

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2021

PRONOUNCED ON : 28.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(N.P.D)Nos.917 & 1287 of 2021 and
C.M.P.Nos.7455 & 10127 of 2021**

Annapoorani ...Petitioner in C.R.P.No.917 of
2021
Arivazhagan ...Petitioner in C.R.P.No.1287 of
2021
Vs.
Lurdhumary (Died)
1.S.C.Sezhiyan
2.S.C.Jagatheeswari
3.S.C.Rosalin
4.S.C.Doss Thilagaraj
5.S.C.Vincent ...Respondents in both C.R.P.'s

Prayer in C.R.P.No.917 of 2021:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.02.2021 made in E.A.SR.No.3257 of 2020 in E.P.No.96 of 2020 on the file of the XV Small Cause Court, Chennai and direct the XV Small Cause Court, Chennai to number the application and dispose the same.

Prayer in C.R.P.No.1287 of 2021:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.02.2021 made in E.A.SR.No.3255 of 2020 in E.P.No.98 of 2020 on the file of the XV Small Cause Court, Chennai and direct the XV Small Cause Court, Chennai to number the application and dispose the same.

For both the C.R.P.'s:

For Petitioner : Mr.P.Gunaraj
For Respondents : Mr.K.Perumal

COMMON ORDER

C.R.P.No.917 of 2021 is filed challenging the order passed in E.A.SR.No.3257 of 2020 in E.P.No.96 of 2020 and C.R.P.No.1287 of 2021 is filed challenging the order passed in E.A.SR.No.3255 of 2020 in E.P.No.98 of 2020 respectively, on the file of XV Small Causes Court, Chennai.

2.Both these applications have been filed under Section 47 of C.P.C., challenging the executability of fair and executable order passed in R.C.O.P.Nos.2307 & 2311 of 2009 dated 28.09.2012 on the file of the XV Small Causes Court, Chennai. Petitioner in C.R.P.No.917 of 2021 is the respondents/tenant in R.C.O.P.No.2307 of 2009. Petitioner in C.R.P.No.1287 of 2021 is the respondents/tenant in R.C.O.P.No.2311 of

2019. The respondents in Civil Revision Petitions filed the aforesaid rent control original petitions against the petitioners for eviction under Section 10 (2) (i); 10 (2) (vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The case of the respondents is that the tenanted premises was purchased by V.S.Cruz, the husband of deceased Lurdhu marry and father of respondents on 18.08.1980. The petitioners are tenants in their respective portions. The tenants have not paid the rent. Therefore, eviction petition was filed on the grounds of wilful default and denial of title. The common grounds taken by the petitioners are that the respondents father V.S.Cruz and the respondents are not the owners of the superstructure. May be that, respondents father might have purchased the schedule mentioned property. Before that, the property was purchased by one Rangasamy Iyengar from one Abdul Rahman. Rangasamy iyengar leased the property in favour of father of petitioner Arivazhagan and husband of petitioner Annapoorani. With the permission of Rangasamy iyengar, father of petitioner Arivazhagan and husband of petitioner Annapoorani constructed the superstructure. Therefore, petitioners are not the tenants in the term “tenant” defined

under Tamil Nadu Buildings (Lease and Rent Control) Act 1960. Respondents had been collecting only ground rent for the premises. Therefore, there is no question of arrears of rent in payment of rent or denial of title of the respondents.

3. During the enquiry before the learned Rent Controller, XV Small Cause Court, Chennai, in R.C.O.P.Nos.2307 and 2311 of 2009, PW1 was examined and exhibits P1 to P7 were marked. No oral and documentary evidence was produced on the side of the petitioners. On considering rival submissions, the learned Rent Controller, XV Small Causes Court, Chennai, found that the tenanted premises was purchased by V.S.Cruz with land and building. The petitioners have not produced any evidence to show that they constructed the superstructure. It was also found that the petitioners committed wilful default in payment of rent and denied the title of the landlord. On these reasons, the learned Rent Controller, XV Small Causes Court, Chennai, allowed both the R.C.O.P.'s and directed the petitioners to vacate and deliver the possession. Petitioner Annapurni filed R.C.A.No.712 of 2012 against the

order passed in R.C.O.P.No.2307 of 2009. Petitioner Arivazhagan filed R.C.A.No.713 of 2012 against the order passed in R.C.O.P.No.2311 of 2009. The learned Rent Controller Appellate Authority, VIII Small Causes Court, Chennai extensively considered the submissions of the petitioners and found that the learned Rent Controller, XV Small Causes Court, Chennai, has rightly decided the matter and confirmed the order of the learned Rent Controller, XV Small Causes Court, Chennai, and both rent control appeals were dismissed. Petitioners preferred C.R.P.No.1335 of 2015 and C.R.P.No.1345 of 2015 against the judgment on rent control appeals. This Court found that there is no illegality in the order passed by the Courts below and confirmed the order of eviction and dismissed the Civil Revision Petitions. Thereafter, the respondents filed E.P.No.96 of 2020 in R.C.O.P.No.2307 of 2009 and E.P.No.98 of 2020 in R.C.O.P.No.2311 of 2009. During the pendency of these execution petitions, the petitioners have filed E.A.S.R.No.3257 of 2020 in E.P.No.96 of 2020 and E.A.S.R.No.3255 of 2020 in E.P.No.98 of 2020 under Section 47 of C.P.C.,.

4.The learned counsel for the petitioners submitted that the

land in question along with larger extent of 2kani and 1899sqft., comprised in R.S.No.1283 was acquired by the Government of Tamil Nadu by a Government order on 18.09.1917 for the purpose of allotting it to Adi-Dravidar people for creating housing sites. The land was handed over to Varadarajapuram Co-operative Credit Society Ltd., for forming a lay out and allotting the house to the Adi-Dravidar for their residential purposes. It shall not be sold to non Adi-Dravidar for the reason that it is Panjami lands. Therefore, the purchase of the property by V.S.Cruz and his predecessor in title is illegal and non-est in law. V.S.Cruz is not an Adi-Dravidar and its previous title holders Rangasamy Iyengar, Abdul Rahman and Saminatha Pillai are also not Adi-Dravidars. Varadarajapuram Co-operative Credit Society Ltd., formed the society named Nariyancadu Varadarajapuram Adi-Dravidar Kudiyurpor Nala Sangam. This Sangam filed Writ Petition for Mandamus to conduct enquiry regarding the alienation of the lands in question to a non-Scheduled Caste persons and to take necessary steps for resumption of such lands in survey No.1283. Interim injunction was granted in this Writ Petition restraining the Sub-Registrar, Periamedu from registering

the alienation in this survey number. The land in question is Panjami land and any alienation of this Panjami land to non Adi-Dravidar is illegal and therefore the fair and executable order passed in R.C.O.P.'s are illegal and in-executable. Parties cannot enter into an illegal contract. Even if any illegal contract entered into, that will not bind others. Executability of void decree can be challenged at any time even in collateral proceedings.

5.In support of his submissions, learned counsel for petitioner relied on the judgment reported in (1993) SCC online 176, (**Nutan Kumar and others Vs. II Additional District Judge, Banda and others**), for the proposition that if an agreement is made to do or suffer a prohibited act that agreement will be unenforceable, and no Court will extend its assistance for its implementation. No decree for ejectment of the tenant can, therefore, be passed in favour of the landlord on the basis of such agreement of lease between them in contravention of the provisions of the new Act.

“5.Of the above noted four basic ingredients,

lawfulness of the object of the agreement and absence of express declaration under the Contract Act rendering the agreement to be void are pertinent in the context of investigation of the questions under consideration.

6. Section 23 of the Contract Act envisages that object of an agreement will be unlawful, if

- a) it is forbidden by law; or*
- b) is of such a nature that, if permitted, it would defeat the provisions of any law; or*
- c) is fraudulent; or*
- d) involves or implies injury to the, person or property of another; or*
- e) the Court regards it as immoral, or opposed to public policy.*

30. It is firmly settled that if an agreement is made to do or suffer a prohibited act that agreement will be unenforceable, and no Court will extend its assistance for its implementation. (See Manna Lal Khetan V. Kedar Nath Khetan, (1977) 2 SCC 424; AIR 1977 SC 536; 1977 Tax LR 1638). No decree for ejectment of the tenant can, therefore, be passed in favour of the landlord on the basis of such agreement of lease between them as is in contravention of the provisions

of the new Act.

130.In view of the majority opinion, the Full Bench answers and hold thus:

1.An agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void.

2.The said agreement is unenforceable in law and no decree for ejectment of the tenant.

6.The judgment reported in (1977) 2 SCC 424, (**Mannalal Khetan and Others Vs. Kedar Nath Khetan and others**) is relied for the proposition that “it is well established that a contract which involves in its fulfilment of doing of an act prohibited by statute is void. The legal maxim *A pactis privatorum publico juri non derogatur* means that private agreements cannot alter the general law. Where a contract express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action”.

21.If anything is against law though it is not

prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act.

22. Penalties are imposed by statute for two distinct purposes: (1) for the protection of the public against fraud, or for some other object of public policy; (2) for the purpose of securing certain sources of revenue either to the State or to certain public bodies. If it is clear that a penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable.

7. The judgment reported in **2010 (3) CTC 845, (V.G.P.Prem Nagar, Minvariya Kudi Erupor Nala Sangam Vs. The State of Tamil Nadu)** is relied for the purpose of showing that the conditions imposed with a view to protect the depressed classes while assigning Panchami lands cannot be said to be unreasonable.

4. Today, statistics reveal that vast extents of the land

so distributed are now with the persons who do not belong to the depressed classes. Therefore, the conditions appear to have been violated without any restraint or check. The Special Form-D applies to order for assignment of lands to Scheduled Castes and Condition No.9 reads as follows:

“If the land is alienated to any person within a period of ten years from the date of the grant by way of sale, gift, mortgage or lease of any kind, or after that period, to any person who is not a member of the Scheduled Caste...,the grant will be liable to be resumed by the Government who will be entitled to re-enter and take possession of the land without payment of any compensation or refund of the purchase money”.

8.The learned counsel for the petitioner also relied on judgment reported in **AIR 1954 Hon'ble Supreme Court 340, (Kiran Singh Vs Chaman Paswan)**, for the proposition that a decree passed by a Court without jurisdiction is a nullity. It is observed in the judgment that “It is a fundamental principle well established that decree passed by a Court without jurisdiction is a nullity and that its validity could be set

up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

“A.Civil Procedure Code, 1908, Sections 9 and 21 – Decree passed by a court without jurisdiction is a nullity - A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.”

9.Thus, it is submitted by the learned counsel for the petitioner that when there is condition restraining alienation of property in survey Number R.S.No.1283 to non-Adi-Dravidar person, alienation made in favour of Rangasamy Iyengar, Abdul Rahman, Saminatha Pillai and V.S.Cruz is not in accordance with law and therefore, the order of eviction passed in R.C.O.P.Nos.2307 & 2311 of 2009 are illegal and in-executable. However, without considering a merits of the petitioner's

claim, the learned XV Judge, XV Small Causes Court, Chennai dismissed the petitions in E.A.SR.No.3257 & 3255 of 2020 as not maintainable. Against the said order, these Civil Revision Petitions are preferred. The learned counsel for the petitioner prayed for setting aside the order of learned XV Judge, XV Small Causes Court, Chennai, for the reasons aforesaid and for declaring that the order dated 28.09.2012 passed in R.C.O.P.Nos.2307 and 2311 of 2009 is null and void and inexecutable.

10.In response, the learned counsel for the respondents submitted that the contention now raised by the petitioners that the land concerned in this case is a Panjami land and therefore it could not be alienated to non-Adi-Dravidar persons, is taken for the first time in this Civil Revision Petition. This plea was not taken either before the Rent Controller, Rent Control Appellate Authority or before this Court in Civil Revision Petition. This plea is taken only for the purpose of protracting and delaying the delivery of the property. Petitioners have not produced any document to show that the land in question is a Panjami land. In fact the land was acquired by the Government and sold

to the Varadarajapuram Co-operative Credit Society Ltd., The Society in turn sold the property to its members for a consideration. The property was not given free of cost. There is absolutely no oral and documentary evidence to show that the property is Panjami property. Respondent's father V.S.Cruz is also an Adi-Dravidar and was also a member of the Society. The agreement with Nariyancadu Varadarajapuram Adi-Dravidar Kudiurpor Nala Sangam, shows that the landed building can be sold or mortgaged, only to some other member of the Society or to the person decided by the Panchayat of the Society and not to other person. This agreement shows that there is no prohibition for sale of the property to other member of the Society. When respondent's father V.S.Cruz, is a member of the Society, there is no illegality in purchasing the property. It is again submitted that there are eight tenants in the premises and eviction proceedings are initiated against them. Possession had been taken from two tenants. Petitioners are deliberately protracting the proceedings by initiating several legal proceedings. Respondents are not parties to W.P.No.12687 of 2012. The scope of the petition and prayer sought in W.P.No.12687 of 2012 are different and that petition has no

relevance to this execution proceedings. Thus, the learned counsel for the respondents prayed for the dismissal of these Civil Revision Petitions by confirming the order of learned Rent Controller, Chennai.

11.Considered the rival submissions and perused the records.

12.Admittedly, the respondents filed the aforesaid R.C.O.P.'s for evicting the petitioners on the grounds of wilful default and denial of title. Petitioners set up a plea that they are the owners of superstructure and they paid only ground rent. Their plea was rejected by the learned Rent Controller and eviction was ordered. The rent control appeals filed against the eviction orders in R.C.A.Nos.712 & 713 of 2012 were also dismissed, followed by the dismissal of C.R.P.Nos.1335 & 1345 of 2015. Admittedly, petitioners have not taken the plea either before the Rent Controller or before Appellate Authority or before this Court in the Civil Revision Petition that the property in question is a Panjami property, that is, Panjami land. For the first time when the respondents filed execution petitions in E.P.No.96 of 2020 and E.P.No.98 of 2020, this new plea is

taken. It appears during the enquiry before the learned Rent Controller, with regard to deciding the maintainability of this petition, despite giving several opportunities to argue on the maintainability of these petitions, no submission was made before the learned Rent Controller. Therefore, learned Rent Controller passed order after perusing the records.

13.The reading of the order dated 12.02.2021 in E.A.SR.Nos.3257 & 3255 of 2020 passed by the learned Rent Controller, XV Small Causes Court, Chennai, shows that the allotment order dated 09.09.1919 shows that there was no conditions stipulated in the said order and the property was allotted on payment and it was not a free of transfer. In this case Mrs.Henricus constructed house and leased out to Madras city Co-operative Bank on 25.10.1938. Thereafter, the property was sold to many persons before it came to the hands of V.S.Cruz. V.S.Cruz is claimed to be an Adi-Dravidar. Originally, Madras Municipality acquired this property under land acquisition and sold to Nariancadu Co-operative Society. The society, in turn, divided the land

into plots and sold it to various persons. It was neither an agricultural land nor land given free of cost. The purchasers of the land paid consideration for plots purchased. It was also found that the petitioners have not produced any document to show that the land was a Panjami land and allotted to the depressed class people. Even before this Court there is no materials produced to show that the land in question was a Panjami land and it was allotted free of cost. On the other hand, there are materials available to show that the lands were acquired by the Government, sold to society and the society, in turn, divided the land into plots and sold to its members.

14.As rightly pointed out by the learned counsel for the respondents, agreement with Nariancadu Co-operative Society, shows that the property can be sold to a member of a society or to any person decided by the Panchayat of the Society. The learned counsel for the respondents also produced copy of the receipt to show that V.S.Cruz was the member of Varadarajapuram Co-operative Credit Society Ltd.,. The deed of conveyance dated 22.10.1955 also shows that as per the

resolution of the Panchayatar Sangam alienation can be made. Assuming, without admitting, that even if there is any violation of conditions in the alienation of property, the petitioners/tenants, cannot challenge that alienation. Petitioners failed to prove that they are the owners of the superstructure. Respondents proved that they are the owners of the tenanted premises. Therefore, respondents are entitled to file rent control petition for evicting the petitioners. Accordingly, they filed eviction petition and got favourable order of eviction against the petitioners.

15.It is apparent that the plea that the tenanted premises is a Panjami land, is taken up belatedly, after failing in three Courts, only with a view to protract the delivery of the property. The proceedings in W.P.No.12687 of 2012 is for different purpose and for different relief and the respondents are not parties to that Writ Petition and therefore pendency of that Writ Petition has no bearing over this case. There is no illegal contract involved in this case and there is no lack of jurisdiction in obtaining the eviction order and therefore, the judgments placed by the learned counsel for the petitioner before this Court are not useful to

advance petitioner's case. The learned XV Judge, XV Small Causes Court, Chennai has considered the relevant aspects and found that applications in E.A.SR.No.3257 of 2020 in E.P.No.96 of 2020 in R.C.O.P.No.2307 of 2009 ,and E.A.SR.No.3255 of 2020 in in E.P.No.98 of 2020 in R.C.O.P.No.2311 of 2009 have been filed only to drag on the proceedings and dismissed the applications. This Court for the reasons stated above, finds there is no reason to interfere with the order dated 12.02.2021 passed by the learned XV Judge, XV Small Causes Court, Chennai and the orders are confirmed.

16.Resultantly, these Civil Revision Petitions are dismissed with the costs of the respondents. Consequently, connected miscellaneous petitions are closed.

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28.10.2021

Index: Yes/No

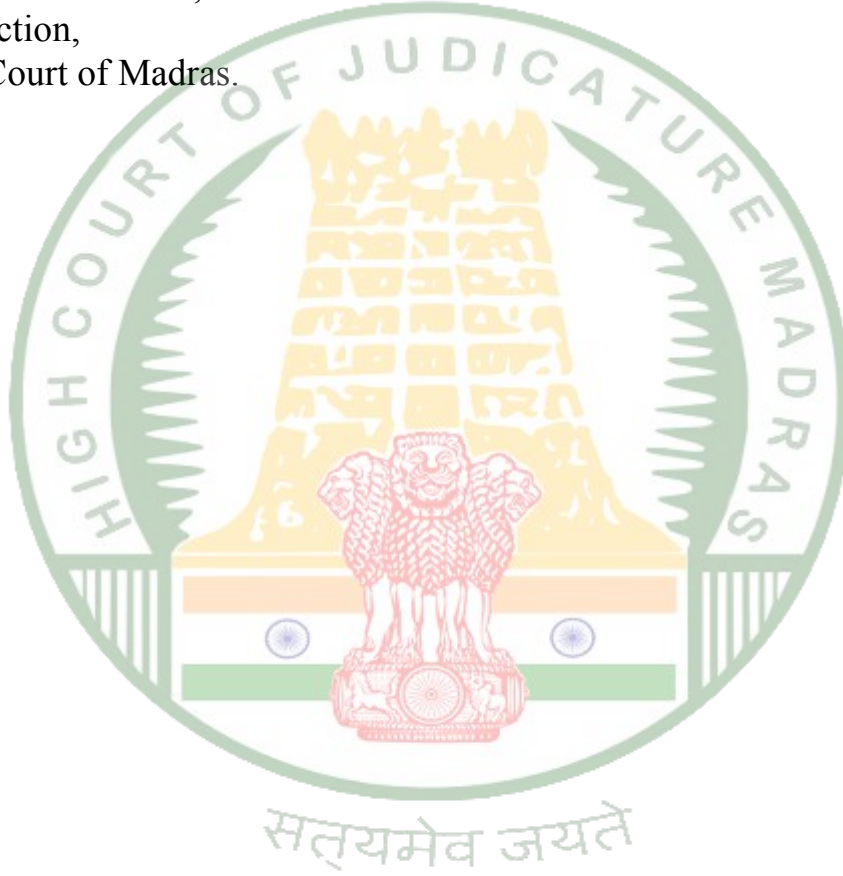
Internet: Yes/No

Speaking Order: Yes/No

To

1.The XV Judge,
XV Small Causes Court,
Chennai.

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

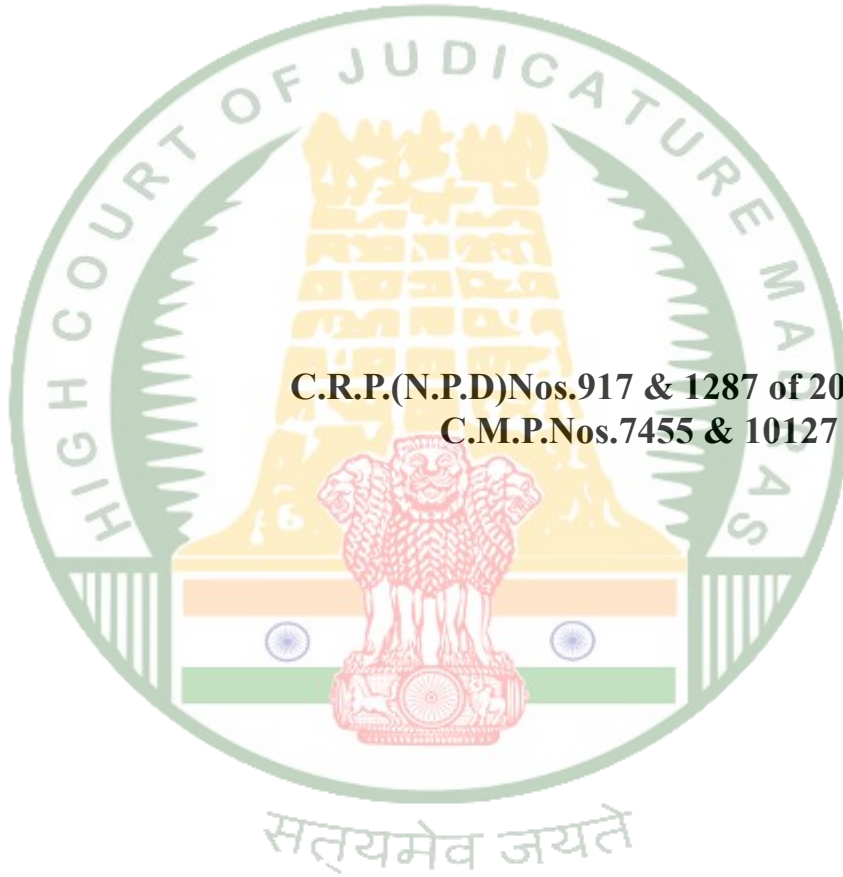


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