

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD).No.4896, 4897, 4898 and 4899 of 2012 and
M.P.No.1 + 1 of 2012

CRP (NPD) No.4896, 4898 of 2012

R.Govindarajan ... Petitioner

Vs.

Venugopalan ... Respondent

CRP (NPD) No.4897, 4899 of 2012

A.Susairaj ... Petitioner

Vs.

Venugopalan ... Respondent

Prayer in CRP (NPD) No.4896 of 2012: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980 against the orders dated 18.06.2012 passed in RCA No.757 of 2008 by the learned VIII Judge, Court of Small Causes, Chennai upholding the orders dated 18.09.2008 passed in RCOP No.1040 of 2007 by the XIV Judge, Court of Small Causes, Chennai

Prayer in CRP (NPD) No.4897 of 2012: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960, as amended by Act 23 of 1973 and Act 1 of 1980 against the orders dated 18.06.2012 passed in RCA No.758 of 2008 by the learned VIII Judge, Court of Small Causes, Chennai upholding the orders dated 18.09.2008 passed in RCOP No.1039 of 2007 by the XIV Judge, Court of Small Causes, Chennai

Prayer in CRP (NPD) No.4898 of 2012: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960, as amended by Act 23 of 1973 and Act 1 of 1980 against the orders dated 18.06.2012 passed in RCA No.759 of 2008 by the learned VIII Judge, Court of Small Causes, Chennai upholding the orders dated 18.09.2008 passed in RCOP No.887 of 2007 by the XIV Judge, Court of Small Causes, Chennai.

Prayer in CRP (NPD) No.4899 of 2012: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960, as amended by Act 23 of 1973 and Act 1 of 1980 against the orders dated 18.06.2012 passed in RCA No.760 of 2008 by the learned VIII Judge,

Court of Small Causes, Chennai upholding the orders dated 18.09.2008 passed in RCOP No.887 of 2007 by the XIV Judge, Court of Small Causes, Chennai

For Petitioner : Mr.R.K.Bhavanantham (in CRP 4896 and
CRP 4898 of 2012)
For Respondent : Mr.M.Premkumar (in CRP 4897 and
CRP 4899 of 2012)

COMMON ORDER

All the civil revision petitions arise out of the common judgment passed in RCA No.757/2008, 758/2008, 759/2008 and 760/2008 by the learned Rent Control Appellate Authority/VIII Judge, Court of Small Causes, Chennai. The civil revision petitioners are tenants in the premises bearing old Door No.52, New No.139, Konnur High Road, Ayanavaram, Chennai. The respondent/ landlord T.Venugopalan represented by his power agent Thiruvengada Ramanuja Dass filed RCOP No.1039/2007 and 1040/2007 against A.Susairaj and R.Govindarajan respectively, who are the revision petitioners herein, under Section 10(2)(i) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and Act 1 of 1980 (herein after referred to as " the Act") for evicting them

from the tenanted premises. The Tenants A.Susairaj and R.Govindarajan filed RCOP No.887/2007 and RCOP No.888/2007 respectively before the Court of Small Causes, Chennai before the XV Judge, Court of Small Causes under Section 8(5) of the Act permitting them to deposit the rents for the period from December 2006 to March 2007 and for the subsequent periods. Both the courts below dismissed the petitions filed by the tenants under Section 8(5) of the Act and allowed the petitions filed by the landlord filed under Section 10(2)(1) and 10(3)(c) of the Act. Aggrieved over the same, the present revision petitions are filed.

2. Mr.R.K.Bhavanantham, learned counsel appearing for the revision petitioners contended that the power of attorney holder, who is the father of the landlord refused to receive the rents from the tenants and therefore, the rent for the month of December 2006 was sent by the tenants through money order and the same was returned as refused. He would further contend that the tenants issued a legal notice to the landlord to specify the bank account, in which he can deposit the rents and the said notice was also returned as not claimed. His another contention is that though the power of attorney, who is the father of the landlord is residing in the I floor of the premises, refused to receive the rents from the tenants and

therefore, the tenants have not committed willful default in payment of rents. His specific contention is that both the courts below, without considering the facts that all the legal formalities contained in Section 8 of the Act were complied with by the tenants, dismissed the petitions filed by the tenants and allowed the petitions filed by the landlord under Section 10(2)(1) and 10(3)(c) of the Act.

3. His next contention is that the landlord wanted the tenanted premises for establishing an office of a trust in the premises and that since the trust is a separate legal entity and has not been shown as a party to the proceedings, the petition filed by the landlord under Section 10(3)(c) of the Act cannot be maintained. He also relied on the following decisions in

(i) ***R.J.Metha and Co., represented by its partners V. Prootan Singh reported in 1979(2) MLJ 19***

(ii) ***Central Warehousing Corporation represented by its Regional Manager V. Indersain Goyal reported in 2000 TLNJ 337***

and contended that the eviction petition filed by the landlord for establishing an office of a trust would not fall under Section 10(3)(c) of the Act. He would therefore contend that the landlord cannot file an eviction petition under Section 10(3)(c) of the Act in his individual capacity.

4. Per contra, Mr.M.Premkumar, learned counsel appearing for the respondent would contend that even though both the tenants were in know of the facts that the landlord is residing in United States of America, they had sent notices to the landlord to his Chennai address and therefore it cannot be construed that all the legal formalities under Section 8 of the Act have been complied with by the tenants. He also contended that even after filing of the RCOP, the tenants did not pay rents to the landlord and therefore, they have committed willful default in payment of rents. His further contention is that since the trust consists of the family members of the landlord, the petition filed by the landlord under Section 10(3)(c) of the Act seeking eviction of the tenants is perfectly maintainable.

5. The contention of the landlord in the instant case is that the tenants are in arrears of rents from the month of February 2006 till the date of filing of RCOP and they did not pay any amounts towards rents. It is also the contention of the landlord that even after filing of a petition under Section 8(5) of the Act, the tenants did not pay any amount towards rents to the landlord and therefore, the tenants have committed willful default in payment of rents. It is settled law that a tenant has a statutory duty to pay rents, without any demand from the landlord and has no right to accumulate

rents and to pay the same in lump sum.

6. It is seen from the records that the landlord is residing in United States of America and he has given power attorney to his father, who is residing in the first floor of the petition premises. The tenants, who are occupying a portion of the said premises knew that the landlord is residing in United States of America and only the power of attorney of the landlord is residing in the first floor of the premises. However, they sent notices to the landlord indicating his address as Old No.52, New No.139, Konnur High Road, Ayanavaram, Chennai. Before filing of petition under Section 8(5) of the Act, the tenant has to comply with the provisions contained in Section 8(1) to 8(4) of the Act, without skipping any one of the steps. As per Section 8(5) of the Act, if the landlord refused to receive the rents sent through money order, the tenant should deposit the rents before the Rent Controller and should continue to deposit the rents that become due in respect of the building.

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7. At this juncture, the learned counsel appearing for the revision petitioners contended that the landlord had filed a civil suit against the tenants claiming arrears from the month of May 2006 and in the RCOP filed

by him, it is stated that the tenants did not pay rents from the month of February 2006 and therefore, the petitioners were confused about the rental arrears.

8. It is pertinent to point out that the tenants should know from which month they have to pay rents to the landlord and as already observed, the tenants are liable to pay rents without any demand from the landlord. Therefore, the contention of the learned counsel appearing for the revision petitioners that since the landlord has taken two different stands in the civil suit and the rent control petitions with regard to the rental arrears, the tenants did not pay rents, cannot be accepted. In any event, the subsequent conduct of the tenants would clearly go to show that they have committed willful default in payment of rents.

9. As regards the grounds under Section 10(3)(c) of the Act, the contention of the landlord is that he is running a trust in the name and style of "Srividya Educational and Charitable Trust" in a small portion of the ground floor of the petition premises and that the object of the trust is to help the poor and needy and that the portion in which the above trust is now being run, is not enough and also not suitable for running the office of the

trust. His further contention is that the trust is in the process of opening new educational institutions and the landlord also intended to establish computer classes, spoken english classes for the benefit of poor students in the ground floor.

10. Both the courts below had concurrently held that

(i) Establishment and existence of trust by the landlord is not disputed by the tenants and

(ii) the petition filed by the landlord under Section 10(3)(c) of the Act is maintainable, since the trust is a family trust with the landlord's father as Managing Trustee and other family members as trustees.

11. The learned counsel appearing for the revision petitioners would contend that since the landlord had filed a petition for eviction under Section 10(3)(c) of the Act against the tenants in his individual capacity and not in the name of the trust, the same is not maintainable.

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12. As per the Indian Trust Act, 1882, a trust is not a separate legal entity. In the decision in ***Central Warehousing Corporation represented by its Regional Manager V. IndersainGoyal reported in 2000***

TLNJ 337 (cited supra), relied on by the learned counsel appearing for the revision petitioners, the eviction petition was filed by the Director of company in his individual capacity and in such circumstances it was held that the business of a company cannot be treated as the business of the landlord. But in the present case on hand, the trust is not a separate legal entity.

13. Similarly, the decision relied on by the learned counsel appearing for the revision petitioners in ***R.J.Metha & Co., represented by its partners Vs. Prootam Singh reported in 1979(2) MLJ 19*** deals with a partnership firm. More over, the definition of the "landlord" under Section 2 (6) of the Act defines as follows.

" 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.

Moreover, the trust also cannot be equated to an artificial person or a partnership firm as laid down in the said decision. Both the courts below

have appreciated the evidence on record in the proper perspective and therefore, I do not see any reason to interfere with their findings.

14. In the result,

(i) The civil revision petitions in CRP No.4896 of 2012 and CRP No.4897 of 2012 are dismissed. No costs. The connected miscellaneous petitions are closed.

(iii) The civil revision petition in CRP No.4898 of 2012 and CRP No.4899 of 2012 are dismissed. No costs.

(iii) The orders passed by the courts below are upheld.

(iv) The civil revision petitioner (R.Govindaraj) in CRP(NPD) No.4896 of 2012 and 4898 of 2012 and the civil revision petitioner (A Susairaj) in CRP (NPD) No.4897 of 2012 and 4899 of 2012 are directed to hand over the vacant possession of the property to the respondent within three months from the date of this order.

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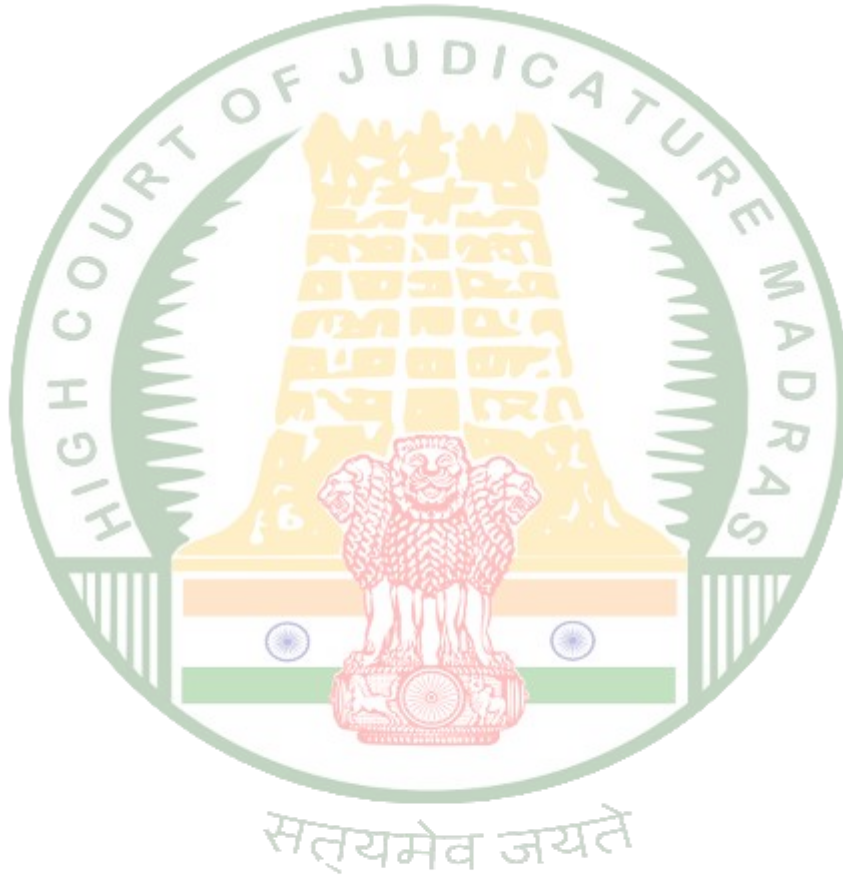
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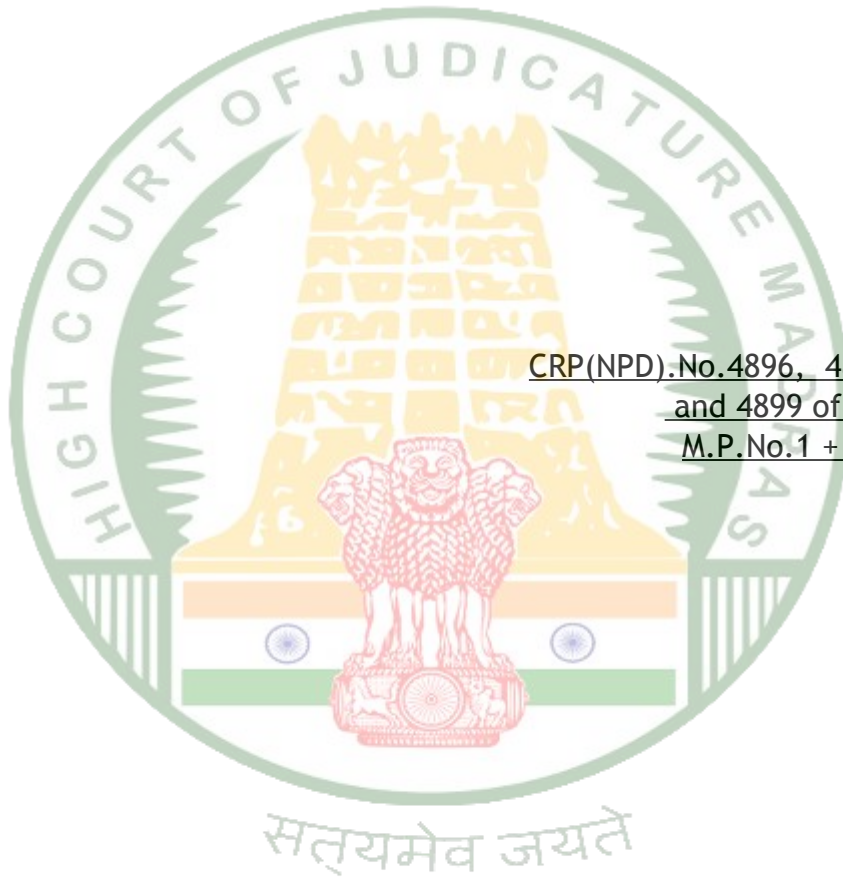
To

1. The Rent Control Appellate Authority, VIII Judge,
Court of Small Causes, Chennai.
2. The XIV Judge, Rent Controller, Court of Small Causes, Chennai.



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R.HEMALATHA, J.,
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