



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.09.2020

DELIVERED ON : 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)Nos.889 and 890 of 2019

and

C.M.P. (MD)No.5173 of 2019

WEB COPY

Anjalai : Petitioner/Respondent/Tenant
in both cases

..Vs..

K.Komagan : Respondent/Petitioner/Land Lord
in both cases

PRAYER in C.R.P(MD)No.889 of 2019: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 05.12.2018 passed in Miscellaneous Petition No.140 of 2018 (Trichy) in Petition No.147 of 2013 on the file of the Revenue Court (Special Deputy Collector), Tiruchirapalli.

PRAYER in C.R.P(MD)No.890 of 2019: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 11.02.2019 passed in Petition No.147 of 2013(Trichy) on the file of the Revenue Court (Special Deputy Collector), Tiruchirapalli.

For Petitioner : Mr.M.Saravanan
For Respondent : Mr.C.Vakeeswaran
(in both cases)

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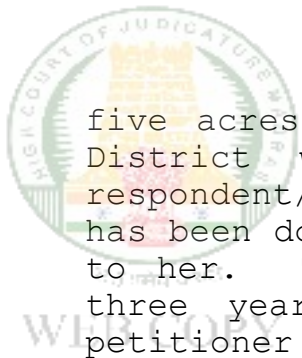
COMMON ORDER

These Civil Revision Petitions are filed by the cultivating tenant as against the order in Miscellaneous Petition No.140 of 2018 in Petition No.147 of 2013, dated 05.12.2018 and against the order passed in Petition No.147 of 2013, dated 11.02.2019, on the file of the Revenue Court (Special Deputy Collector), Tiruchirapalli.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.

3.Brief facts that are necessary for the disposal of these Civil Revision Petitions are as follows:

4.The respondent herein is the landlord and the revision petitioner is a cultivating tenant. It is stated that an extent of



five acres of land in Thamalavayarupamayam Village, Tiruchirapalli District was leased out to the revision petitioner by the respondent/landlord. It is admitted that the revision petitioner has been doing paddy cultivation in the agricultural land leased out to her. The landlord submitted that the rent for the period of three years (ie., from 2010 to 2013) payable by the revision petitioner to the respondent was 240 bags of paddy, which is equivalent to a sum of Rs.2,40,000/- and that the revision petitioner failed to pay the arrears of rent due to the respondent, despite repeated demands. Hence, the respondent/landlord filed a petition before the Revenue Court, Tiruchirapalli in Petition No.147 of 2013 to order eviction of revision petitioner from the lands by putting the respondent herein in possession of the lands.

5.Though the proceedings before the Revenue Court is summary in nature, the revision petitioner took enormous time and the matter was dragged on and came before this Court earlier in C.R.P.(MD) Nos.1323 and 1324 of 2017 at the instance of tenant to issue direction to the Revenue Court to number the reopen and recall petition and give sufficient opportunity to the parties. Thereafter, the respondent/landlord filed a petition in I.A.No.140 of 2018 in P.No.147 of 2013 to amend the Old Survey Number to New Survey Number and to modify the extent from 12 Acres 28 cents to 11 Acres 40 cents. The said petition for amendment was allowed on 05.12.2018. As against the order allowing the petition for amendment, C.R.P.(MD)No.889 of 2019 is filed.

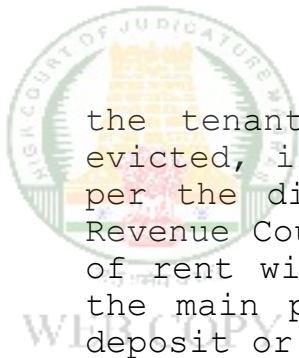
6.The respondent/landlord filed a petition in I.A.No.1 of 2019 in P.No.147 of 2013 to direct the tenant to pay the arrears of rent and to pass an order to evict the revision petitioner from the lands, in case, the revision petitioner fails to pay the amount within the time stipulated by the Revenue Court. By order, dated 04.02.2019, the Revenue Court determined the quantum and directed the revision petitioner to pay 50% of the arrears payable towards the rent from 2010 to 2013 within one week. It is indicated in the said order that the main petition in P.No.147 of 2013 would be allowed, in case, the revision petitioner fails to pay the rent arrears within the time stipulated. On 11.02.2018, the Revenue Court found that the revision petitioner had not complied with the conditional order. Hence, the Revenue Court passed an order allowing the petition in P.No.147 of 2013. The Revenue Court in its order, dated 11.02.2019, found that the revision petitioner/tenant failed to pay 50% arrears, as directed earlier by the Revenue Court and that therefore, the revision petitioner is liable to be evicted from the lands, as she has not deposited the rent, even though the petition for eviction was pending for more than five years. Aggrieved by the order passed by the Revenue Court in P.No.147 of 2013, directing eviction of tenant, C.R.P.(MD)No.890 of 2019 is filed.



7.The learned Counsel for the revision petitioner submitted that the Revenue Court has no jurisdiction to pass an order of eviction under Section 3(4) (b) of the Tamil Nadu Cultivating Tenants Protection Act 1955. The learned Counsel further submitted that the order of eviction against the cultivating tenant cannot be passed at one stretch, as the Act contemplates that the cultivating tenant should be given fair opportunity to deposit the arrears within a time stipulated by the Revenue Court and to pass an order of eviction only if the tenant does not pay the rent arrears within the time stipulated. The learned Counsel further submitted that the Revenue Court has no jurisdiction to entertain an interlocutory application for direction to deposit the rent pending disposal of the main petition and that the Revenue Court has shown undue haste in passing the order of eviction ignoring the provisions of the Tamil Nadu Cultivating Tenants Protection Act 1955. It is also submitted by the learned Counsel for the revision petitioner that the conditional order was passed by the Revenue Court without giving sufficient opportunity to the tenant to file counter and that within two months, an order of eviction was passed.

8.The learned Counsel for the respondent submitted that the eviction proceeding before the Revenue Court was pending from 2013 and that the petition filed for eviction was on the ground that the tenant failed to pay the rent for the period from 2010 to 2013. It is further submitted that the tenant/revision petitioner has committed wilful default in payment of rent, even for the subsequent period from 2013 to 2016 and that the respondent/landlord was compelled to file another petition before the Revenue Court for a direction to pay the arrears of rent for the subsequent period. The learned Counsel further pointed out that the revision petitioner is enjoying substantial and valuable property (an extent of 5 acres of land) and harvesting paddy twice a year and continuing in possession without paying any rent for the past 11 years. Since the revision petitioner has committed wilful default in payment of rent for more than 10 years, it is also contended by the learned Counsel for the respondent that the purpose of these revision petitions is only to drag on the proceedings to thwart the eviction proceedings without paying any rental arrears.

9.Before this Court, the fact that the tenant has committed wilful default in payment of rent for the period from 2010 to till date is not in dispute. As against the submissions of the learned Counsel for the respondent that the tenant has not paid even a pie for all these years towards rent, the learned Counsel for the revision petitioner is unable to show any proof for payment of anything towards rent for the past ten years. It is not in dispute that the petition for eviction filed before the Revenue Court was on the ground that the tenant has committed wilful default in paying the rent for a period of more than three years. Even for the subsequent period from 2013 to 2020, no amount is paid towards rent. Hence, the Revenue Court is perfectly right in holding that



the tenant is in arrears of rent and that she is liable to be evicted, if she does not make payment within the time stipulated as per the direction of the Revenue Court in I.A.No.1 of 2019. The Revenue Court has directed the tenant to pay only 50% of the arrears of rent within the period of one week with the default clause that the main petition would be allowed, in case, the tenant fails to deposit or pay 50% of arrears amount within the time stipulated.

10.The tenant has committed default in payment of rent for more than a period of ten years. The Revenue Court directed the tenant to pay only 50% of the rent payable for three years. However, the tenant has failed to pay this amount and no step is taken by the tenant to seek extension of time. No Civil Revision Petition is preferred as against the conditional order, that was passed in I.A.No.1 of 2019 in P.No.147 of 2013.

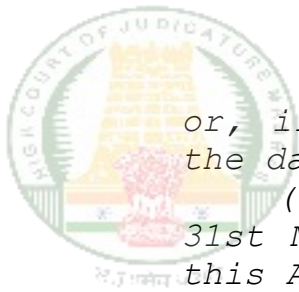
11.In the above circumstances, it is relevant to refer the judgment of Honourable Supreme Court in the case of **Chinnamarkathian @ Muthu Gounder and another vs Ayyavoo @ Periana Gounder and others**, reported in **1982 1 MLJ 17 : 1982 1 SCC 159**. The issue is elaborately discussed by the Honourable Supreme Court and paragraphs 22 and 23 of the judgment are the view expressed by majority and hence extracted below:

"22.The relevant portion of section 3 is set out hereunder:

"3(1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his Landlord, whether in execution of a decree or order of a Court or otherwise (2) Subject to the next succeeding sub-section, sub section (1) shall not apply to a cultivating tenant (a) who, in the areas where..... if in arrear at the commencement of this Act, with respect to the rent payable to the landlord, does not pay such rent within six weeks after such commencement or who in respect of rent payable to the landlord after the commencement of this Act, does not pay such rent within a month after such rent becomes due; or (aa) who, in the other areas of the State of Madras, if in arrear at the commencement of this Act, with respect to the rent payable to the landlord and accrued due subsequent to the 31st March 1954, does not pay such rent within a month after such commencement, or who in respect of rent payable to the landlord after such commencement, does not pay such rent within a month after such rent becomes due; or (b) to xx xx xx

Explanation I to IV xx xx xx

<https://hcservices.ecourts.gov.in/hcservices> (b) (a) A cultivating tenant may deposit in Court the rent



or, if the rent be payable in kind, its market value on the date of deposit, to the account of the landlord-

(i) in the case of rent accrued due subsequent to the 31st March 1954, within a month after the commencement of this Act;

(ii) in the case of rent accrued due after the commencement of this Act, within a month after the date on which the rent accrued due.

"(b) The Court shall cause notice of the deposit to be issued to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant. If the Court finds that any further sum is due, it shall allow the cultivating tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow. If the Court adjudges that no further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the Court, the cultivating tenant shall be deemed to have paid the rent within the period specified in the last foregoing sub-section. If, having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the Court, the landlord may evict the cultivating tenant as provided in sub- A section (4).

"(c) xx xx xx

Explanation I- xx xx xx"

"(4) (a) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall, whether or not there is an order or decree of a court for the eviction of such cultivating tenant, make an application to the Revenue Divisional officer and such application shall bear a court-fee stamp of one rupee.

(b) on receipt of such application, the Revenue Divisional officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations. hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (a) or clause (aa) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as the may direct. If the cultivating tenant



deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (b). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional officer shall pass an order for eviction."

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An analysis of the section clearly leads to certain indisputable propositions. Sub-section (I) creates a bar against the eviction of a cultivating tenant from his holding or any part thereof, by or at the instance of this landlord, even though the latter seeks to do so in execution of a decree or order of a Court. This bar is subject only to the provisions of sub-section (2), (3) and (4). Sub-section (2) enacts an exception to sub-section (I) and lays down inter alia that sub-section (I) shall not apply to a cultivating tenant who conforms to the description in clause (a) or (aa) of sub-section (2). Both the clauses last mentioned cover tenants who are in arrears in regard to the payment of rent at the commencement of the Act or who fail to pay rent falling due after such commencement within a month after its becoming due. Sub-section (3) enables a cultivating tenant to deposit arrears of rent in Court and further provides that after notice of such deposit has been given to the landlord, the Court would embark on a summary inquiry and then adjudge whether any further sum is due to the landlord. If the Court finds that a further sum is due, "it shall allow the cultivating tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow". If the cultivating tenant fails to pay the sum determined by the Court to be due under sub-section (3) the landlord "may" evict the cultivating tenant as provided in sub-section (4). Sub-section (4) then states that a landlord seeking to evict a cultivating tenant falling under sub-section (2) shall make an application to the RDO who shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary inquiry into the matter and pass an order either allowing the application or dismissing it. The sub-section further provides that if the case falls under clause (a) or (aa) of sub-section (2) in which the tenant has not avail of the provisions contained in subsection (3) the RDO may allow the cultivating tenant such time as he considers just and reasonable having regard.....

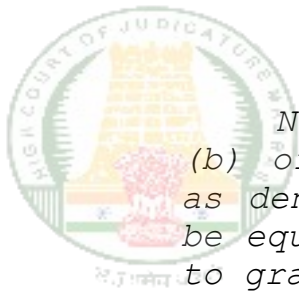


23. Now as I read sub-section (4), it gives the RDO power either to allow the application of the landlord or to dismiss it after he has held a summary enquiry into the matter. If the application is allowed an order of eviction has to be passed. If it is dismissed the proceedings again come to an end. However, if the ground of eviction is non-payment of rent, the RDO is closed with power to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and, while exercising the same, it is not incumbent on the RDO to grant time. If the legislature intended to make it obligatory on the part of the RDO to fix a time for deposit of the arrears in all cases covered by clause (a) or clause (aa) of sub-section (2) there is no reason why it should have used the word "may" in relation to the grant of time. Support for this view is available in clause (b) of sub-section (3) wherein, the legislature has directed:

"If the Court finds that any sum is due it shall allow the cultivating tenant such time as it may consider just and reasonable..... "

(emphasis supplied)

In this situation it must be held that while the opportunity of depositing the arrears of rent cannot be denied to a cultivating tenant during the course of proceedings under sub-section (3), the same is not available as of right under clause (b) of sub-section 4. The difference in the language used by the legislature is significant and not without purpose. The intention of the legislature appears to be that normally a defaulting tenant must seek the help of the Court all by himself and that if he does so he must be protected; but that a defaulting tenant who waits for payment of rent till he is sought to be evicted by the landlord is not necessarily entitled to the same protection. Circumstances may exist which may place him at par with a tenant covered by sub-section (3) but then it may not necessarily be so. That is why it is left to the discretion of the RDO to grant time to the cultivating tenant or to deny him that opportunity. An example of a case in which no time should be allowed would be that of a tenant who, although in affluent circumstances at all relevant point of time, has failed to make payment of rent year after year in spite of repeated demands from an otherwise indigent landlord and whose conduct is, therefore, contumacious calling for no sympathy or concession. The extension to him of the same facility which is afforded to a willing tenant under sub-section (3) would be uncalled for and in fact unjust.



Nor do I find why the word "may" occurring in clause (b) of sub-section (4) be not given its ordinary meaning as denoting the conferment of a discretion on the RDO and be equated with "shall" so as to make it obligatory on him to grant time to the cultivating tenant."

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12.From the judgment of Honourable Supreme Court above referred to, it is not mandatory for the Revenue Court to give time to the tenant to deposit the arrears of rent, in case, the petition for eviction is filed on the ground of non payment of rent. It is held by the Honourable Supreme Court that the power is discretionary and it is not incumbent on the Revenue Divisional Officer to grant time.

13.In the present case, the factual position is not disputed that petitioner/tenant, as tenant failed to pay or deposit the rent, even after sufficient time was given to pay 50% of the amount of arrears for the period of three years. It was only after finding that the tenant has not paid the rent as directed, the order of eviction was passed by allowing the main petition in P.No.147 of 2013. This Court finds that the order of Revenue Court is perfectly in order. The conduct of the tenant in dragging on the proceedings and refusing to pay rent admitted, despite a fair opportunity was given to the tenant in 2019, indicate that the revision petitioner has filed these revision petitions only to drag on the proceedings without paying any rent and this Court is of the view that no indulgence can be shown to the revision petitioner by any misplaced sympathy.

14.Under the Tamil Nadu Cultivating Tenants Protection Act 1955, a tenant is liable to be evicted, in case, he/she commits default in payment of rent and it is not necessary that the default should be wilful, as in the case of Tamil Nadu Buildings (Lease and Rent Control) Act 1960. Having regard to the legal position understood from the judgment of Honourable Supreme Court above referred to and the admitted facts, this Court finds no merit in the revision petition in C.R.P.(MD)No.890 of 2019 and hence dismissed.

15.Regarding, C.R.P.(MD)No.889 of 2019, the revision petition is only against the order allowing the petition for amendment. The amendment is pursuant to change in survey number and the amendment is only for giving correct description of the property, which was leased out to the revision petitioner. No serious arguments were advanced by the learned Counsel for the revision petitioner as against the order allowing the petition for amendment. Hence, this Court finds no infirmity in the order of Revenue Court allowing the petition for amendment. Hence, the revision petition in C.R.P.(MD) No.889 of 2019 is dismissed.

16.In fine,



1) C.R.P.(MD)No.889 of 2019 is dismissed and the order passed by the Revenue Court in Miscellaneous Petition No.140 of 2018 (Trichy) in Petition No.147 of 2013, dated 05.12.2018, on the file of the Revenue Court (Special Deputy Collector), Tiruchirapalli, is confirmed.

2) C.R.P.(MD)No.890 of 2019 is dismissed and the order passed by the Revenue Court in Petition No.147 of 2013 on the file of the Revenue Court (Special Deputy Collector), Tiruchirapalli, dated 11.02.2019, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar (CS)

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To

The Special Deputy Collector,
Revenue Court, Tiruchirapalli.

Copy to: The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+2 CCs to Mr.C.VAKEESWARAN, Advocate SR-17627 & 17628.
+1 CC to Mr.R.SUBRAMANIAN, Advocate SR-17598.

Common order made in
C.R.P. (PD) (MD) Nos.889 and 890 of 2019
21.09.2020

SCR (CO)
CS (29.09.2020) 9P 7C