landlord pleading an immediate need for demolition followed by reconstruction and that the landlord was a man of means to put up construction.

56. The court there referred also observed that the decision rendered in **P.Orr & Sons case** rendered in (1996) 6 SCC 475 and stated that it had watered down in **Vijay Singh vs Vijayalaxmi Ammal** referred to *supra*.

57.It may be useful to refer to a profound passage of Hon'ble Mr. Justice V.R.Krishna Iyer in **Kalyani vs Madhavi** 1970 KLT 257 which reads as follows:-

"Counsel, however, argues and rightly, that the building must be in such a condition that it needs reconstruction and this ingredient has to be made out apart from the landlord's bona fide intention to reconstruct. Here, it is argued that the stress is upon the physical condition of the building. **I do not agree. If eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse, there is no doubt that few buildings could be evicted before they have actually collapsed. Knowing the length of time taken in rent control litigation in Kerala, not unusual to find the period between the institution of an application and its ultimate disposal in the revisional court, lengthening into several years if a building perilously close to sinking alone can justify a petition under Section 11(4)(iv) in a State with heavy monsoons, I do not know what purpose would be served by such a course except to endanger the lives of tenants. It is obvious, therefore, that a wider and more realistic meaning must be given to the expression condition of the building. The social purpose of this provision is to remove the road blocks in the way of progress in building programmes. Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of obsolescent and unsightly buildings**

to make room for larger, modern constructions is a social necessity, provided existing tenants are not thrown into the streets. The condition of the building is a larger concept which includes considerations of social surroundings and allied factors. Where the building is very old and incongruous with the social setting and the surroundings of the place, the Court has got to take a more liberal view in applying the provisions of law..."
(Emphasis supplied)

58.It is noticed that the petitioners has successfully managed to squat on the property despite successive adverse orders. There are no material in the present civil revision petitions to lend an alive branch to the petitioners.

59.In fact, even if there is scope for enhanced rental prospect by demolishing the existing building and by putting up a new construction in view of the changes in the locality, even if the building is not old or in a dilapidated condition, bonafide requirement of the landlord can be inferred as long as the the landlord intends to put up new construction and puts of construction. What is frowned upon is the attempt to use Section 14(1)(b) as a ruse to evict a tenant to get better tenants without actually putting up construction.

60.It may be apt to refer to a passage from **Nidhi v. Ram Kripal Sharma**, (2017) 5 SCC 640. The Hon'ble Supreme Court held that, *"the legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; **but in the process of doing justice the court cannot be overzealous and forget its duty towards the landlord also as ultimately, it is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court.**"*

61.Obtaining permission for proving bonafides is not what is contemplated under the provisions of the Act. In fact, even if the respondent had obtained a planning permit in the year 2007, it would have lapsed under the relevant Building Control Rules in the city of Chennai. Therefore, I am of the view that the landlord need not obtain permission to prove his bona fide.

62.All that is required is a bonafide request from the landlord to the tenant to vacate the premises for demolition and reconstruction. Bonafide of the landlord , can be inferred from the

surrounding facts and circumstances and cannot be thwarted merely because the tenant enjoys the privilege to pay an abysmally low rent to the landlord.

63.If the building is in dilapidated condition and has to be demolished, the Rent Controller can certainly infer bonafide requirement of the landlord.

64.In case the landlord does not put up construction, the tenant is not remediless under the Act. He can ask for re-possession.

65.The property is located in prime a commercial area in Chennai. The respondent intended to replace the existing building with a new construction way back the year 2007. Despite lapse of 12 years, the respondent is yet to commence construction in view of the litigation despite having succeeded in both the rounds of litigations.

66.The fact that one of the presmises was rented out during the currency of the litiatiion may not be a relevant factor. In **Gaya Prasad vs Pradeep Srivastava** (2001) 2 SCC 604 the Hon'ble

Supreme Court held that the crucial date for deciding as to bona fide requirement of landlord is the date of his application for eviction. The litigation continued for 23 years and during that period the son of the landlord joined Provincial Medical Service and was posted at different places. The Court refused to take notice of the subsequent event holding that the crucial date was the date of filing of the eviction petition.

67. In my view, the present revision petitions have been filed only to defeat and tire out the landlord by filing frivolous proceedings and to take advantage of the delay associated with the disposal of the cases in the courts.

68. Though rent control proceedings were initiated in the year 2007 came to be passed on 23.12.2007, the petitioners managed to drag on the proceedings before the Rent Control Appellate court for another seven years and another five years before this court.

69. The order passed by the Rent Controller as affirmed by the Rent Controller Appellate Court is well reasoned and deserves no interference. Consequently, the both the civil revision petitions are

liable to be dismissed.

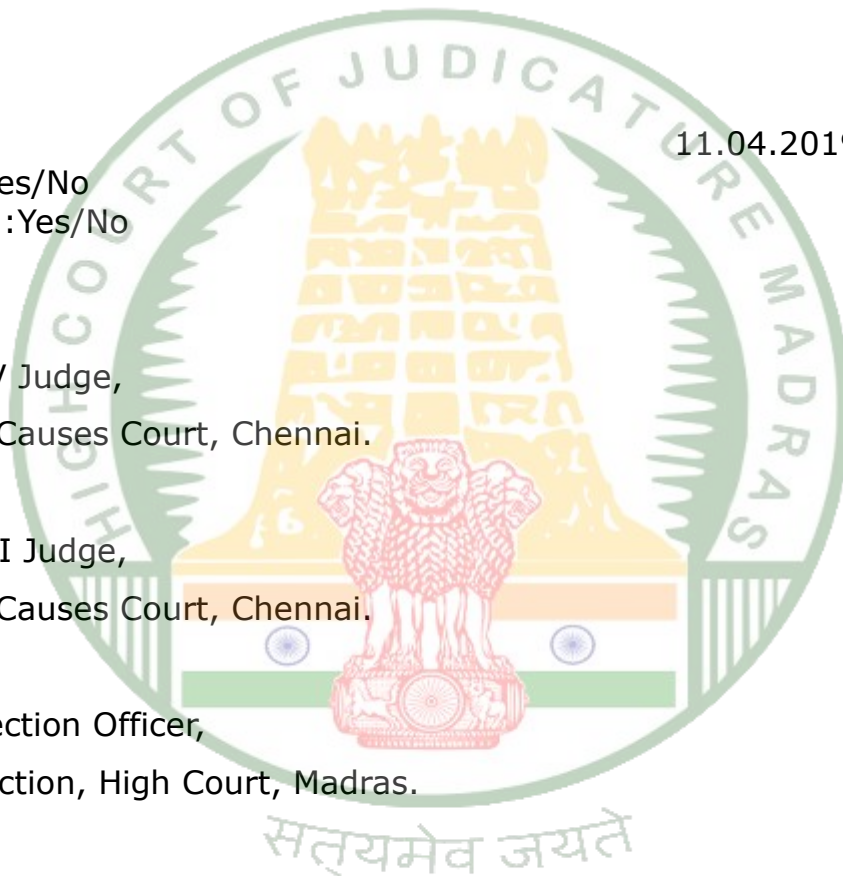
70.Both the Civil Revision Petitions are dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

11.04.2019

Index :Yes/No
Internet :Yes/No

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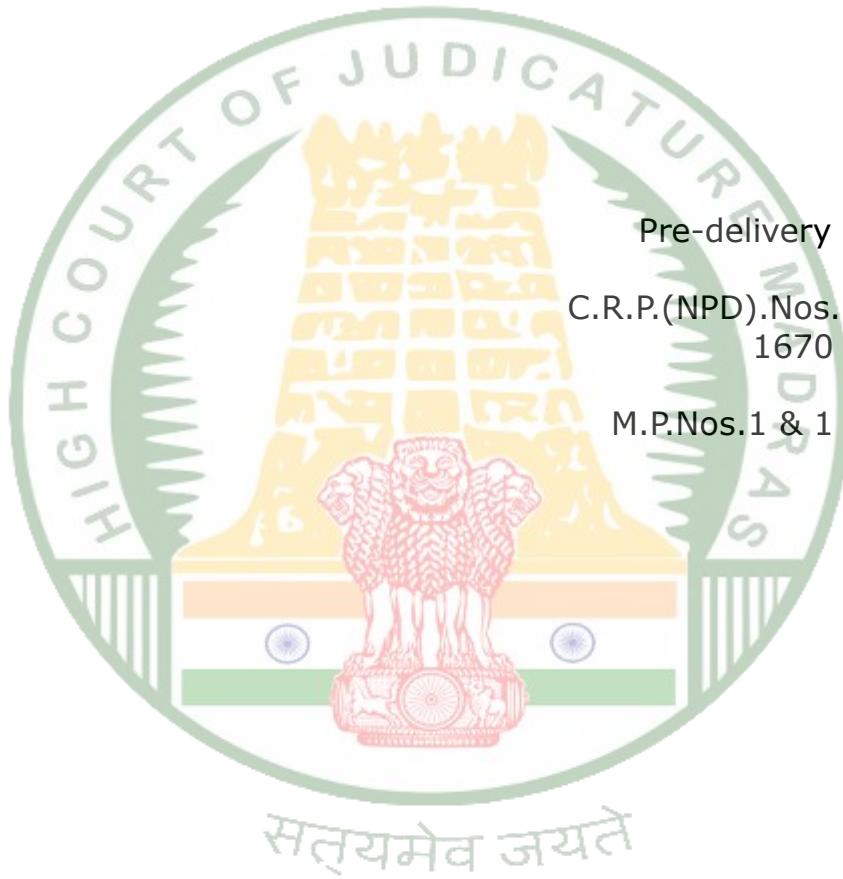
- 1.The XV Judge,
Small Causes Court, Chennai.
- 2.The VII Judge,
Small Causes Court, Chennai.
- 3.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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Pre-delivery order in

C.R.P.(NPD).Nos.1669 &
1670 of 2015
and
M.P.Nos.1 & 1 of 2015

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