

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 27.01.2020]

[ORDERS PRONOUNCED ON : 28.02.2020]

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.[NPD] Nos.2601 and 2602 of 2010

1. Razia Sultana Waqf Alal Aulad Trust,
(Private Trust),
Rep. by its Trustees.
 2. Ajmunnisa
 3. Razia Sultana
 4. Badru Jehan
- ... Petitioners in both C.R.Ps.

.. Vs ..

1. Amaludeen (Died)
 2. Kabeeramma
 3. Regina
 4. Jesima
 5. Rasika
- ... Respondents in C.R.P.No.2601/2010

[R-2 to R-5 brought on record as
L.Rs. of the deceased sole
respondent viz., Amaludeen vide
Court order dated 27.01.2020 made
in M.P.Nos.1, 2 and 3 of 2013 in
C.R.P.No.2601 of 2010].

H.Niyamathullah

... Respondent in C.R.P.No.2602/2010

Prayer in both C.R.Ps.:- Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1/1980, against the judgment and decree dated 27.10.2006 passed in R.C.A.Nos.1229 and 1230 of 2003 respectively by the learned VII Judge, (Rent Control Appellate Authority), Court of Small Causes, Chennai, by erroneously allowing the said appeals filed against the well considered order of eviction dated 10.09.2003, passed by the learned XIV Judge (Rent Controller), Court of Small Causes, Chennai, in R.C.O.P.Nos.1368 and 1367 of 2002 respectively.

In both C.R.Ps.

For Petitioners
in both C.R.Ps. : Mr.K.P.Ashok

For R-1 in
C.R.P.No.2601/2010 : No Appearance

For RR-2 to 5
in C.R.P.No.2601/2010 : No Appearance

For Respondent
in C.R.P.No.2602/2010 : No Appearance

COMMON ORDER

The private Trust viz., Razia Sultana Waqf Alal Aulad Trust represented by its Trustees are the revision petitioners herein and they are the landlords. The respondents in both the civil revision

petitions are the tenants. The landlords and tenants relationship between the parties is not disputed.

2. The common pleadings made in R.C.O.P. petitions are as follows:-

[i] Amaludeen is a tenant in respect of Room No.2 in the first floor of premises No.82-B, Ponappa Mudali Street, Purasawalkam, Chennai - 7, on a monthly rent and amenities charges of Rs.660/-.

[ii] H.Niyamathullah is a tenant in respect of Room No.8 of the same premises on a monthly rent and amenities charges of Rs.800/-. The second respondent in both the R.C.O.Ps. namely, Mr.Mohamed Mansoor alias Masrook is an unauthorised sub-tenant under the above tenants. The tenants have deliberately failed and neglected to pay rents due from May 2000 onwards even after repeated demands.

[iii] The tenants are now due rents from October 2000 till June 2002 and therefore, they are liable to be evicted under Section

10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 (hereinafter referred to as the Act). Further, they have unauthorisedly sublet their demised portions to one Mr.Mohamed Mansoor alias masrook, who is the second respondent in both the R.C.O.Ps., with the permission, knowledge or consent of the landlords. The tenants have parted possession of the demised property and shifted to No.78 (Old No.50), Ponappa Mudali Street, II Floor, Purasawalkam, Chennai, and receiving unauthorised rents from the sub-tenants. Hence, the tenants are liable to be evicted under Section 10 (2) (ii) (a) of the Act.

[iv] The landlord trust is having its present office at No.97, Coral Merchant Street, Chennai, which building does not belong to the landlords and it belongs to M/s.Hajee Muhammed Jan Literary and Charitable Trust which has asked the landlords to vacate the said premises. The landlords are not in occupation of any office premises of its own in the city of Chennai. Hence, *bona fide* they are required the petition premises for their own use and occupation and the tenants are liable to be evicted under Section 10(3)(a)(iii) of the Act.

3. Common averments of the counter affidavit filed in R.C.O.P. petitions are as follows:-

[i] The usual mode of payment of rent is that on behalf of the Waqf, an employee used to come every month and collect the monthly rents. While so, the said employee never turned out on time and consequently, the arrears have come to stand in the hands of the tenants. Soon after the receipt of noticed dated 11.09.2000, the tenants have sent reply notices dated 03.10.2000 along with cheques being the arrears for the period from May 2000. After receipt of summons issued by the Court, the tenants have tendered at the very date of first hearing a sum of Rs.15,180/- and Rs.18,400/-.

[ii] The tenants have not committed any wilful default. The tenants have never sublet any portion of their Tenants. Mr.Mohamed Mansoor alias Masrook is related to the tenants and he used to visit often as a guest. The tenants' portions are purely a residential one. Hence, the R.C.O.Ps. are not sustainable in law.

4. Before the learned Rent Controller, on the side of the landlords, one witness was examined as P.W.1 and documents Exs.P.1 to P.6 were marked and on the side of the tenants, two witnesses were examined as R.Ws.1 and 2 and documents Exs.R.1 to R.3 were marked. Two Court documents were marked as Exs.C.1 and C.2.

5. Based on the oral and documentary evidence adduced on both sides, the learned Rent Controller, has held that there is a wilful default in payment of rent and allowed both the R.C.O.Ps. and ordered for eviction of the tenants. However, on the plea of sub tenancy and owners occupation, the learned Rent Controller has given a categorical finding that the sub tenancy was not proved in the manner known to law. Since the petition premises is a residential purpose, the landlords cannot seek for the non residential purpose and accordingly, rejected those two grounds. On the rejection of those two grounds, the landlords have not preferred any appeal. However, the tenants have preferred two appeals in R.C.A.Nos.1229 and 1230 of 2003 before the learned VII Judge, Court of Small Causes, Chennai, and the said appeals were allowed by the learned Rent Control

Appellate Authority by setting aside the common order passed by the learned Rent Controller. As against the same, the landlords have preferred these two civil revision petitions before this Court.

6. Learned counsel for the revision petitioners/landlords would submit that the landlords have sent notices dated 11.09.2000 long before the filing of the R.C.O.P.Nos.1367 and 1368 of 2002, and it is only after the issue of such notices, the respondents herein/tenants have sent payment for the earlier period till September 2000. Thereafter, admittedly, no rent was even tendered or paid to the landlords/revision petitioners herein from October 2000 till the date of filing of R.C.O.Ps.

7. Respondents in both the civil revision petitions are called absent. None represents for the respondents in both the petitions/tenants. This Court has also perused the records.

8. On a perusal of the oral and documentary evidence adduced before the learned Rent Controller, it is seen that there is a

landlords and tenants relationship between the revision petitioners and the respondents and the petition premises is let out for residential purpose. On the point of subletting and owners occupation, the learned Rent Controller has rejected the ground and there is a specific finding by the learned Rent Control Appellate Authority that the landlords have not preferred any appeal against the finding adverse to them in respect of the grounds of subletting and owners occupation. The landlords/revision petitioners herein have not canvassed any points in respect of these two grounds viz., subletting and owners occupation, during the course of the arguments in the appeals. Hence, this Court finds that the other grounds alleged in the R.C.O.Ps. namely, subletting and owners occupation need not be taken into consideration.

9. With regard to non-payment of rents, the learned Rent Controller has held that there is a default and the same is also wilful and ordered for eviction of the tenants. An explanation has been offered by both the tenants/respondents in both the civil revision petitions.

10. It is the specific evidence of R.W.1 and R.W.2 that the Waqf employee has used to come every month and collect the monthly rents. Immediately after receipt of the notices issued by the landlords, the tenants have sent reply notices with a rent arrears of five months. Furthermore, it is the specific finding by both the Courts below that immediately after filing of the R.C.O.Ps., on the first hearing date, the entire arrears have been paid and from the documentary evidence Exs.P.1 and P.2-notices sent to the tenants, they were called upon to pay the rental arrears for the period from May 2000 to August 2000. Immediately after acknowledging the notices, the tenants have sent Exs.P.3 and P.4 along with cheque for Rs.4,000/- and Rs.3,300/- representing the amount. The above said factum of sending the amount under Exs.P.3 & P.4 was duly admitted by the landlords in the cross-examination and yet another explanation offered by the tenants is that when both the cheques have been mistakenly deposited into another trust by name Ajmunissa Waqf Alal Trust, the first respondent is Razia Sultana Waqf.

11. It appears that the trustees for both the trusts are one and the same persons. So, the cheques sent by the tenants/respondents in both the C.R.Ps. towards rental arrears for the period from October 2000 have been mistakenly deposited into the account of another trust. The landlords/revision petitioners in both the C.R.Ps., after realising the mistake, sent Exs.R.1 and R.2 letters along with a cheque for a sum of Rs.4,000/- and Rs.3,300/- respectively to the tenants. This is also an admitted fact that the rents for five months from October 2000 have been sent and it was returned as not properly addressed to the landlords. Thereafter, the tenants did not pay the rent till the date of filing of the R.C.O.Ps.

12. Hence, the explanation put forward by the tenants for non-payment of rent is that the agent of the first revision petitioner trust did not come and collect the rents regularly and it was a prevailing practice between the parties to pay the rent for several months in lumpsum at one time. It appears that after the rents sent by the tenants were adjusted in the account of another trust, the

agent of the Waqf informed that the accounts would be set right soon and relying on the words of the representative, the tenants did not pay the rent for some time.

13. Due to the mistake committed by the Waqf, the said cheques had been deposited in the account of another trust. Only on 15.03.2001, the first petitioner herein/Waqf informed about the wrong deposit of the cheques sent by the tenants under Exs.R.1 and R.2. Thereafter, the tenants/respondents in both the civil revision petitions, believing the words of the agent of the Waqf, did not pay the rent for subsequent period till the R.C.O.Ps. were filed. The reasons adduced by both the tenants viz., the prevailing practice of collecting rents in lumpsum, no demand made by the agent of the Waqf and the Waqf has deposited the rent paid by the tenants in the account of another trust, are all categorically established by oral and documentary evidence.

14. Only due to the unforeseen circumstances and also the mistake committed on the part of the Waqf and also on the basis of

the assurance given by the representative of the Waqf, the tenants withheld the rent for some months. But immediately after filing of the R.C.O.Ps., on the very first hearing date, both the tenants appeared through counsel and paid the entire arrears and the same was acknowledged by the counsel for the landlords. So, a careful perusal of the entire materials and also the evidence would clearly go to show that the tenants had no intention of withholding the rent.

15. The tenants have stated the reasons for lumpsum payment earlier; reason for the non-payment of rents for subsequent period and the payment of arrears on the first hearing date. The landlords have not adduced any evidence to disbelieve the version of the tenants. The learned Rent Controller though accepted the conduct of the tenants in making payment of rents in lumpsum was a prevailing practice, but failed to consider the reason stated by the tenants for non-payment of rent after Exs.R.1 and R.2-notices. It is obvious that as the rents tendered by the tenants were wrongly deposited in the account of another trust and the assurance given by the agent of the Waqf has made the tenants to stop payment of rents for some time.

The delayed payment of arrears on the first hearing date cannot be construed as wilful, in view of the explanation pleaded and established by the tenants.

16. On the above factual background, the learned Rent Control Appellate Authority, has rightly appraised the circumstances and the explanation offered by the tenants for non-payment of rent for five months and also taking note of the fact that default is differed from wilful default and the tenants have stated the reasons for lumpsum payment earlier, the learned Rent Control Appellate Authority finds that the tenants have stated acceptable reasons for the delay occasioned in payment of rental dues till the filing of the R.C.O.Ps. and sustained the same by oral and documentary evidence. Hence, the finding rendered by the learned Rent Control Appellate Authority is well merited and well considered and it does not suffer from any illegality or irregularity warranting interference by this Court under revisional jurisdiction. Further, in the absence of any arguments regarding sub-tenancy and the owners occupation, the learned Rent Control Appellate Authority has rightly rejected the petition. Here

also, since the petition premises is admittedly residential premises and the landlords/revision petitioners herein wanted to have the office premises, the same is not permissible under law and hence, both the civil revision petitions are liable to be dismissed.

17. In the result,

[i] Both the Civil Revision Petitions are dismissed.

[ii] The order passed by the learned Rent Control Appellate Authority is confirmed.

[iii] There shall be no order as to costs.

28.02.2020

Internet :Yes

Index : Yes/No

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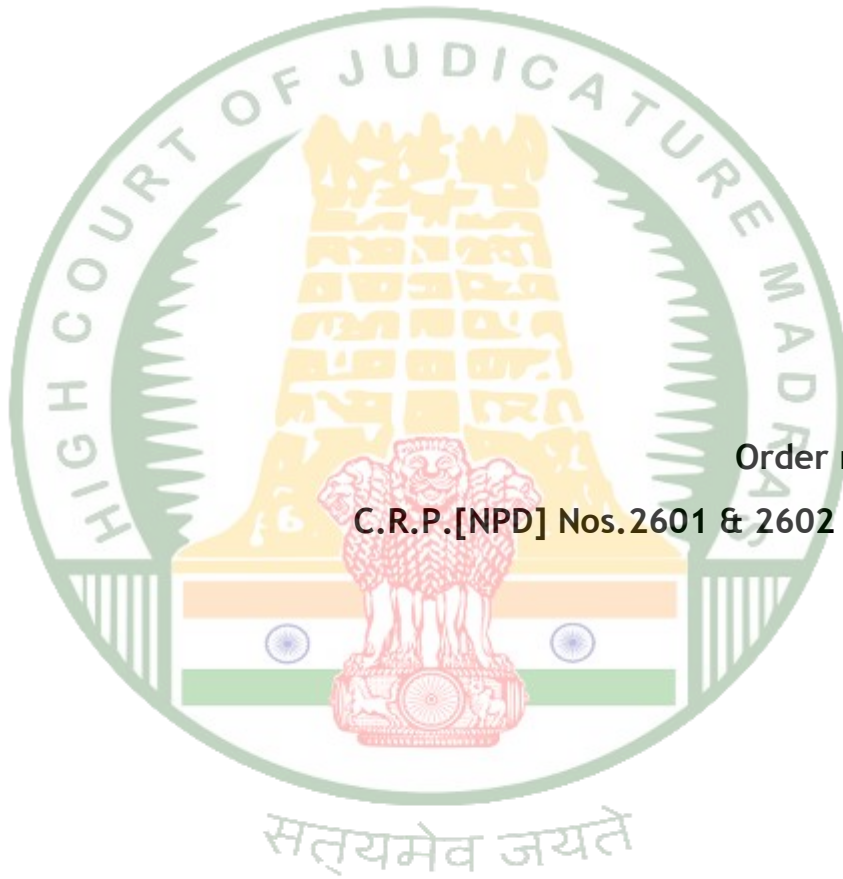
1. VII Judge,
Rent Control Appellate Authority,
Court of Small Causes, Chennai.
2. XIV Judge,
Rent Controller,
Court of Small Causes,
Chennai.



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RMT.TEEKAA RAMAN, J.

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Order made in
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