

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.04.2021
Pronounced on	30.04.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.741 of 2016

and

C.M.P.No.4009 of 2016

S.Jeganathan

... Petitioner/Tenant/Appellant

Vs.

Sourastra Vipra Sabha
Namakkal,

Represented by its President,

D.No.11, Duban Kumarasamy Street,

Namakkal Town,

Namakkal District.

... Respondent/Landlord/Respondent

PRAYER : The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, against the Order dated 08.09.2015 in R.C.A.No.4 of 2011 passed by the learned Sub-ordinate Judge, Namakkal confirming the order dated 17.10.2011 passed in H.R.C.O.P.No.11 of 2010 on the file of the Rent Controller/Principal District Munsif Court, Namakkal.

For Petitioner : Mr.S.Gunaseelan

For Respondent : Mr.S.R.Varun Karthik
for M/s. C.Jagadish

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed praying to set aside the Order dated 08.09.2015 in R.C.A.No.4 of 2011 passed by the learned Sub-ordinate Judge, Namakkal confirming the Order dated 17.10.2011 passed in H.R.C.O.P.No.11 of 2010 on the file of the Rent Controller/Principal District Munsif Court, Namakkal.

2. The petitioner is the tenant/appellant.

3. The arguments of both side counsels heard elaborately.

4. This Civil Revision Petitioner is the tenant of the respondent.

He has filed a petition in H.R.C.O.P.No.11 of 2010 for depositing rent under Section 8(5) of the Tamil Nadu Building (Rent and Lease Control) Act, 1960. The respondent submitted before the Rent Controller that the respondent is a Public Trust and hence the Rent Control Act will not be applicable for the Public Trust. The learned Rent Controller/Principal

District Munsif, Namakkal accepted the contention and dismissed the Rent Control application as not maintainable. Aggrieved over that, the petitioner/tenant has filed the first appeal in R.C.A.No.4 of 2011 and the same was also dismissed by confirming the Order of the Rent Controller.

5. Now, this Civil Revision Petition has been filed by challenging the said Order. While dismissing the Rent Control Application, both the learned Rent Controller and the Rent Control Appellate Authority placed reliance on the Judgement of this Court reported in *2004(4) Law Weekly 474 (S.Kulandaivelu Vs. Sowrashtra Vipra Sabha Namakkal, represented by its President and Secretary at Dhuban KomarasamiTheru, Namakkal)*. The respondent/Trust is a party in the above case. While passing the judgement in this case, the learned Single Judge, S.Sardar Zackria Hussain, J (as he then was) held that the respondent's Society is a Public Trust and so the Rent Control Act is not applicable to it.

6. The learned counsel for the Civil Revision Petitioner has submitted that the respondent/Trust is not a Public Trust but it is only a

Private Trust and hence the Rent Control Act is very much applicable. He submitted the following citations in support of his argument that the Rent Control Act is applicable to the respondent/Trust.

S.No.	Name of the parties	Citation particulars
1.	<i>Sowrashtra Vipra Sabha Vs. Namakkal Municipality & another.,</i>	1996 11 SCC 584
2.	<i>S.Kulandaivelu Vs. Sowrashtra Vipra Sabha Namakkal.,</i>	2004-4-L.W.474
3.	<i>Dhanasekaran Vs. The A.R.C. School Board.,</i>	2009(1) CTC 779
4.	<i>Sha Poosaji Mangilal Vs. The South Indian Humanitarian League.,</i>	2009(2) CTC 25
5.	<i>B.Shaji Vs. Sree Pravaraswamy Devasthanam.,</i>	2010(3) CTC 851
6.	<i>Lakshmi Ammal Vs. Sowrashtra Vipra Sabha.,</i>	CRP.(PD).No.1847 of 2012
7.	<i>M/s. Sowrashtra Vipra Sabha Vs. The District Registrar (Societies).,</i>	W.P.Nos.11279 of 2009 and 15143 of 2012
8.	<i>Thangapandiyar Vs. Shri Kanniga Parameswari Amman Chathiram, Private Trust.,</i>	CRP.(NPD).No.1024 of 2013
9.	<i>Gopal Vs. V.A.Sathyanarayanan, Managing Trustee of Sri Thirunavukkarasu Swamigal Madam, Vellore & another.,</i>	2017 Supreme (Mad) 3430

7. The case involved in citation No.1 is a case where the status of the respondent is not an issue, though the trust was a party to the said case.

8. Citation No.2 is the Judgement which was relied on by the Rent Controller and the Rent Control Appellate Authority for dismissing the petition by accepting that the respondent is a Public Trust.

9. Citation Nos.3 & 4 are the Judgements in which the learned Single Judge of this Court has laid down the rule that two fundamental tests should be applied in order to find out whether a Trust is a Public Trust or a Private Trust. They are (i) whether the objects and purpose of the creation of the Trust is for public good. (ii) whether there is any investment of fund or property.

10. Citation No.5 is not applicable to the facts of this case. Citation No.6 also will not help to the facts of this case because no findings as to the status of the respondent has been rendered, though it was a party.

WEB COPY

11. In the case involved in citation No.7 also, the respondent is a party. The litigation is between two rival groups of Sowrashtra Vipra Sabha, which are said to have been registered under the Societies Act. If

the petitioner considers the facts involved in this case are helpful to him, he can take the opportunity to produce it before the Civil Court where the suit for recovery of possession is pending. Citation No.8 relates to a party which is a Private Trust and the same is not applicable to this case.

12. In the case connecting to citation No.9, it is held that if a Court renders a finding as to the status of the Trust as a Private Trust, the matter cannot be agitated once again. The same logic is applicable when a Court renders a Trust as a Public Trust. It has been already pointed out that in the case of *S.Kulandaivelu Vs. Sowrashtra Vipra Sabha Namakkal* reported in *2004(4) Law Weekly 474*, the Court has held that the respondent is a Public Trust. The reasons for rendering such a finding is extracted as under:-

“7. It is seen from Ex.B-1 that the amount collected by way of rent by the respondent Sabha is utilised both for public purpose and also for the purpose of marriages and for funeral expenses relating to the Sowrashtra community and to conduct night school and in assisting the students for the purpose of higher technical education and to purchase books etc., for the students and also for the purpose of establishing co-operative societies and to start new jobs to effect improvement on the field of agriculture and business in the hand-loom and weaving sectors and to help widows and social orphans (சமீக அநாதைகள்) and also to attend on the

handicapped poor patients suffering from incurable disease. As such, it is clear that the respondent Sabha is a public trust in which case, the respondent sabha being a public trust is exempted from the purview of the Rent Control Act. It follows that the Rent Control Original Petition as filed is not maintainable. Though no case was set up and specific pleading was not taken in the counter that the respondent Sabha is a public trust and as such the petition premises is exempted from the purview of the Rent Control Act, such stand taken by the revision petitioner/tenant before this Court is very much maintainable being the question of law and the finding recorded by the learned Rent Control Appellate Authority that the respondent Sabha is only a private trust and so the maintainability of the Rent Control Original Petition in favour of the respondent Sabha cannot be said to be correct. Such finding of the learned Rent Control Appellate Authority is to be set aside.”

13. It is true that the status of the Trust may change if the objects and purposes and other activities of the Trust change in due course. But the petitioner herein has not established such facts before the Rent Controller. Further, the order of this Court passed in the earlier case (***S.Kulandaivelu Vs. Sowrashtra Vipra Sabha Namakkal***) was also not challenged and it still holds good.

14. It is submitted by the learned counsel for the respondent that they have already filed a suit against the petitioner for recovery of

possession. If the petitioner believes that the character of the respondent/Trust has changed and it is no more a Public Trust, he can establish those facts with sufficient materials before the Trial Court itself. Having got the knowledge that the respondent/Trust has already been accepted by this court as a Public Trust, the petitioner has raised the same issue in this subsequent case also. As already there is an order of this Court which held that the respondent is a Public Trust and the same is not challenged and set aside, it is correct for the Rent Control First Appellate Authority to rely on the same and accept the respondent as a Public Trust and hold that the rent control Act is not applicable to the respondent Trust.

15. In view of the foregoing reasons, I do not find any factual or legal infirmity in the order passed by the Rent Control Appellate Authority and it does not warrant any interference.

WEB COPY

In the result, this Civil Revision Petition is dismissed. No costs.
Connected civil miscellaneous petition in C.M.P.No.4009 of 2016 is also closed.

30.04.2021

Speaking
Internet : Yes
Index : Yes

Sni

To

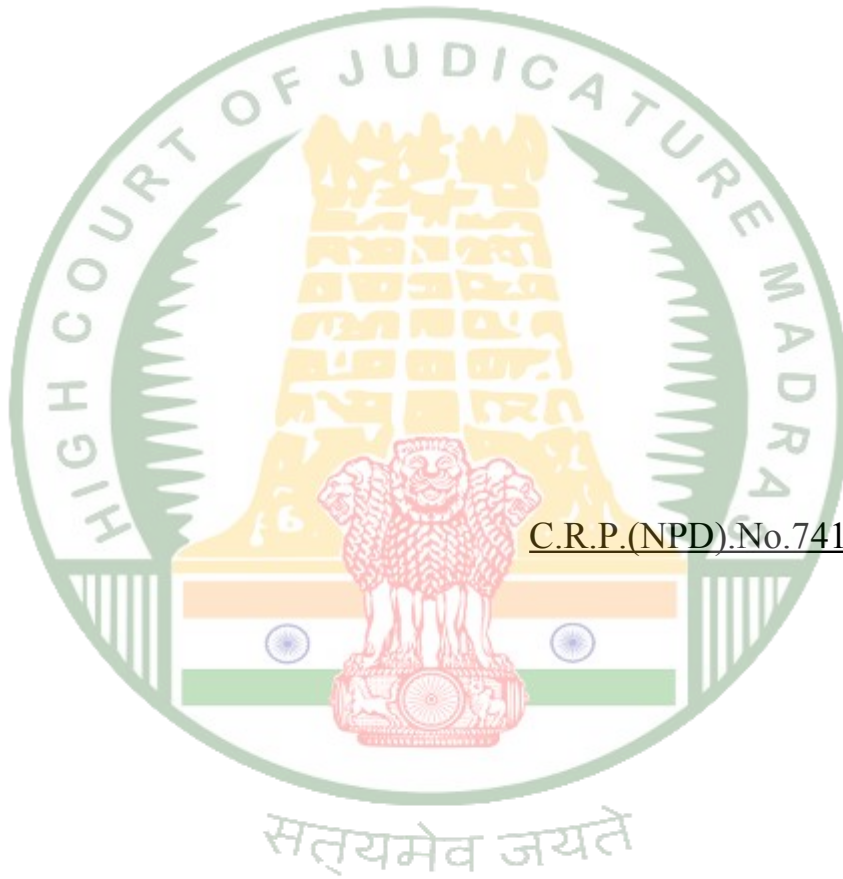
- 1.The Sub-ordinate Judge,
Namakkal.
- 2.The Rent Controller/Principal District Munsif Court,
Namakkal.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY

R.N.MANJULA,J.

Sni



C.R.P.(NPD).No.741 of 2016

WEB COPY

30.04.2021