

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.(NPD)No.3514 of 2012 &
M.P.No.1 of 2012

Padmavathy

.. Petitioner

Vs.

The Arulmighu Pachaiaimman Temple,
Rep. by Executive Officer,
Office at Temple Premises,
Anna Salai, Chennai - 600 002. .. Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 29.08.2012 in E.A.No.8225 of 2010 in E.P.No.76 of 2010 in O.S.No.4191 of 2006, on the file of X Assistant City Civil Court, Chennai.

For Petitioner

:

Mr.R.Sankarasubbu

For Respondent

:

Mr.S.D.Ramalingam

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ORDER

Civil Revision Petition is filed against the fair and decreetal order passed by the learned X Assistant Judge, City Civil Court, Chennai, in E.A.No.8225 of 2010 in E.P.No.76 of 2010 in O.S.No.4191 of 2006, dated 29.08.2012.

2. The short facts of the case are as follows:-

The subject matter of the property belongs to the respondent-Temple and the petitioner was a tenant in the subject property by putting up a superstructure. Since the petitioner has not paid the fair rent fixed by the respondent-Temple, the respondent issued a notice under Section 106 of Transfer of Property Act, by terminating the tenancy and filed the suit in O.S.No.4191 of 2006 for delivery of vacant land. The learned III Assistant Judge, City Civil Court, Chennai, after trial, decreed the suit and thereafter, the respondent-Temple filed the Execution Petition before the City Civil Court, Chennai in E.P.No.76 of 2010. During the pendency of E.P, the petitioner /tenant has filed the Application in E.A.No.8225 of 2010 under Section 47 of C.P.C and the said Application was dismissed by the learned X Assistant Judge, City Civil Court, by an order dated 29.08.2012. Challenging the said order, the petitioner has filed the present Revision before this Court.

3. The learned counsel for the petitioner would submit that though the subject matter of vacant site is belonged to the respondent-Temple, a superstructure was put up by the petitioner and she has been in possession of the property for more than 5 decades and therefore, the petitioner is entitled to be protected under the City Tenants Protection Act. Though the said defense was rejected, however, during the pendency of the suit, the Government has issued G.O.Ms.No.456 Tamil Development, Hindu Religious and Charitable Endowment News, dated 9.11.2007, regarding fixation of fair rent and in the said G.O., the Government has given instruction to HR & CE Department to withdraw all the suits pending and also if any higher volume of rent is received, then, they have to adjust the same with the future rent. The learned Judge, failed to consider the said G.O. However, in the E.P., the petitioner has filed an Application under Section 47 of C.P.C. and submitted that the petitioner and other tenants have made representations to the Commissioner (HR & CE) Department for fixation of fair rent as per G.O.Ms.No.456 Tamil Development, Hindu Religious and Charitable Endowment News, dated 9.11.2007 and subsequent Government Order in G.O.Ms.No.298, Hindu Religious and Charitable Endowment News, dated 20.07.2010 and however, till date no order has been passed and therefore, till the passing of any order by the Joint Commissioner, HR & CE

Department, the Execution Petition cannot be proceeded and also the Decree is in-executable based on G.O.Ms.No.406 and G.O.Ms.No.298. However, the executing Court, without considering the facts, dismissed the Application, which warrants interference of this Court.

4. The learned counsel for the respondent-Temple submitted that the defense taken by the petitioner-tenant that she has put-up a superstructure in the vacant site and therefore, she is entitled for protection under the City Tenants protection Act, was rightly rejected by the trial Court on the ground that the City Tenants Protection Act could not be applicable to the Temple property as well as educational institutions. It is further submitted that with regard to applicability of G.O, even prior to issuing of Government Orders, the respondent fixed the fair rent in accordance with law and the same was not challenged by the petitioner before the competent Court. It is further submitted that the petitioner has not paid the fair rent fixed by the respondent-Temple and therefore, the respondent issued a Statutory Notice under section 106 of Transfer of Property Act and the trial Court has gone into the said fact that since the petitioner not at all paid the fair rent fixed by the respondent-Temple, decreed the suit in favour of the Temple. It is further submitted that the petitioner has not filed any Appeal against the Decree passed by the trial Court and only after filing of Execution Petition

by the respondent-Temple, the petitioner-tenant has filed the Application in E.A.No.8225 of 2010. It is further contended that with regard to representation submitted by the petitioner and others to the Joint Commissioner, HR & CE for fixation of fair rent as per G.O.Ms.No.456, dated 9.11.2007 and subsequent G.O.Ms.No.298, dated 20.07.2010, the learned counsel submit that the petitioner-tenant has to pay initially the original fair rent fixed by the respondent on 01.11.2001 at Rs.4,055/- per month along with arrears to till date and after receipt of the said sum, the determination of fair rent can be done based on G.O.Ms.No.456, dated 9.11.2007 and subsequent G.O.Ms.No.298, dated 20.07.2010 and if the petitioner has paid any higher sum, the same may be adjusted towards future rent.

5. Heard the learned counsel on either side and perused the entire materials available on record.

6. Admittedly, the subject property belongs to the respondent-Temple and the petitioner is the tenant by putting up a superstructure. The petitioner has taken lease on the vacant site and put up the superstructure and prayed before the trial Court to extend the benefit under the City Tenants Protection Act. It is settled proposition of law that City Tenants

Protection Act will not applicable to the Religious Institutions and Charitable Trust as per the amended Act in the year 1994. Therefore, the question ended finality once the Court decided the issue, the revision petitioner is not entitled to the benefit of Section 9 of the City Tenants Protection Act and therefore, the said point was rightly rejected by the learned Judge.

7. The next point is to be considered in this Revision with regard to non payment of fair rent fixed by the respondent-Temple to the petitioner. It seems that the land value has gone up considerably from the year onwards and the Temple has to get the fair return from the property and taking into consideration of the above fact, the rent was enhanced and fixed at Rs.4,055/- per month. Since the petitioner has not paid the fair rent fixed by the respondent-Temple, the respondent-Temple has issued a notice under Section 106 of Transfer of Property Act, by terminating the tenancy and even after receipt of notice, the petitioner has not acted upon, and therefore, the respondent-Temple has filed a Suit in O.S.No.4191 of 2006, and after trial, the Suit was decreed. Thereafter, the respondent/Temple has filed an Eviction Petition in E.P.No.76 of 2010. During the pendency of E.P, the petitioner/tenant has filed an Application in E.A.No.8225 of 2010 under Section 47 of C.P.C.

8. According to the learned counsel for the petitioner that after fixation of fair rent by the respondent-Temple, on 01.11.2001 for a sum of Rs.4,055/- the Government issued G.O.Ms.No.456, dated 9.11.2007 and subsequent G.O.Ms.No.298, dated 20.07.2010, regarding fixation of fair rent. Therefore, the petitioner and other tenants have made representations to the Joint Commissioner (HR & CE) for restructuring the fair rent based on the above Government Orders, however, till date, no action was taken by the Joint Commissioner (HR & CE), and therefore, the Decree passed by the trial Court is in-executable.

9. It is to be noted that the petitioner/tenant has been paying the monthly rent of Rs.25/- for 5 decades and it was revised only in the year 2001, from Rs.25/- to Rs.4,055/- and the said order came to be passed on 01.11.2001. Since the petitioner has not paid the said sum along with arrears, the respondent-Temple issued a notice under Section 106 of Transfer of Property Act and filed a suit and also obtained a Decree in their favour. Hence, the respondent-Temple has filed Execution Petition and pending E.P, the petitioner has filed an Application under Section 47 of C.P.C.

10. As per this Government Order in G.O.Ms.No.456, in respect of commercial shops, the enhancement of the rent, once in three years, was restricted to 15%, as against the direction in earlier Government Order to increase the rent by 33.3% once in three years. In this Government Order also, it is admitted that the previous Government Order vide G.O.Ms.No.353, dated 04.06.1999, was kept in abeyance till 01.11.2001. The Government also gave a direction regarding the manner in which the fair rent should be fixed. As per the guidelines, the fair rent should be calculated w.e.f., 01.11.2001. It is further stated that w.e.f., 01.07.2004, the rent should be increased by 15%, in respect of cases, where the fair rent was fixed by implementing G.O.Ms.No.56 dated 19.02.1998. The Government directed the fixation of fair rent for the period from 01.07.1998 to 30.10.2001 by reducing the fair rent fixed in 2001 by 15%.

11. From the above, it is clear that the Government directed the fixation of fair rent for the period from 01.07.1998 to 30.10.2001 by reducing the fair rent fixed in 2001 by 15%. In the said G.O., it has not been mentioned at all no amount has to be paid and only a direction was issued for re-fixation of fair rent once in three years as per the prevailing market rate of the property. In the case on hand, the respondent has revised the

fair rent from Rs.25/- to Rs.4,055/- for 1024 sq.ft-, on 01.11.2001. However, till date, the petitioner/ tenant has not at all paid the said sum, by dragging the issue and taken a plea with regard to fair rent fixed by the respondent-Temple for a sum of Rs.4,055/- was not calculated based on the the subsequent changes in the aforesaid Government Orders and filed an Application under Section 47 of C.P.C.

12. Therefore, under these circumstances, the petitioner cannot contend that based on the aforesaid G.Os', the Decree is in-executable. In view of the above, this Court finds that there is no perversity or irregularity in the order passed by the executing Court.

13. However, taking into consideration the facts and circumstances of the case and also considering the fact that the petitioner has put up a superstructure in the subject land and also considering submissions made by the learned counsel for the respondent and on perusal of the documents, this Court is of the considered view that the grievance expressed by the petitioner can be redressed by issuing the following directions:-

(i) The petitioner is directed to deposit the fair rent fixed by the respondent on 01.11.2001 for a sum of Rs.4,055/- along with arrears to till

date to the credit of E.P.No.76 of 2010 in O.S.No.4191 of 2006, on the file of X Assistant City Civil Court, Chennai, within a period of three months from the date of this order;

(ii) The petitioner is directed to make one more representation to the Joint Commissioner, (HR & CE) Department for fixation of fair rent based on G.O.Ms.No.456, dated 9.11.2007 and subsequent G.O.Ms.No.298, dated 20.07.2010, within a period of two weeks from the date of this order. On receipt of the said representation, the Joint Commissioner, (HR & CE) Department is directed to determine the fair rent as per G.O.Ms.No.456, dated 09.11.2007 and G.O.Ms.No.298, dated 20.07.2010 or if any other subsequent G.O. in this regard and file a report to the learned Judge X Assistant Judge, Chennai, within a period of six weeks therefrom.

(iii) If the fair rent is determined by the Joint Commissioner (HR & CE) Department less than of Rs.4,055/- per month, the same may taken into consideration by adjusting the future rent to be paid by the petitioner/tenant. Likewise, if the fair rent is determined more than of Rs.4,055/- per month, the petitioner is directed to pay the balance sum and thereafter directed to pay the rent periodically, without fail.

(iv) If the petitioner is complied with the direction issued in paragraph No.13(i), the learned X Assistant Judge, Chennai is directed to consider the points raised by the petitioner/tenant with regard to consideration of Government Orders in G.O.Ms.No.456, dated 9.11.2007 and subsequent G.O.Ms.No.298, dated 20.07.2010 or if any other subsequent G.O. in this regard passed by the Government; and also the subsequent order would be passed by the Joint Commissioner (HR & CE), and if the petitioner is not complied with the direction issued in paragraph No.13(i), the learned X Assistant Judge, Chennai is directed to dispose of Execution Petition in E.P.No.76 of 2010 on merits in accordance with law forthwith.

14. With the above directions, the Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
speaking order/non speaking order.

Note: (i) Issue Order copy on 02.09.2020

(ii) The Registry is directed issue a copy of the order
to the learned X Assistant City Civil Court, Chennai.

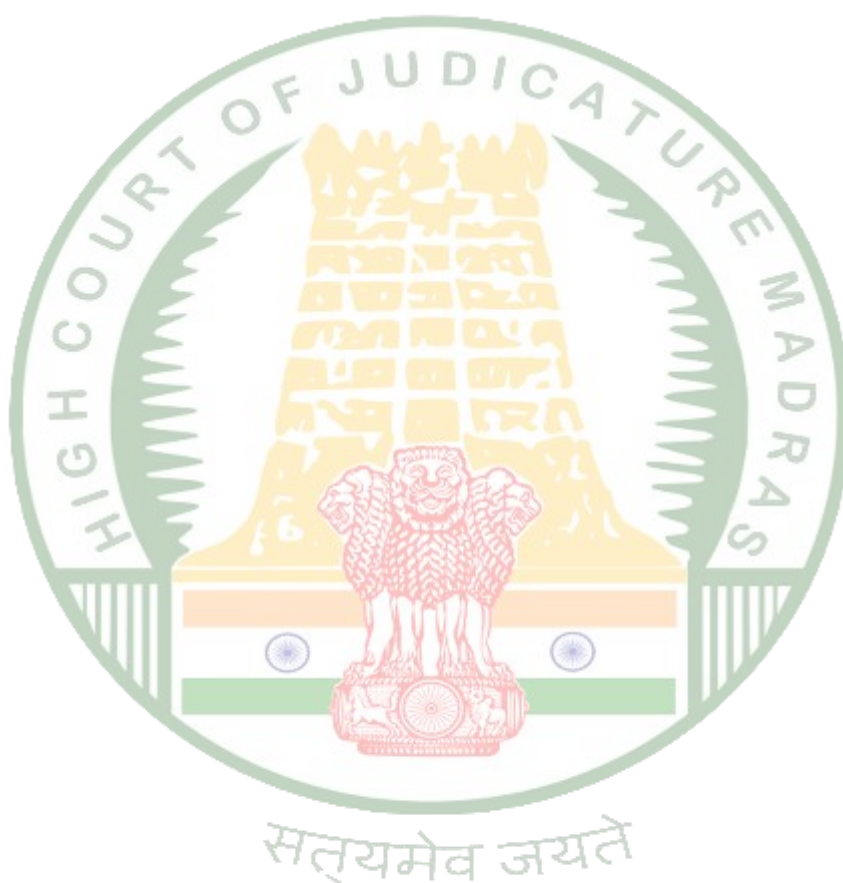
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To

The X Assistant City Civil Court,
Chennai.

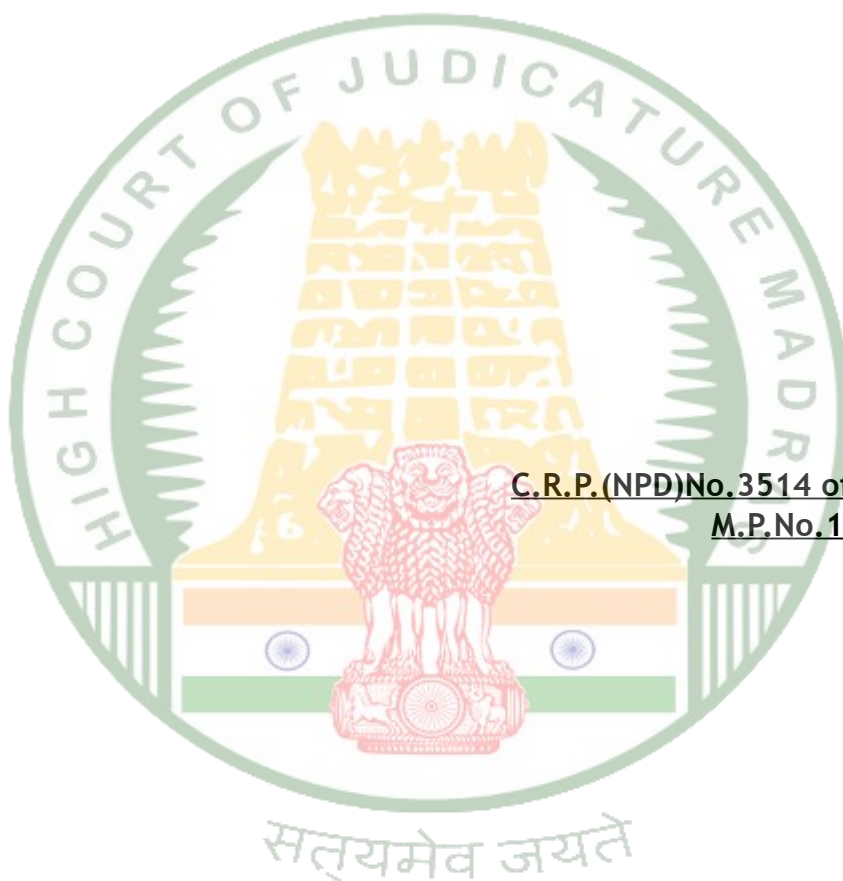


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P. VELMURUGAN, J.

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