

**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.4270 of 2018

and

C.M.P.Nos.23415 of 2018 and 1829 of 2019

Mr.Prabhakaran

...Petitioner

Vs

Dr.Muthulakshmi

...Respondent

**PRAYER:** Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease And Rent Control) Act, against the Judgement and Decree passed in R.C.A.No.661 of 2017 dated 25.09.2018, passed by the learned VIII Small Causes Court at Chennai confirming the Judgement and Decree in R.C.O.P.No.1129 of 2013, dated 21.09.2017 on the file of the learned XII Small Causes Court at Chennai.

For Petitioner : Mr.R.Ramanlal

For Respondent : Mr.V.Ragavachari  
Caveator counsel for sole respondent

**ORDER**

The unsuccessful tenant is the revision petitioner before this Court. The revision is filed challenging the order passed in R.C.A.No.661 of 2017 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, dismissing the appeal filed by the tenant challenging the order of eviction passed by the learned XII Small Causes Judge (Rent Controller), Chennai, in R.C.O.P.No.1129 of 2013. The parties are referred to in the same litigative status as in the Rent Control Petition. Though the matter was posted for admission, both parties agreed that their arguments could be treated as final arguments in the revision. The facts in brief, necessary for disposing of the above Civil Revision Petition are as follows:

2.The landlady had filed R.C.O.P.No.1129 of 2013, against the tenant seeking eviction on the ground of owner's occupation in respect of non-residential building. It was the case of the landlady, that her husband had purchased the entire property including the petition premises in the year 1992 and on 16.04.2009, he had settled one portion on his daughter and thereafter settled the petition premises on

the landlady under a settlement deed dated 13.03.2013.

3.It is the case of the land lady that the respondent had been inducted as a tenant in respect of the petition premises in the year 2002, on a monthly rental of Rs.3,000/- and an advance of Rs.25,000/- had been paid by the tenant. After the petition premises was settled on the landlady, the tenant had attorned tenancy in her favour.

4.The landlady would contend that she is a Doctor and had retired as a Professor of Gynaecology from the Kilpauk Medical College, Chennai. On her retirement she had taken up employment as a professor with SRM Medical College and was also simultaneously running a clinic in a rented building paying a monthly rental of Rs.6,000/-. It is the case of the landlady that she had requested the tenant to evict and handover vacant possession of the petition premises however which was refused by the tenant.

5.The landlady would contend that she was living in the rear portion and the petition premises is therefore ideally suited for running a clinic. She would contend that she is not in possession of any other

property and therefore had come forward to file the Rent control Petition.

6.The tenant had resisted the said petition primarily on the ground that the petition lacked bonafides and was only an attempt to somehow evict him from the petition premises. He would contend that the landlady's husband, K.S.Venkatachalam, had filed R.C.O.P.No.1222 of 2006 (for fixation of fair rent) and R.C.O.P.No.1225 of 2006 (for demolition and reconstruction) against the tenant on the file of the XIII Small Causes Court, Chennai, thereafter, the said Venkatachalam had also filed R.C.O.P.No.1019 of 2010 on the very same ground as pleaded in R.C.O.P.No.1225 of 2006. It is the case of the tenant that since R.C.O.P.No.1019 of 2010 was filed on the very same ground, the tenant had filed M.P.No.574 of 2010, invoking the provisions of Section 19 of the Tamil Nadu Buildings (Lease and Rent Control) Act, herein after called the Act, for dismissing R.C.O.P.No.1019 of 2010.

7.The said application was dismissed by the Rent Controller but was however allowed in R.C.A.No.672 of 2011 by an order dated 10.12.2012, consequently R.C.O.P.No.1019 of 2010 stood dismissed

by an order dated 15.02.2013.

8.It is the further case of the tenant that after the dismissal of the R.C.O.P.No.1019 of 2010, which was not challenged by the said Venkatachalam. Without challenging the said order Venkatachalam had settled the petition premises alone upon the landlady immediately thereafter and within a period of three months the present Rent Control Petition was filed by the landlady seeking eviction on the ground of owner's occupation.

9.The tenant would further contend that right from the year 2006, he has been unduly harassed by the husband of the landlady who had disconnected the electricity connection, constraining the tenant to file R.C.O.P.No.1232 of 2006 for restoration of basic amenities on the file of the XIV Small Causes Court (Rent Controller), Chennai. M.P.No.387 of 2006 was filed seeking interim orders and the same was ordered on 21.07.2006, however, despite the orders the said Venkatachalam did not restore the electricity supply and therefore the tenant had filed W.P.No.15864 of 2007 seeking a separate connection to the petition premises.

10. After the Writ petition was ordered in favour of the tenant, the said Venkatachalam started instituting false complaints against the tenant and using the help of the Police to somehow forcibly evict the tenant from the premises. Therefore the tenant was constrained to file O.S.No.5877 of 2006 for a bare injunction and an interim order of injunction was also obtained by the tenant in I.A.No.11632 of 2006. Having failed in all his attempts the said Venkatachalam within a month of the dismissal of R.C.O.P.No.1019 of 2010 had settled the petition premises alone in favour of his wife, who within three months had also instituted the proceedings for evicting the tenant on the ground of owner's occupation. The tenant has further contended that the landlady is also carrying on her practice in a portion which is behind the petition premises and the Northern side of the petition premises had fallen vacant and which was not being occupied by the landlady which only prove the total lack of bonafides. The tenant would further contend that the premises which had fallen vacant was much larger than the petition premises. He therefore sought for a dismissal of the Rent Control Petition.

11.The Rent Controller after a detailed enquiry proceeded to allow the Rent Control Petition on the ground that the earlier petitions were filed invoking the provisions of Section 14 (1) and Section 4 of the Act, whereas the present proceedings was filed on the ground of owner's occupation.

12.The appeal taken out by the tenant in R.C.A.No.661 of 2017 on the file of the VIII Small Causes Judge (Appellate Authority), Chennai, also ended against the tenant. It is challenging the concurrent orders of the Courts below that the tenant is now before this Court.

13.Mr.R.Ramanlal, learned counsel appearing on behalf of the tenant would reiterate the fact that the petition seeking owner's occupation totally lacks bonafides and has been filed only with a view to somehow evict the tenant. He would also argue that having maintained an application for demolition and reconstruction right up to the year 2013, all of a sudden the landlady has come forward with a petition for eviction on the ground of owner's occupation. He would

also point out that the settlement deed itself has been created for the purpose of providing a cause of action for the instant Rent Control Petition.

14.He would draw the attention of this Court to the contention raised by the landlady's husband in R.C.O.P.No.1225 of 2006, where in paragraph No.5 of the said petition, he would submit as follows:

*"5.The petitioners further state that the entire premise No.F-192, 1<sup>st</sup> street, Anna Nagar, Chennai 102, is an old building and a dilapidated, dangerous and bad condition. It is in structurally unsound condition. There are several very big and wide structural all over. The entire wood work including doors and windows are being eaten away. The building is also leaking and there are seepage marks."*

15.He would contend that having made such a statements as early as in the year 2006, with reference to condition of the building, which statement was maintained right upto the year 2013; the present petition for seeking eviction on the ground of owners occupation is absurd and prove malafides. The condition of the building has been reiterated by the Engineer appointed by the said Venkatachalam in his

report which has been marked as Ex.R.8, in the instant Rent Control Proceedings. The Engineer would contend as follows:

*"the entire building in the premises is structurally weakened, unsound and dilapidated condition. The building does not withstand any further construction over the building. It is beyond the repairs. In my opinion, the building requires immediate demolition and reconstruction."*

16. The counsel would further argue that Venkatachalam had not submitted himself for further cross examination in the suit O.S.No.5877 of 2006 despite orders of this Court in C.R.P.Nos.450 and 451 of 2009, dated 29.07.2009. In view of the above, ultimately R.C.O.P.No.1225 of 2006 was dismissed for default on 27.08.2009 and no steps have been taken to restore the same. Further the said Venkatachalam had proceeded to file a fresh petition in R.C.O.P.No.1019 of 2010. The counsel would further highlight the fact that the settlement itself would highlight the chronology of the events preceeding the filing of R.C.O.P.No.1129 of 2013 to reiterate his argument that the petition lacks bonafides. He therefore prayed that the concurrent orders of eviction be set aside.

17. Per contra, Mr.V.Ragavachari, learned counsel appearing on behalf of the counsel for the caveator would contend that the landlady has produced sufficient documents to prove her requirements, as a result of which the authorities below have concurrently held in favour of the landlady. He would further argue that concurrent finding should not be upset by this Court under Section 25 of the Act.

18. Heard the counsels on either side and perused the documents. Before proceeding to discuss the evidence and the arguments it is necessary to briefly consider the chronicle of dates and events in order to get a comprehensive idea of the dispute on hand.

**1992** – *K.S.Venkatachalam purchased the petition premises and its larger extent.*

**2002** – *The tenant is inducted into the petition premises.*

**2006** – *Venkatachalam had filed two petitions R.C.O.P.No.1222 of 2006 for fixation of fair rent and R.C.O.P.No.1225 of 2005 on the ground of demolition and reconstruction.*

**16.04.2009** – Venkatachalam settled a portion of property purchased by him in favour of his daughter.

**30.06.2009** – landlady retires from the post of Professor of Gynaecology in Kilpauk Medical College.

*Electricity connection disconnected by the Venkatachalam.*

R.C.O.P.No.1232 of 2006 filed by the tenant for restoration of basic amenities on the file of the XV Small Causes Court, Chennai.

**21.07.2006** – M.P.No.387 of 2006 in R.C.O.P.No.1232 of 2006 for interim restoration is ordered in favour of the tenant, however, electricity is not restored.

*Venkatachalam uses Police to forcibly evict the tenant.*

O.S.No.5877 of 2006, filed by the tenant for a bare injunction and interim orders of injunction obtained in I.A.No.11632 of 2006.

**27.08.2009**, Venkatachalam had not submit himself for further cross examination despite order of this Court in C.R.P.Nos.450 and 451 of 2009, R.C.O.P.No.1225 of 2006 dismissed for default.

**21.06.2010** – R.C.O.P.No.1019 of 2010 filed for demolition and reconstruction which is the very same ground as in R.C.O.P.No.1225 of 2006.

*M.P.No.574 of 2010 filed by the tenant invoking provisions under Section 19 of the Act. The petition is dismissed.*

**10.12.2012** – R.C.A.No.672 of 2011 was filed challenging the order in M.P.No.574 of 2010 is allowed

**15.02.2013** – R.C.O.P.No.1019 of 2010, consequently stands dismissed.

**13.03.2013** – settlement of the demised premises alone in favour of the landlady.

**25.06.2013** – eviction petition in R.C.O.P.No.1129 of 2013 is filed.”

19.From a reading of the above chronology of events, it is clearly evident that from the year 2006 there has been an attempt made to evict the tenant from the petition premises right up to the year 2013 when R.C.O.P.No.1019 of 2010 was dismissed. The then landlord K.S.Venkatachalam had come forward with a contention that the building was highly dilapidated and had to be pull down immediately the petition filed in support of the R.C.O.P.No.1225 of 2006, which has been extracted supra as also the Engineer's report in the said Rent

Control Proceedings reiterates the stand taken by Venkatachalam that the petition premises was in an highly dilapidated and dangerous condition. Having maintained that stand till the year 2013, all of a sudden after the demised premises was settled on the landlady, the landlady does a turn around and contends that the premises is required for her own use and occupation so as to enable her to run a clinic. This reason for seeking eviction therefore rings hollow.

20. She has specifically come forward with a case that she is presently running a clinic in a rented premises, however, no documents whatsoever has been produced to prove the said contention either in the form of the lease deed or by examining the landlord of the said premises. The existence of a bonafide requirement is the primordial condition that is required to be satisfied in a proceedings seeking for an eviction on the ground of owner's occupation.

21. From a mere perusal of the chronology narrated supra, it appears that within four months from the dismissal of the petition for demolition and reconstruction and within three months of the property being settled in her favour the landlady has come forward with an application for owner's occupation and further no where in the petition

does she make any reference to the earlier proceedings instituted by her husband against the tenant which also casts a doubt on her bonafides. It is also seen that the contention of the tenant that other portions in the larger extent of the property were lying vacant and better suited for the need of the landlady has not been refuted by her.

In the above Circumstances, I am of the view that both the authorities below have failed to address themselves to the bonafides of the landlord in seeking eviction on the ground of owner's occupation and therefore their orders suffers from infirmity. Consequently, the Civil Revision Petition is allowed and the order in R.C.A.No.661 of 2017 on the file of the VIII Small Causes Court (Appellate Authority), Chennai, confirming the order of the XII Small Causes Court (Rent Controller), Chennai in R.C.O.P.No.1129 of 2013 is set aside. There shall be no order as to costs. Consequently connected Civil Miscellaneous Petitions are also closed. However, the above order shall not in any manner preclude the landlady from initiating proceedings under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

**04.06.2019**

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Index : Yes/No  
Speaking order/non-speaking order

To,  
1.The VIII Small Causes Judge,  
Chennai.

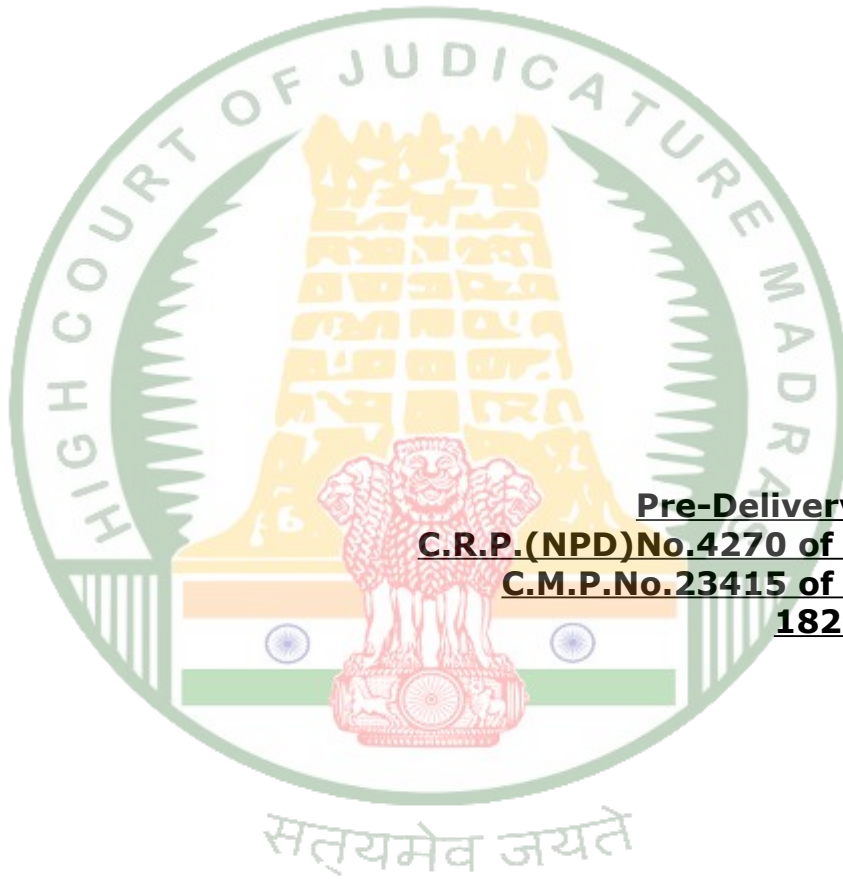
2.The XV Small Causes Judge,  
Chennai.



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**P.T.ASHA, J.,**

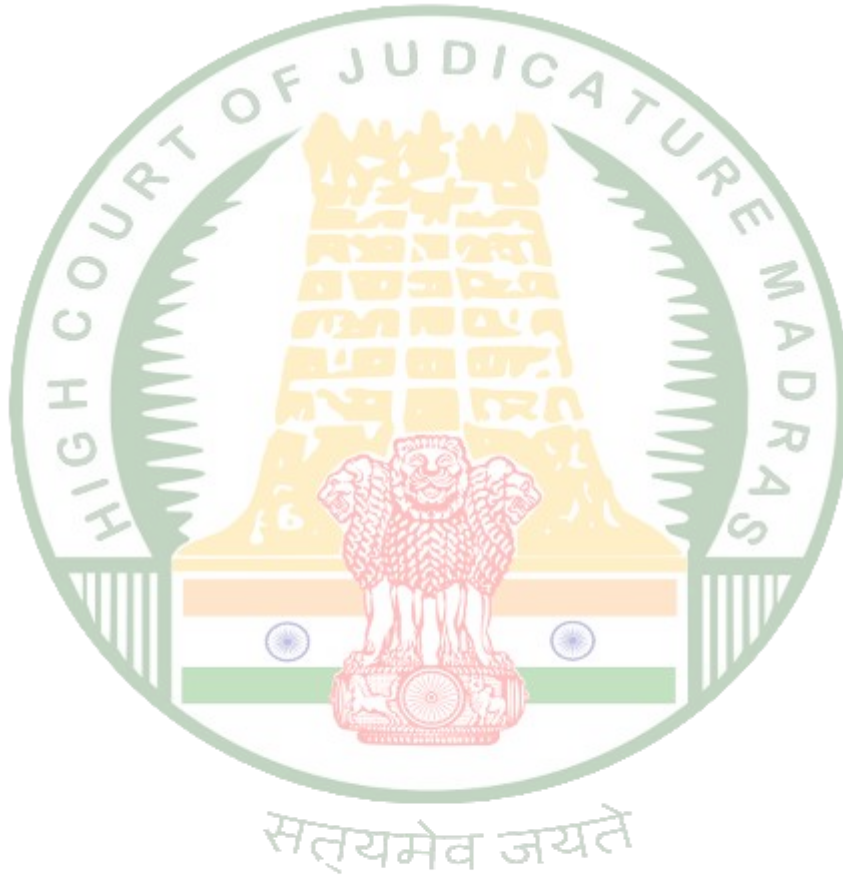
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**Pre-Delivery order in**  
**C.R.P.(NPD)No.4270 of 2018 and**  
**C.M.P.No.23415 of 2018 and**  
**1829 of 2019**

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**04.06.2019**



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