

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 12.09.2019

Pronounced On : 31.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4124 of 2014

1. B.Venugopal.
2. V.Sangeetha

... Petitioners

..Vs..

1. Bhawarlal (Deceased)
2. Kushalchand
3. G.Chandrakala
4. M.Chitrakala
5. B.Mahendra
6. B.Kishore

... Respondents

[R3 to R6 brought on record as LR's of the deceased first respondent viz., Bhawarlal vide Court order dated 16.03.2018 made in CMP No.14486 of 2016 in CRP No.4124 of 2014 [VMVJ]

Prayer: This Civil Revision Petition has been filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and as Amended by Act 23 of 1973, against the fair and decreetal order dated 13.03.2012 passed in RCA No.13 of 2011 on the file of the Appellate Authority (Sub-Court), The Nilgiris District at Udthagamandalam, reversing the Fair and Decreetal Order dated 12.03.2010 passed in RCOP No.29 of 2006 on the file of the Rent Controller at Udthagamandalam.

For Petitioners : Mr.A.K.Kumaraswamy, Sr. Counsel
for Mr.K.Govi Ganesan

For Respondents : Mrs.R.Anitha (for R3 to R6)
No appearance (for R2)

ORDER

Aggrieved over the order dated 13.03.2012, passed in RCA No.13 of 2011, on the file of the learned Subordinate Judge cum Rent Control Appellate Authority of The Nilgiris at Udagamandalam, the petitioners / landlords, have filed the Civil Revision Petition, seeking the relief to set aside the above referred order.

2. Before the learned Rent Controller, Udagamandalam, The Nilgiris, the petitioners in this Civil Revision Petition, as landlords have filed the Rent Control Original Petition in RCOP No.29 of 2006, seeking the relief to evict the respondents/tenants from the petition mentioned premises. The learned Rent Controller, in his order dated 12.03.2010 had allowed the RCOP by observing that under Sections 10(2)(ii)(b) and 10(3)(a)(i) of the the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as "Act"], the petitioners are entitled to the relief of eviction, as prayed for.

3. Aggrieved over the said findings, the Respondents 1 & 2, in this Civil Revision Petition filed a Rent Control Appeal before the Rent Control Appellate Authority in RCA No.13 of 2011, in which, the learned Subordinate Judge - cum- Rent Control Appellate Authority, vide order dated 13.03.2012, set aside the findings arrived at by the learned Rent Controller and allowed the Rent Control Appeal. Ultimately, the petition filed by the Revision Petitioners/Landlords, was

dismissed. Feeling aggrieved over the same, the petitioners/Landlords are before this Court.

4. The averments of the petitioners/Landlords made in the petition filed in RCOP No.29 of 2006 in brief, are as follows:

(i) The petitioners are the owners and landlords of the petition mentioned premises and the 1st respondent is the tenant under the petitioners, in the petition mentioned premises, on a monthly rent of Rs.2500/-. The tenancy is monthly in nature. The petition mentioned premises consists of ground floor and first floor. The 1st respondent initially took the premises on rent from late C.Kolandiah Chettiar, who is the father-in-law of the 1st petitioner and maternal grand father of the 2nd petitioner. During the life time of said C.Kolandiah Chettiar, he settled the property in the name of his daughter, who is the wife of the 1st petitioner. After the settlement, the said C.Kolandiah Chettiar died leaving behind the petitioners, as the legal heirs and the rents are being paid in the name of the 2nd petitioner.

(ii) The tenancy is for residential cum non-residential purpose. The first room of the ground floor alone has to be used as a shop and the rest of the premises as a residence. The 1st respondent has changed the entire premises as non residential (shop-cum-godown) and hence, he is liable to be evicted under Section 10(2)(ii)(b) of the Act.

(iii) The 1st respondent without the consent of the petitioners/landlords, has illegally sublet the first floor of the premises to the 2nd respondent on a monthly rent of Rs.4,000/- and the 2nd respondent, was using the first floor as a godown for textiles etc., and this act of subletting is also a violation of section 10(2)(ii)(a) of the Act.

(iv) The 1st respondent has failed to pay the monthly rent for the past six months from 01.09.2005 and instead of paying the rents, he has filed a frivolous petition under Section 8 of the Act in RCOP No.3 of 2006 for depositing the rents and is liable to be evicted for committing wilful default in payment of rents.

(v) Further, the 2nd petitioner requires the premises for her own use and occupation as she finds it difficult to stay at Near (Bellary) and she has also been medically advised to stay at Ootacamund and her requirement is bonafide, as she does not own any other premises at Ootacamund. The petition mentioned premises is predominantly residential and only the respondents have illegally changed the use of the same. Hence, the petition is for eviction.

5. The averments made in the counter affidavit filed by the 1st respondent in brief, are as follows:

(i) The 2nd petitioner only is the landlord and the 1st petitioner is collecting

rents on behalf of the 2nd petitioner. The petition mentioned premises is predominantly a non residential premises and the monthly rent is fixed as Rs.2,500/-. The 1st respondent has paid the rent regularly without any default till the end of August 2005 and the same was collected by the 1st petitioner on behalf of the 2nd petitioner. Thereafter, the 1st petitioner did not collect the rents from September 2005 onwards and the petitioners/landlords were evading to receive the rents tendered by the 1st respondent. The 1st respondent had sent the rents for the months of September and October 2005, by cheque bearing Sl.Nos.335250 & 336587 dated 04.10.2005 and 04.11.2005, respectively. Even after sending the cheques, the petitioners/landlords have evaded to receive the same.

(ii) The 1st respondent has sent a legal notice dated 28.11.2005, calling upon the petitioners/landlords to receive the rents or to specify a bank, where the rents are to be deposited. The petitioners/landlords even evaded to receive the notice. Therefore, the 1st respondent sent rents for the months of September, October and November 2005 by Money Order, which has also been evaded to be received, by the petitioners/landlords.

(iii) The 1st respondent in order to prove his bonafide, had filed a petition in RCOP No.3 of 2006, before the learned Rent Controller, Udthagamandalam, for depositing the rents and the same is pending disposal.

(iv) The petition mentioned premises is predominantly a non-residential premises and the premises is leased out by C.Kolandiah Chettiar, initially as non-residential premises only. Therefore, the allegation that the 1st respondent has changed the entire premises into non-residential premises, is false. The 1st respondent has not sub-let any portion of the premises to any third party as alleged and the entire premises is in the use of the 1st respondent.

(v) The reason for non payment of rent by the 1st respondent, would be very clear from the petition filed by him in RCOP No.3 of 2006 for depositing the rents and hence, the alleged default of rent from 01.09.2005 onwards, does not arise. The petition mentioned premises predominantly being used for business premises, cannot be sought for any residential purposes. The alleged requirement of the petition mentioned premises for own use and occupation is malafide and hence, the petition deserves to be dismissed.

6. The averments made in the counter affidavit filed by the 2nd respondent in brief, are as follows:

(i) The allegation that the 2nd respondent is using the first floor of the petition mentioned premises, as a godown for textile on a monthly rent of Rs.4,000/-, is false. The 2nd respondent is doing business in the name of “Saraswathi Hall”, situated at Mariamman Temple Buildings, from the year 1971. He has several godowns in and around Upper and Main Bazaar of Ooty, to

sufficiently stock his goods. Hence, there is no necessity for him to stock his goods in the petition mentioned premises. The 2nd respondent has sent a reply notice on receipt of legal notice dated 27.12.2005, sent by the petitioners/landlords containing the false allegations. The 2nd respondent has been made a party to the proceedings unnecessarily. Hence, the petition deserves to be dismissed with exemplary costs.

7. Before the learned Rent Controller, the 1st petitioner herein, examined himself as PW1 and marked 5 documents viz., Ex.Nos.P1 to P5. On the side of the respondents, the deceased 1st respondent Bhawar Lal was examined as RW1 and one Kushal Chand was examined as RW2. Further, six documents were exhibited on their side, as Ex.Nos.R1 to R6.

8. Having considered the materials placed before him, the learned Rent Controller, in his order dated 12.03.2010, came to the conclusion that though the petition was filed under Sections 10(2)(i), 10(2)(ii)(a), 10(2)(ii)(b) and 10 (3)(a)(i) of the Act, the petitioners/landlords, are entitled to the relief only under Sections 10(2)(ii)(b) and 10(3)(a)(i) of the Act.

9. Aggrieved over the said finding, the respondents in the Civil Revision Petition preferred an appeal before the learned Subordinate Judge cum Rent Control Appellate Authority, The Nilgiris at Uthagamandalam, in which the

eviction order passed by the learned Rent Controller, Uthagamandalam, was set aside. Only in the said circumstances, the petitioners/landlords, are before this Court, with the present Civil Revision Petition.

10. Today, when the Civil Revision Petition came up for hearing, the learned counsel appearing for the petitioners/landlords and the respondents are present.

11. The learned senior counsel appearing for the petitioners/landlords would contend that the learned Subordinate Judge cum Rent Control Appellate Authority, Udhagamandalam, at the time of deciding the Rent Control Appeal, has relied on the fact that since, the 2nd petitioner has not entered into the witness box, for giving the evidence, it is sufficient to hold that the petition filed by the petitioner, is not having any bonafide reasons. However, he would contend that since the petition filed by the 1st respondent/tenant for fixation of fair rent at 12% of the market rate, was taken into account for fixing the fair rent, would go to show that the petition mentioned premises, was used as a non residential premises and only, because of the said reasons, the said Court, set aside the order passed by the learned Rent Controller, which is erroneous in law.

12. On the other hand, learned counsel appearing for the respondents would contend that in the petition filed by the petitioners, they have stated that

only on medical ground, the petition mentioned premises is needed to the 2nd petitioner. On the other hand, at the time of giving evidence as PW1, the 1st petitioner has stated that only for school education, the petition mentioned premises, is needed to the 2nd petitioner. The said inconsistency will clearly reveal the fact that they have approached the Court without any bonafide reasons.

13. Further, the learned counsel for the respondents would contend that the report filed by the Advocate Commissioner, would clearly prove that the petition mentioned premises, is used as a non residential premises. Further, the petitioners have not produced any relevant documents to show that the petition mentioned premises is in the possession of the 2nd petitioner. So in all aspects, the petitioners/landlords fail to prove their case and accordingly, the judgment and decree passed by the learned Subordinate Judge cum Rent Control Appellate Authority, Udthagamandalam, is a well considered one and thereby, no need to interfere in the findings arrived at by the said learned Rent Control Appellate Authority.

14. The submissions made by the learned counsel on either side are considered.

15. It is true that in the judgment rendered by the learned Rent Control Appellate Authority, it was held that the non entering into the witness box by the 2nd petitioner, is the sufficient reason that she has not filed the petition with the bonafide reason. In this regard, the learned senior counsel for the petitioners/landlords, relied on the following judgments:

(i) In *Mehmooda Gulshan Vs. Javaid Hussain Mungloo*, reported in AIR 2017 SC 1047, our Hon'ble Apex Court has held as follows:

“Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. In present case, landlord intended to engage her son in business at premises. It is for the landlord to decide as to best use premises should be put to. There is nothing wrong on the part of a landlord in making plans for a better living by doing business engaging her son. Having regard to the background of the son who is unemployed and undereducated, the landlord was able to establish that business was the available option and the tenanted premises was the only space available. Thus, the genuine need for the premises has been established.”

(ii) In *C.Karunakaran (Dead) by Lrs. Vs. T.Meenakshi*, reported in 2005

(13) SCC 99, our Hon'ble Apex Court has held as follows:

“Merely non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions (this fact is acknowledged by

the first appellate Court also), it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case”

(iii) In **Munuswamy Vs. S.Nathan**, reported in (1996) 1 MLJ 176, this Court has held as follows:

“When the provisions of the Rent Control Act are considered especially in the case where the landlord puts forward a case for eviction on the ground that he requires the building for the occupation of any member of his family, that is a case of dependency of that member of the family of the landlord. That dependency has to be considered from a broader and humane outlook. It is not a case where the members of the family are claiming occupation as of right but where the landlord feels that he must provide them with accommodation. He feels that it is his duty to provide them accommodation so as to have a proper family relationship. The requirement for separate accommodation may be for the member of the family. But the *bona fide* is on the landlord. So the non-examination of the person for whom it is required is not the basis”

16. On the other hand, the learned counsel appearing for the respondents relied on the judgment of this Court in **R.Jagannatha Chettiar Vs. Swarnambal**, reported in 1997 LW 182, wherein this Court has held that the best person to speak to the requirements of her own use would be the daughter of the landlord and she has not been examined, and that it is fatal to the petition filed by the petitioner.

17. Since our Hon'ble Apex Court has held as against the principle laid down by this Court, this Court is in a position to follow the judgment rendered by our Hon'ble Apex Court, relied on by the learned counsel for the petitioners/landlords.

18. According to the verdict of our Hon'ble Apex Court, the examination of the person, who needs the accommodation, is not necessary. However, on close scrutiny of the petition filed by the petitioners/landlords, the petitioners have stated in paragraph No.8, as hereunder.

“The second petitioner also requires the premises for her own use and occupation as she finds it difficult to stay at Near which is one of the hottest places in the country. The petitioner No.2 has also been medically advised to stay at Ootacamund and her requirement is bonafide, as she does not own any other premises at Ootacamund. The petition mentioned premises is predominantly residential and only the respondents have illegally changed the use of the same.”

19. On the other hand, at the time of filing the proof affidavit, PW1 has stated in paragraph No.7 as follows:

“The 2nd petitioner also requires the premises for her own use and occupation as she finds it difficult to stay at near which is one of the hottest places in the country. I submit that the 2nd petitioner has also been medically advised to stay at Ootacamund and her requirement is bonafide as she does not own any other premises at Ootacamund”.

20. It is not in dispute that as of now, the 2nd petitioner is residing in Bellary with her husband, who is employed in Central Government. Further, it is not in dispute that the 2nd petitioner is aged about 28 years and also she is a house wife. So considering the age and as her husband is employed in Central Government, it is not possible for the 2nd petitioner to leave her husband and stay at Ootacamund. Though, it was stated that the 2nd petitioner was having some illness, in order to prove the same, on the side of the petitioners/landlords, no medical record was produced to prove her need of petition mentioned premises. Without any relevant document to show that the 2nd petitioner medically needs a cool place, for her residence, the reason stated by the petitioners cannot be accepted. Hence, ***the petition filed under Section 10(3)(a)(i) of the Act (own occupation for residential purpose), is not maintainable.***

21. In respect of the finding rendered by the learned Rent Control Appellate Authority for the ground raised under Section 10(2)(ii)(b) of the Act (different user), it is the case of the petitioners/landlords that the petition mentioned premises, is predominantly a residential one. On the other hand, it is the case of the respondents/ tenants that the petition mentioned premises, is predominantly a non residential premises. Before the learned Rent Controller, an Advocate Commissioner was appointed and he has filed a report, in which it is mentioned that the petition mentioned premises was used as a non residential premises.

22. In the judgment rendered by the learned Rent Control Appellate Authority, the categorical finding in respect to ground raised under the head 10(2)(ii)(b) (different user), it is held that, at the time, when the petitioner filed petition for fixation of fair rent, the fair rent was collected at 12% of the market value, which is to be collected only for the building, which is used as non residential one. Further, at the time, when the fair rent was fixed, neither the petitioners nor the respondents have claimed that the petition mentioned premises was used predominantly as a residential one. According to the learned Rent Control Appellate Authority, the non raising of objection at the time of calculating the fair rent is the best reason to show that the petition mentioned premises was used by the respondents only as a non residential one.

23. As observed above, the learned Rent Control Appellate Authority, allowed the appeal filed by the respondents/tenants and set aside the order of eviction. In this respect, it is necessary to see the evidence given by RW1, who is the deceased 1st respondent/tenant.

“ஆதியில் வாடகைக்கு கொடுக்கும் சமயத்தில் மனுசொத்து குடியிருப்பு பகுதியாக ஒரு பகுதி வாடகைக்கு விடப்பட்டது என்றும் மற்றொரு பகுதி குடியிருப்பல்லாத பகுதியாக வாடகைக்கு விடப்பட்டது என்று சொன்னால் சரிதான். மேலும் குழந்தையார் செட்டியார் அவர்கள் ஆதியில் மனுசொத்தின் முன்பகுதியை கடை வைப்பதற்காகவும் இதர பகுதிகளை வீட்டு உபயோகத்திற்காகவும் கொடுத்தார். மனுசொத்து அமைந்திருக்கும் பகுதி குறிப்பாக புகைப்படத்தில் கண்டுள்ள பகுதி முன்பகுதி கடையாகவும், பின்பகுதி வீடாகவும் உபயோகித்து வருகிறார்கள் என்று சொன்னால் சரிதான்.”

24. Though the entire case of the respondents before the Court below is that the petition mentioned premises is a non residential one, the above referred evidence given by the RW1 will clearly reveal the fact that he himself has admitted that the building was originally let out to him predominantly for residential purpose. In the said circumstances, it is relevant to see the judgment of our Hon'ble Apex Court in *Union of India Vs. Ibrahim Uddin and Another*, reported in 2012 (8) SCC 148, wherein our Hon'ble Apex Court has held as follows:

“29. Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully, withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. ..”

25. So after the categorical admission by the 1st respondent/tenant that the property was leased out to him for residential as well as for non residential, now, claiming that the entire property let out is only for non-residential purpose shows that he has used it as a different user and that will be the best ground for eviction.

26. Before concluding the Civil Revision Petition, this Court necessarily has to point out the character/attitude of the 2nd respondent. Being a common man,

if a person is not in a possession of any property, it is not necessary for him to send a reply notice and defend the case of the 1st respondent up to the level of High Court. In this case, the 2nd respondent after receiving the legal notice, immediately sent his reply that he is not in the possession of the petition mentioned premises. More than that he enters appearance before the learned Rent Controller and gives evidence that he is not in possession of the petition mentioned premises. So the character and antecedent of the 2nd respondent would clearly show that he is in support of the 1st respondent/tenant. In the evidence given before the learned Rent Controller, he has stated that 1st respondent is not related to him. In the said occasion, contesting the case up to the High Court by the 2nd respondent, would clearly reveal the fact that he is in support of the 1st respondent/tenant. Though the said attitude of the 2nd respondent may be not a reason for eviction, the over all facts and circumstances of the case, makes it clear that there is something fishy in the case of the respondents. The learned Rent Control Appellate Authority without considering the said circumstances, has set aside the order of eviction passed by the learned Rent Controller, which is erroneous in law.

27. So, in the light of the above discussion, this Court is of the opinion that the grounds raised under Section 10(2)(ii) (b) of the Act, is proved and thereby the petitioners are entitled to the relief of eviction. **The Civil Revision Petition is allowed, accordingly.** The Respondents are directed to vacate the petition

mentioned premises and handover the possession of the same to the Civil Revision Petitioners, within a period of two months from the date of receipt of a copy of this order. No Costs.

31.10.2019

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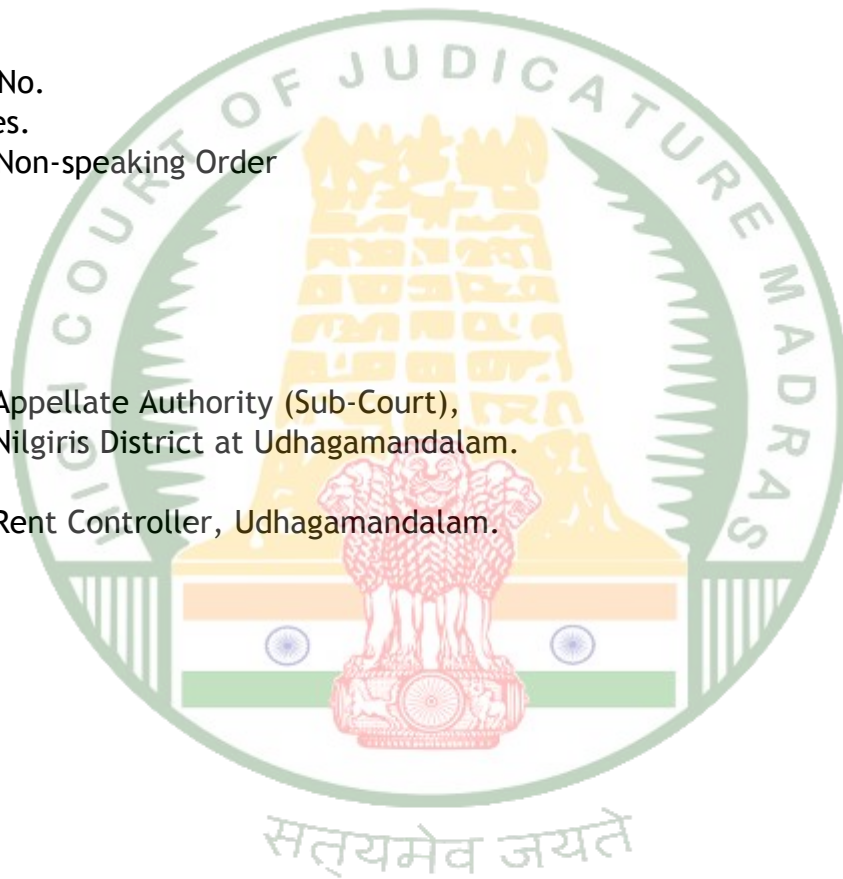
Index: Yes/No.

Internet: Yes.

Speaking / Non-speaking Order

To

1. The Appellate Authority (Sub-Court),
The Nilgiris District at Udhagamandalam.
2. The Rent Controller, Udhagamandalam.

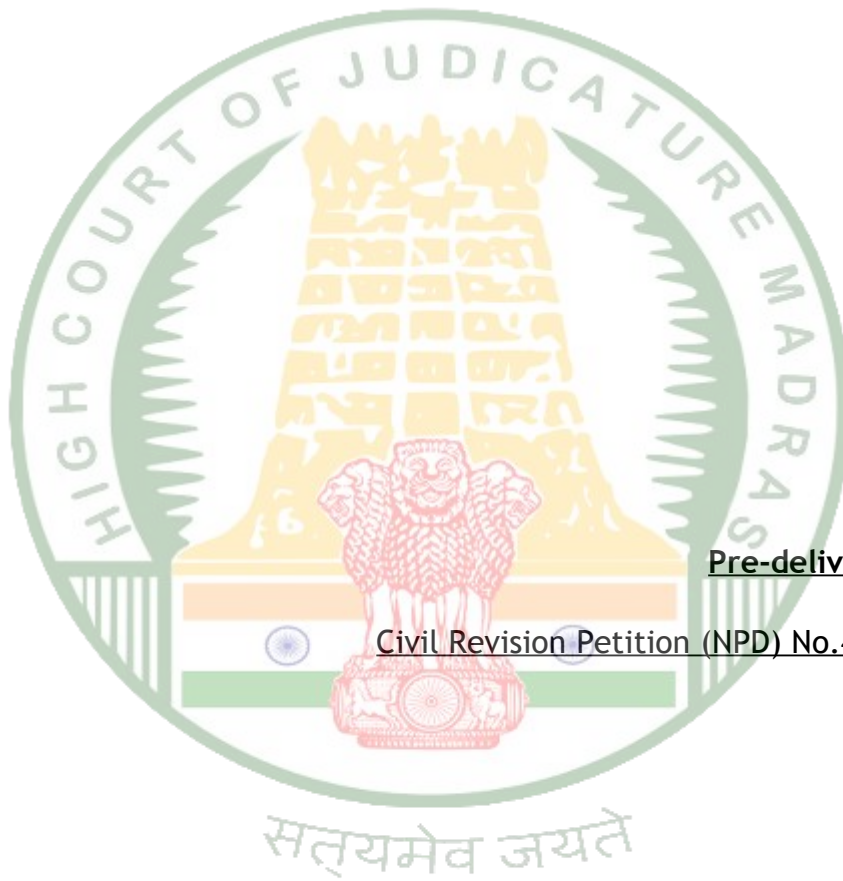


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CRP (NPD) No.4124 of 2014

R.PONGIAPPAN, J.,

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Civil Revision Petition (NPD) No.4124 of 2014

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