



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17.02.2021

JUDGMENT PRONOUNCED ON : 22.06.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.848 of 2000 and
S.A.No.669 of 2005

1. The Executive Engineer,
TWAD Board,
No.7, Ganapathy Nagar,
Thanjavur.
2. The Assistant Executive Engineer,
TWAD Board, Town Sub Division,
Tiruvarur.

... Appellants/Appellants/
Defendants in both cases

...Versus...

Arulmighu Atchayalingasamy
Thirukoil, Keevalur,
rep.by its Executive Officer
Tiruvarur Taluk

... Respondent/Respondent/
Plaintiff in both cases

PRAYER in S.A.No.848 of 2000:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.181 of 1999 dated 15.11.1999 on the file of the Principal District Judge, Nagapattinam confirming the judgment and decree made in O.S.No.160 of 1997 dated 07.04.1999 on the file of the Principal Subordinate Judge, Nagapattinam.

PRAYER in S.A.No.669 of 2005:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.2 of 2004 dated 22.03.2004 on the file of the District Judge, Nagapattinam confirming the judgment and decree made in O.S.No.161 of 2000 dated 02.07.2003 on the file of the Additional Subordinate Judge, Nagapattinam.



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For Appellants : Mrs.S.Thamizharasi,
Standing counsel
for TWAD Board in both cases

For Respondent : Mr.M.S.Palanisamy in both cases

C O M M O N J U D G M E N T

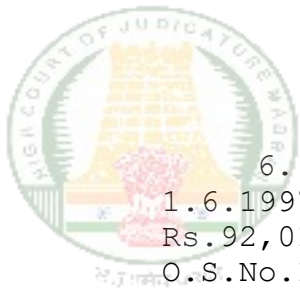
In both the cases, Executive Engineer-TWAD Board is the appellant and the respondent is the temple.

2. By consent of parties, the cases are heard in common and disposed of by common judgment.

3. The subject matter of the suit property originally belongs to the respondent-temple situated in Nagapattinam District. Both the suits have been filed for arrears of rent for the period of 01.05.1996 to 31.05.1997, subject matter of Second Appeal No. 848/2000 and second arrears of rent is for the period 01.06.1997 to 31.05.2000 subject matter of Second Appeal No.669/2005.

4. Common pleadings in both the cases are that the suit property originally belongs to the temple as the appellant defendant TWAD Board wanted to construct a water tank for distribution of drinking water in the nearby villages, wanted to invoke a land acquisition proceedings and since the time for completion of land acquisition proceedings involves cumbersome procedure. Till such time as an interim measure, it is alleged in the plaint that they approached the plaintiff temple to lease out the land and they ready to pay the rent. Accordingly, a sum of Rs.2,556/- was agreed upon and the appellant TWAD Board has paid six months rent as an advance by way of cheque. Subsequently, after exchange of notice to the parties, the appellant board has taken possession of the property and constructed a dam and subsequently, after 2000, land acquisition proceedings have been initiated for acquisition of vast extent of land and subsequently, compensation is also paid to the executive officer of the temple.

5. The plaintiff temple alleged that balance of rental amount to the tune of Rs.33,228/- was not paid and hence they filed O.S.No.160/1997 before the Principal Sub Court, Nagapattinam and they also obtained decree and the same is confirmed in A.S.No.181/1999. After disposal of the first appeal in the execution proceedings, the appellant TWAD Board has deposited the decree amount and preferred a Second Appeal No.848/2000.



6. In respect of arrears of rental amount for the period 1.6.1997 to 31.05.2000 at the rate of Rs.2,556/- for 36 months Rs.92,016/- was claimed along with the interest of 9% in O.S.No.161/2000 wherein, judgment and decree passed in O.S.No.160/1997 and A.S.No.181/1997 were marked. In both the proceedings, the respective trial Courts and the respective appellate Courts had held that there is a jural relationship between the parties as that of landlords and tenant and there are terms of agreement as found in the communication exchange between the parties are to rental amount is Rs.2556/- and since there is an arrears, plaintiffs is entitled for decree of the amount along interest of 6% and hence the Second Appeal.

7. The Second Appeal No.669 of 2005 was admitted on the following Substantial Question of Law :-

(i) Whether the Courts below were right in not dismissing the suit as not maintainable since the suit was filed by the Executive Officer and not by the Trustees?

(ii) Whether the Courts below were right in decreeing the suit for arrears of rent when there is no written agreement marked?

(iii) Whether the Courts below were right in not dismissing the suit once the land acquisition proceedings are initiated and when there is no relationship of landlord and tenant?

8. The Second Appeal No.848 of 2000 was admitted on the following Substantial Question of Law :-

(i) Whether the Courts below right in decreeing the suit, on the basis of agreement of tenancy, when the agreement itself is subject to the approval of the Commissioner Hindu Religious Endowments, and in the absence of such agreement no jural relationship of landlord and tenant can be inferred?

(ii) Whether the Courts below right in decreeing the suit for arrears of rent when the Commissioner, H.R&C.E ., has given consent for acceptance of land even before entering into the agreement of tenancy setting at naught the agreement of tenancy without any approval?

9. The learned Standing Counsel submitted that both the Courts below have concurrently erred in holding that the appellant defendant is not liable to pay the rent in the absence

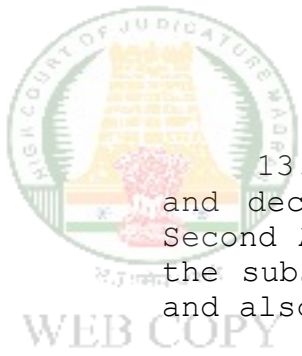


of any written rental agreement being not filed before the trial Court and both the Courts below have concurrently erred in failing to note simultaneous proceedings between the recovery of rent and the land acquisition common session proceedings. In the absence of necessary sanction under Section 34 of the HR & CE Act, approving and grant of permission to lease out the property to the defendant appellant. The suit itself is not maintainable.

10. Mr.M.S.Palanisamy, the learned counsel for the respondent would contend that it is an admitted fact that the defendant appellant was let in possession of the temple property they also constructed water tank and for the respective period in the respective suit they have paid only the advance amount namely six months advance at the time of inception of tenancy. Regarding balance of the amount, they have not paid and no documents have been filed to substantiate any alleged payment. On the contrary, the stand of the appellant defendant that they are not liable to pay because compensation has been paid in the land acquisition proceedings.

11. After hearing the rival submission of the learned Government Pleader, Mr.M.S.Palanisamy and also taking note of the substantial question of law, it is seen from the documents filed before the trial Court and the findings rendered by the lower Appellate Court. I find that two suits have been laid by the respondent temple in respect of 52 cents of land leased to the appellant/defendant-TWAD Board and the suit in O.S.No.160/1997 before the Principal Sub-Court, Nagapattinam is for recovery of rent from 01.05.1996 to 31.05.1997 for a period of 13 months to the tune of Rs.33,228/- with interest. The another suit in O.S.No.161 of 2000 is also for recovery of arrears rent, for the subsequent period namely 01.06.1997 to 31.05.2000 for a period of 36 months to the tune of Rs.92,016/-.

12. Suit property is 52 cents of land. The defendant/appellant seeks to put up over a tank for the distribution of drinking water nearby to the villages. Since, initialization of land acquisition proceedings shall consume time to expedite distribution of drinking water to the villages, a private negotiation was agreed upon between the parties whereby till the initialization of negotiable proceedings, the land can be leased out and payment of Rs.2,556/- per mensem; Extent 52 cents at the rate of Rs.3/- 52 per sq.ft which is the guideline value for Survey No.22 as could be seen from Ex.B3 marked in O.S.No.61/2000 and as per Ex.A6, Ex.A7 is to the effect that the land acquisition proceedings can be waived and private negotiation can be heard.



13. Initially, the first suit O.S.No.160/1997 was decreed and decreed amount was deposited and appeal was dismissed and Second Appeal was pending before this Court. Subsequent suit for the subsequent period, as stated supra O.S.No.161/2000 was filed and also was decreed.

14. The learned Standing Counsel for the appellant-Board could contend that in the absence of any written agreement between the parties, there cannot be any jural relationship between the parties as that of landlord and tenant. As observed earlier, as per Ex.B3 rent was given upto 30.04.1996 by the own act of the Executive Officer/appellant there can not be now resite from the stand having paid the rent upto 13.04.1996 and hence, in view of the conduct between the parties, the above contention does not arise for consideration.

15. Having agreed to pay the rent till the acquisition, the appellant cannot go back and besides under Ex.B3, they have paid the rent upto 13.04.1996.

16. The next point of consideration is that while the land in subject matter of the suit land was taken on lease. Subsequently, the same was acquired after following the land acquisition proceedings and the compensation was also paid and hence rental arrears cannot be claimed as no legal legs to stand. Nearly because land acquisition proceedings is initiated, the relationship of landlord and tenant and liability of the appellant-Board does not seize to exist on mere initialization of the acquisition proceedings. Still it has been completed as per the law laid down acquisition of the land and hence, the finding rendered by both the Courts below that the respondent/plaintiff is entitled to receive the rent till the end of the land acquisition proceedings is well merited and well considered does not suffer from any irregularity or illegality warranting interference at this appellate stage.

17. The suit was instituted by the Executive Officer who was appointed at the relevant point of time and hence the suit is maintainable. In view of the Exs.A9 and B3 as discussed supra, all the substantial questions of law are answered in negation against the appellant and in favour of the respondent/plaintiff.

18. In this view of the matter, there is no merit in the second appeal and second appeal is devoid of merits.

19. After the conclusion of the argument, the learned Standing Counsel would represent that the TWAD Board is serving the general public by erecting the over a tank and the respondent is none other than the HR&CE Board and hence, made



submission that waiver can be made by the Court.

20. In view of the civil decree is passed which is confirmed herein it is hereby made clear that the appellant-Board is at liberty to make representation through his Chairman and Managing Director to the Secretary, HR&CE while either for waiver of the decree in part or in portion subject to the approval of the respondent/plaintiff.

21. In this view of the matter, both the Second Appeals are dismissed. No costs. The judgment and decree of the first appellate Court and the trial Court are confirmed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Nagapattinam
2. The Principal Subordinate Judge,
Nagapattinam.
3. The District Court,
Nagapattinam
4. The Additional Sub-Court,
Nagapattinam.

Copy to:

The Section Officer,
VR Section,
High Court,
Madras.

+1CC to M/s.S.Thamizharasi, Advocate, Sr.No.29151

+2CCs to Mr.M.S.Palaniswamy, Advocate, Sr.Nos.28949, 28950

Judgment in S.A.No.848 of 2000 and
S.A.No.669 of 2005

AJS (CO)

K.RK. (10.11.2021)