

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2019

Delivered on: 04.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.492 of 2016

and

CMP.No.2543 of 2016

1. The Secretary to Central Government,
Ministry of Postal Communications,
New Delhi.

2. The Post Master General,
Head Post Office,
Annasalai, Chennai.

3. The Superintendent of Post Office,
Annasalai, Thiruvannamalai.

...Petitioners

Vs

M. K. Annachatram

...Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings and Rent Control Act, 18/1960 as amended by Act 23 of 1973 and Act 1 of 1980 praying to set aside the Judgment and Decretal Order dated 08.07.2015 passed in R.C.A.No.1 of 2012, on the

file of the Principal Subordinate Judge/Rent Controller Appellate Authority, Tiruvannamalai, reversing the order and decretal order, dated 25.01.2012, passed in R.C.O.P.No.3 of 2009 on the file of the District Munsif-Cum-Rent Controller, Tiruvannamalai.

For Petitioners : Mr. N. Rajan
For Respondent : No appearance

ORDER

The tenant is the Revision Petitioner before this Court and the Revision Petition arises against the reversing order passed by the Principal Subordinate Judge (Appellate Authority), Tiruvannamalai, in RCA.No.1 of 2002 in allowing the appeal filed by the landlord. The parties are referred to in the same litigative status as in the Rent Control proceedings.

2. A brief resume of the facts culminating in the filing of the above Civil Revision Petition is herein below narrated:

The petitioner, a Private Trust is the owner of the demised premises which is a portion of a larger building bearing D.No.161, Car Street, Tiruvannamalai.

Around 15 years prior to the filing of Rent Control Proceedings

the premises was leased to the 3rd respondent for housing a post office. The 3rd respondent was paying a very low rent which constrained the petitioner to file a petition for fixing the fair rent in RCOP.No.18 of 1998. The learned Rent Controller fixed the fair rent at Rs. 5463 /- per month and on an appeal by the landlord in RCA.No.90 of 1999, the rent was enhanced to a sum of Rs.6,465/- per month. However, the 3rd respondent refused to pay the enhanced rent and continued to pay at the original rate of Rs.1050/- since repeated demands failed to yield the desired result, the petitioner was constrained to file a suit O.S.No.165 of 2003 for recovering the arrears. Ultimately, the 3rd respondent paid up the arrears.

3. Thereafter once again the rents were being paid at the earlier rate and despite a legal notice dated 1.09.2008 issued by the petitioner, demanding payment of arrears of rent for the period 1.02.2007 to 31.07.2008 totalling Rs.1,00,710/-, the 3rd respondent did not come forward to clear the same and therefore since the default was wilful eviction was sought for on the ground of wilful default.

4. The petitioner also sought eviction on the ground of demolition and reconstruction, since the building had become old and the area around was a fast developing into a commercial area and if the petitioner premises was demolished and reconstructed, the Trust could earn a good income. Hence the petitioner had filed R.C.O.P.No.3 of 2009 on the file of the Principal District Munsif (Rent Controller) Tiruvannamalai on the grounds of wilful default and demolition and reconstruction.

5. This petition was resisted by the 3rd respondent inter alia denying the various contentions raised in the petition and contending that the Post Office has been functional at the demised premises since 1.04.1963 and originally the rent was a sum of Rs. 260/- which was gradually increased to the present rate of Rs.6465/- per month. The 3rd respondent would attribute the delay in payments of the fair rent to administrative glitches.

WEB COPY

6. The 3rd respondent would contend that they have paid the arrears by cheques in the following manner:-

Rs. 1, 65,345/- on 10.10.2006

Rs. 3,70,375/- on 27.08.2007

Rs. 1,13,715/- on 17.03.2009

7. They would further contend that these amounts have been received without any demur by the petitioner and therefore there is no default much less a wilful one.

8. As regards the eviction on the ground of demolition and reconstruction, the 3rd respondent would contend that the demised premises is part of a larger extent of land and cannot be independently demolished and they had therefore contended that the petitioner lacked bona fides. They therefore sought for a dismissal of the Rent Control Petition.

9. The learned Rent Controller after hearing either parties proceeded to dismiss the petition by his order dated 25.01.2012. The learned Rent Controller would observe that the petitioner as PW1 has clearly admitted that the 3rd respondent had paid the entire arrears

and was not his default. As regards the 2nd ground of demolition and reconstruction, the learned Rent Controller had held that the petitioner has not obtained any orders for demolition from the Municipality and therefore the plea lacked bona fides.

10. Challenging the said orders, the petitioner had filed R.C.A.No.1 of 2012 on the file of the Principal Subordinate Judge (Appellate Authority) Tiruvannamalai. By his order dated 8.07.2015, the learned Appellate Authority was pleased to allow the appeal and it is challenging this order that the respondents/tenants are before this Court.

11. Mr. N. Rajan, learned counsel appearing on behalf of the respondent would put forth two contentions:-

(a) That the respondent is exempt from the purview of the Rent Control Act being an essential service and therefore coming within the exemption of Sec 10(4)(i) of the T.N.Buildings (Lease and Rent Control Act, hereinafter called ('the Act'))

(b) That the petitioner which is a public charitable trust is also exempt under G.O.Ms.2000 from the provisions of the Act. He would

draw the attention of the Court to paragraph 7 of the Rent Control Petition.

12. The learned Counsel would further argue that the arrears had been cleared in the suit O.S.No.165 of 2003 and the suit was closed and therefore prior to the filing of the RCOP, the entire arrears had been cleared. Therefore there was no cause of action for filing the Rent Control Petition. However arguments were not put forward or the question of eviction being ordered on the ground of demolition and reconstruction.

13. The petitioner/landlord though served had not appeared before Court. Despite the matter being adjourned for their appearance. When the matter came up once again, there was no appearance for the landlord and therefore the Court proceeded to hear the counsel for the Revision Petitioner.

14. From a perusal of the records, it is seen that the respondents had participated in the earlier round before the Rent Control Authorities for the fixation of fair rent. Not only had the revision

petitioner/tenant participated in the proceedings in RCOP.No.18 of 1998 but had also challenged the order fixing a fair rent of Rs.5463/- before the Appellate Authority in RCA No.90 of 1999. The respondent had submitted to the jurisdiction of the Rent Control Authorities. Even in the present proceedings it is only in the Revision that this plea taken for the first time.

15. Let us now examine Sec 10(4) (i) of the Act, The same would read as follows:-

" 10(4) No order for eviction shall be passed under Sub-Section 3:

(i) against any tenant who is engaged in employment or class of employment notified by the Government as an essential service for the purpose of this sub-section, unless the landlord is himself engaged in any employment or class of employment which has been so notified, or

(ii) in respect of any building which has been let for use as an educational institution and is actually being used as such, provided that the institution has been recognised by the Government or any authority empowered by them

in this behalf so long as such recognition continues."

16. From a reading of the above section it is clear that a tenant cannot be evicted if the following factors exist:

(a) That the eviction petition is filed invoking the provisions of Section 10 (3) viz; on the ground of owner's occupation and additional accommodation.

(b) That the tenant is engaged in an employment or a class of employment which has been notified as an essential service and the landlord is not so engaged.

Therefore it is evident that a tenant cannot invoke the provisions of Section 10 (4) if:

(a) The eviction petition is not filed invoking the provisions of Section 10 (3); or

(b) If the petition is filed under Section 10 (3), the landlord is also engaged in an employment or class of employment notified as an essential service. Infact Section 10 (4) starts with the non-obstante clause:

"No order of eviction shall be passed under Sub-Section 3."

This makes it clear that the provisions of Section 10 (4) (i) of the Act would only apply to cases filed seeking eviction on the ground owner's occupation or additional accommodation.

17. The Judgment relied upon by the learned counsel will not have any bearing on the case on hand. Therefore the eviction petition filed by the petitioner/landlord is very much maintainable.

18. Though the respondent/tenant would state that the entire arrears was cleared on the date of the filing of the Rent Control Petition, no document has been filed on their side to prove the same except for the statement made by the 3rd respondent in their counter, this despite the fact that no petitioner/landlord has come forward with a case that the respondent/tenant is in arrears of rent. That apart, from a reading of the counter, it is clearly evident that the respondent/tenant has been in arrears for a very long period and has cleared the arrears in lump sum payments that too in instalments, which clearly indicates the supine indifference displayed by them. Therefore the finding of the Appellate Authority that the respondent/tenant is in wilful default cannot be countenanced.

19. Likewise the learned counsel for the petitioner/landlord has not pointed out any error in the finding of the Appellate Authority regarding eviction on the ground of demolition and reconstruction. In the above circumstances, I do not find any infirmity in the order passed by the learned Subordinate Judge (Appellate Authority) Tiruvannamalai and the Civil Revision Petition therefore stands dismissed. Consequently, connected Miscellaneous Petition is closed.

04.06.2019

mrn/kan

Index : Yes/No

Speaking order/non-speaking order

To,

1. The Principal Subordinate Judge/
Rent Controller Appellate Authority,
Tiruvannamalai

2. The District Munsif-Cum-Rent Controller,
Tiruvannamalai

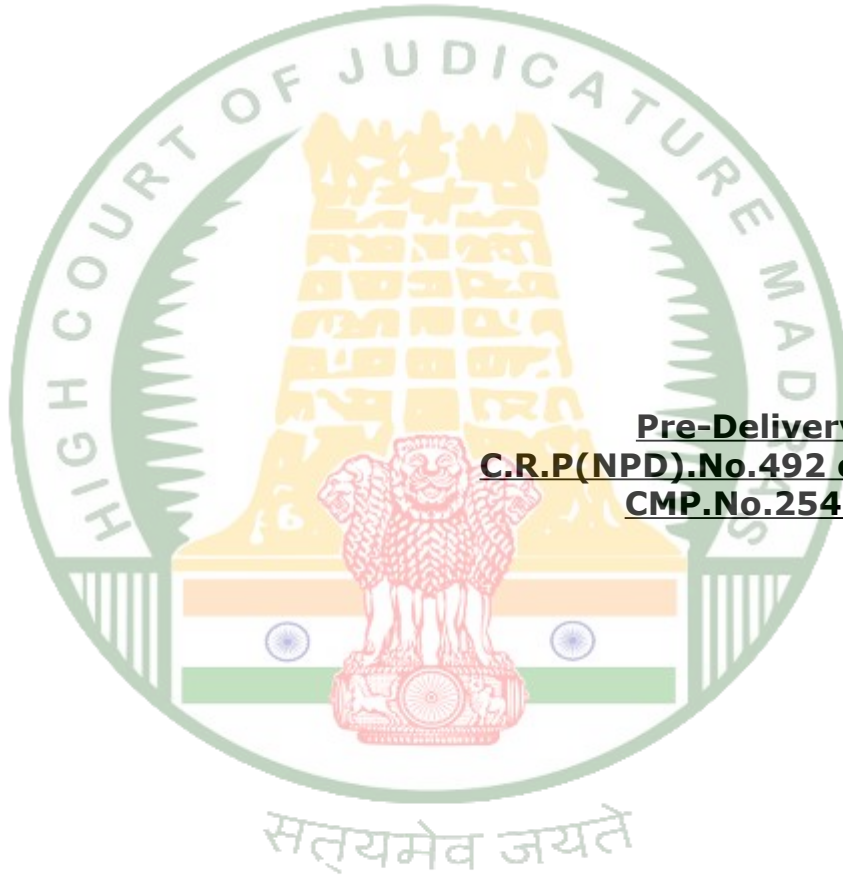
3. The Secretary to Central Government,
Ministry of Postal Communications,
New Delhi.

4. The Post Master General,
Head Post Office,
Annasalai, Chennai.

5. The Superintendent of Post Office,
Annasalai, Thiruvannamalai.

P.T.ASHA, J.,

mrn/kan



**Pre-Delivery order in
C.R.P(NPD).No.492 of 2016 &
CMP.No.2543 of 2016**

WEB COPY 4.06.2019

C.R.P(NPD).No.492 of 2016
&
CMP.No.2543 of 2016

P.T.ASHA, J.,

After the orders were pronounced the counsel for the petitioners sought time for vacating the premises. Considering the fact that the tenant is the Post Office, this Court is inclined to grant six months time to the revision petitioners to vacate the premises on condition that they file an affidavit of undertaking to vacate the premises within a period of six months, continue to pay the rents without any default and not to sublet the premises.

2.The affidavit of undertaking shall be filed within a period of two weeks from the date of receipt of a copy of the order.

The matter shall be posted for compliance on 21.06.2019.

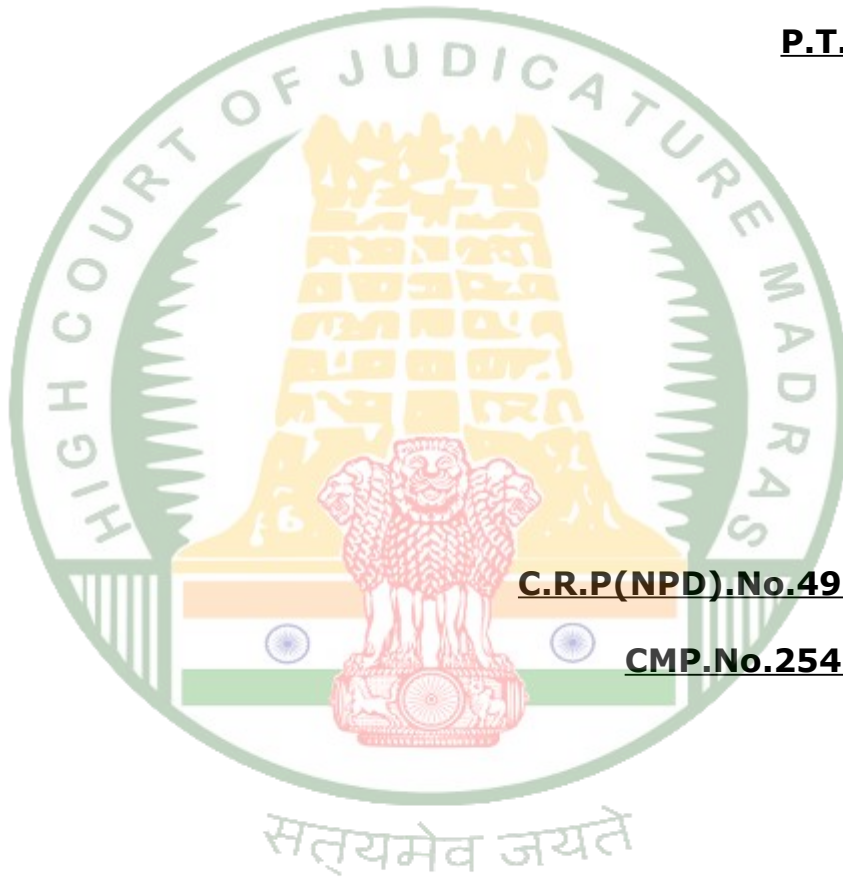
04.06.2019

kan

Note: Issue order copy on 06.06.2019

P.T.ASHA, J.,

kan



C.R.P(NPD).No.492 of 2016
&
CMP.No.2543 of 2016

WEB COPY