

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) Nos.2596, 2598 & 2600 Of 2019

and

C.M.P.Nos.17085, 17127 & 17093 of 2019

Moideenkutty ... Petitioner in C.R.P.No.2596/2019
Gangadharan ... Petitioner in C.R.P.No.2598/2019
Shyam Narayan Singh ... Petitioner in C.R.P.No.2600/2019

Vs.

S.Thangavel ... Respondent in all C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, against the decree and judgment dated 14.03.2019 passed in R.C.A.Nos. 741, 742 and 747 of 2014 on the file of the VII Small Causes Court at Chennai, confirming the decree and judgment dated 09.10.2014 passed in R.C.O.P.Nos.264, 257 and 259 of 2009 on the file of the XI Small Causes Court at Chennai.

For Petitioners
In all the petitions : Mr.A.C.Susheel Kumar

For Respondent : No Appearance

COMMON ORDER

The petitioners are the tenants and the respondent is the landlord. The respondent/landlord filed a petition under Section 14(1)(b) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for eviction of the petitioners/tenants on the ground that the respondent/ landlord requires the building for demolition and reconstruction.

2.The petitioners/tenants filed a counter statement before the Rent Controller to the effect that the building is strong and it is not in dilapidated condition and does not require demolition and reconstruction and also that the land owner is the temple. It was also contended that the respondent had not filed any sanctioned plan for demolition / reconstruction of the building. Therefore, the plea of the respondent is not bonafide.

3.The learned Rent Controller held that in as much as the tenancy is admitted, there is no necessity to go into the question of ownership. The learned Rent Controller finding that the building is 70 years old and that the respondent intends to construct a multi-storied building which would be much more profitable by referring to various decisions has decided the matter in favour of the respondent/landlord.

4.The petitioners/tenants have preferred an appeal before the learned Rent Control Appellate Authority wherein a petition was filed to examine the Executive Officer of the temple, which was allowed and the Executive Officer was examined. He has deposed that the land belongs to the temple. After cross examination, the evidence was closed. The petitions filed by the petitioners/tenants to reopen and recall the witness was rejected by the Rent Control Appellate Authority, against which, they preferred a revision petitions, which was dismissed on 21.02.2019. In the meanwhile, the learned Rent Control Appellate Authority reserved the matter for judgment on 13.04.2018, with liberty for the petitioners/tenants to submit his arguments. After disposal of the Civil Revision Petitions, the matter was adjourned for records. After 21.02.2019, the date on which the matter was adjourned to 14.03.2019 under the caption for receiving records. However, the learned Rent Control Appellate Authority confirmed the order passed by the learned Rent Controller and dismissed the appeals.

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5.The learned counsel for the Revision Petitioners would contend that as per Order 41 Rule 17(1) of the Civil Procedure Code, the appellants had not appeared in the appeal, the appeal has to be dismissed for default and the Appellate Court cannot go into the merits of the case.

In support of his submission, he relied on the judgment of the Hon'ble Supreme Court in the case of **Abdul Rahman and others Vs. Athifa Begum and others**, reported in **(1996) 6 SCC 62**. However, the said judgment of the Hon'ble Supreme Court does not apply to the present case. The present revision petitioners are the appellants and they have effectively prosecuted the appeal filed. They also filed the Civil Revision Petitions in between and also filed a petition to examine the temple authority, which they have successfully done and the examination of the parties was also over. The respondent/ landlord had made his arguments in the appeal, but the revision petitioners did not argue on the given date and therefore, orders were referred and posted for judgment giving time to them to submit their arguments before the date of pronouncing judgment. Therefore, when the petitioners appeared and effectively prosecuted the appeal and participated in the proceedings till the stage of the arguments, they cannot claim that the appeals should be dismissed for default in the absence of their argument. Having participated throughout the appeals, by filing petitioner to implead, reopen and recall and for examining parties, summoning witnesses and filing Civil Revision Petitions against the interim order, the petitioners cannot restrain the Court from deciding the matter on its merits.

6.I am of the considered opinion that the order passed by the

learned Rent Control Appellate Authority, on merits, does not warrant any interference and the Appellate Authority is very much correct. On the points of bonafide the respondent/landlord has come out with sanctioned plan to demolish and reconstruct the building and it is more than 70 years old and he wants to improve his income by constructing a multi-storied building. With regard to the title of the landlord, separate proceedings are pending by way of writ petition and there is no stay granted by this Court. That apart, it is recorded in the order passed by the learned Rent Control Appellate Authority that there is no document as on date in the name of the temple. That apart, it is settled proposition of law that a tenants are not entitled to question the title of the landlord. For the foregoing reason, the finding of the Courts below does not warrant interference as I do not find any merits in the revision.

7. The Civil Revision Petitions filed by the petitioners are accordingly dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

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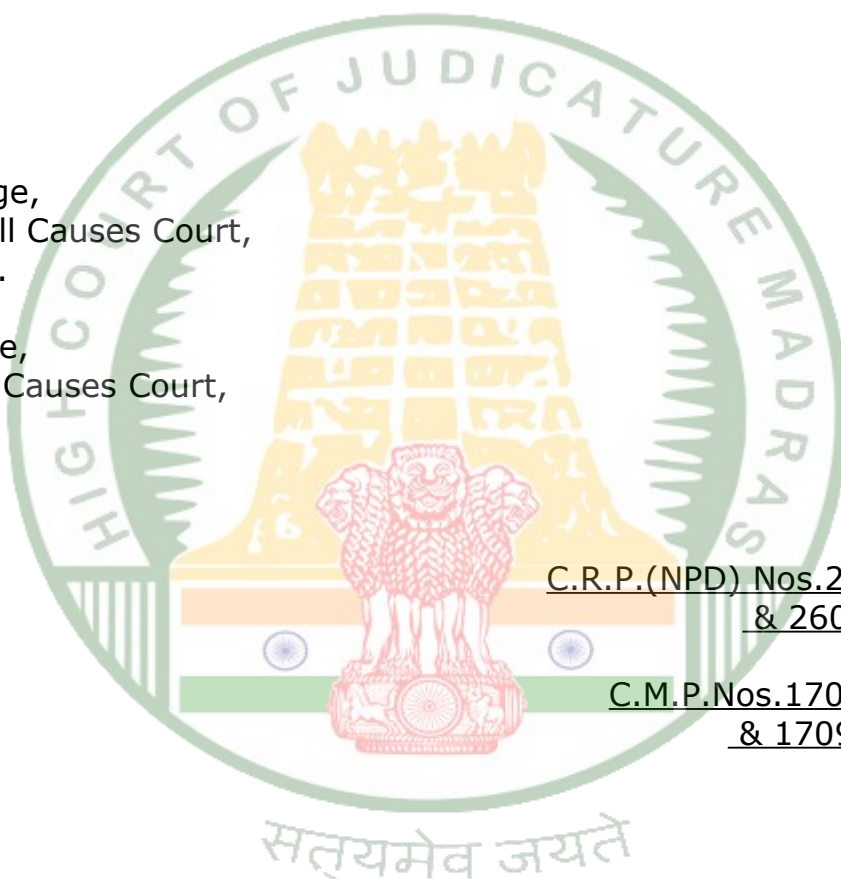
Index: Yes/No
Speaking Order/Non Speaking order.

M.GOVINDARAJ, J.

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To

1. The Judge,
VII Small Causes Court,
Chennai.
2. The Judge,
XI Small Causes Court,
Chennai.



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