

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.01.2021

Pronounced on : 22.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2389 of 2014 &
CRP.PD.No.4244 of 2013

CRP.NPD.No.2389 of 2014

1.A.N.Mohammed Ali
2.A.N.Arief

.. Petitioners

Vs.

1.Sheik Abdul Khader(died)
2.Sabra Bi
3.Abdul Rakib
4.Wahida Banu
5.Abdul Rafi
6.Jameel Banu

(respondents 2 to 6 brought on
record as LR's of the deceased
first respondent viz Sheik AbdulKhader
vide court order dated 21.12.2020
made in CMP.No.13448, 13450 & 13451 of 2020 in
CRP.NPD.No.2389 of 2014

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order and decretal order dated

21.01.2014 passed by the XI Small Causes Court Judge, Chennai in
MP.No.288 of 2013 in RCOP.No.1127 of 2012.

For Petitioners : Mr.Chitra Sampath,
Senior Counsel
for Mr.T.S.Baskaran

For Respondents
R1 : Died
R2 to 6 : Mr.N.A.Nissar Ahmed

CRP.PD.No.4244 of 2013

- 1.Sheik Abdul Khader(died)
- 2.Sabra Bi
- 3.Abdul Rakib
- 4.Wahida Banu
- 5.Abdul Rafi
- 6.Jameel Banu

(petitioners 2 to 6 brought on
record as LR's of the deceased
sole petitioner viz Sheik AbdulKhader
vide court order dated 20.01.2020
made in CMP.No.613 of 2020 in
CRP.No.4244 of 2013

..Petitioner

Vs.

A.N.Mohammed Ali

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decretal order dated
13.09.2013 and made in MP.No.165 of 2013 in RCOP.No.799 of 2012
on the file of the XVI Judge, Small Causes Court, Chennai

For Petitioners : Mr.N.A.Nissar Ahmed

For Respondent : Mr.Chitra Sampath,
Senior Counsel
for Mr.T.S.Baskaran

COMMON ORDER

The Civil Revision Petition in CRP.NPD.No.2389 of 2014 is directed as against the order passed in MP.No.288 of 2013 in RCOP.No.1127 of 2012 on the file of the XI Small Causes Court, Chennai dated 21.01.2014 thereby allowed the petition as RCOP is not maintainable filed by the petitioners herein. The petitioners are landlords in respect of the petition premises. They filed petition for fixation of fair rent. While pending the main petition, the first respondent filed petition to decide the preliminary issue of maintainability of main RCOP as it is exempted from the provisions of Rent Control Act. The respondent contended that the petition premises is wakf property belonging to Madrase Bakhiyathus Salihat, a wakf bearing registration No.GS.No.423 under the supervisory control of Tamil Nadu Wakf Board. While being so, the petitioners have purchased the said property under the sale deed dated 10.03.2011 and it is violation of Section 51 of Wakf Act, 1995 and as such the sale itself is *void abinitio*. It was allowed and the main petition

itself is held as not maintainable before the Rent Controller.

2. M/s.Chitra Sampath, the learned Senior Counsel appearing for the petitioners submitted that the petitioners having been purchased the petition premises by the registered sale deed dated 09.06.2011 vide document No.197 of 2011 registered in the Office of the District Registrar, Chennai North from the Madrase Bakhiyathus Salihat. It is a society registered under the Societies Registration Act and the petition premises is not a wakf property. The petitioners' vendor i.e. Madrase Bakhiyathus Salihat purchased the petition premises by the registered sale deed dated 10.03.2011 vide document No.88 of 2011 in the office of the District Registrar of Chennai North from Madrasai Niswan kHairatul Ehsan. In fact, they purchased the said property on 03.08.1909 vide document No.1235 of 1909 in the Office of the Registrar of North Madras from Official Assignee of Madras. Therefore, the petition premises is not a wakf property and it is categorically admitted by the respondent herein. Immediately after purchase of the said property, the respondent attorn the tenancy and recognized the petitioners as his landlord and paid rent to them. In fact, the respondent filed petition for depositing rents for the

reason that the petitioners were not receiving the rents. When the respondent recognized the petitioners are landlord, they are estopped from his claim that the property itself belongs to wakf and the petition for fair rent is not maintainable. In fact, the respondent also filed petition for injunction when he was forcibly attempted to evict from the petition premises and in the said suit on undertaking that he would be lawfully evicted from the said premises came to be disposed of. Therefore, the respondent specifically and categorically admitted the fact that the petitioners are landlords of the petition premises. Under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, defines the landlord and the petitioners having been recognized as landlord by the respondent, they cannot question their title over their property. When the petitioners lawfully purchased or not, the respondent being a tenant cannot question the title over the petition premises. In support of her contention, she relied upon the following judgments:

(i) ***Nisha Rani Mookherjee Vs. Puran Chand Jain***
reported in ***(2004) 10 SCC 637***

(ii) ***S.Thangappan Vs. P.Padmavathy*** reported in
(1999) 7 SCC 474

(iii) ***Ambica Prasad Vs. Mohd. Alam and Another***

reported in ***(2015) 13 SCC 13***

3. Per contra, Mr.N.A.Nissar Ahmed, the learned counsel for the respondents 2 to 6 would submit that the respondents categorically stated that the learned Rent Controller has no jurisdiction to entertain the petition for fixation of fair rent since the petition itself is not maintainable as the property is a wakf property. The petitioners managed to register the sale deed in their favour in respect of the property belongs to wakf and as such the sale itself is *void abinitio* and the main petition is not at all maintainable before the learned Rent Controller under Section 29 of the Rent Control Act. The petition premises is clearly exempted and as such the petition is not maintainable. The petition premises is originally belonging to Madrase Bakhiyathus Salihat, a wakf bearing registration No.GS.No.423 under the supervisory control of the Tamil Nadu Wakf Board. Therefore, the learned Rent Controller does not have jurisdiction and the petition premises exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act.

4. The Civil Revision Petition in CRP.PD.No.4244 of 2013 is filed against the fair and decretal order dated 13.09.2013 made in MP.No.165 of 2013 in RCOP.No.799 of 2012 on the file of the XVI Judge, Small Causes Court, Chennai. The respondent filed petition for eviction on the ground of demolition and reconstruction. While pending the petition, the first petitioner filed petition to decide the preliminary issue of maintainability of main RCOP as it is exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act. It was dismissed by the learned Rent Controller on the ground that the issue raised by the petitioner is mingled with the facts and law and therefore it can be decided along with the main RCOP. Further concluded that the information obtained by the petitioner under the Right to Information Act in which the properties description differs and as such the information obtained under RTI Act has no substance.

5. Heard M/s.Chitra Sampath, Senior Counsel appearing for the petitioners in CRP.NPD.No.2389 of 2014 and the respondent in CRP.PD.No.4244 of 2013, Mr.N.A.Nissar Ahmed, the learned counsel appearing for the respondents 2 to 6 in CRP.NPD.No.2389 of 2014 and the

petitioner in CRP.PD.No.4244 of 2013.

6. Both the civil revision petitions arising out of maintainability of the Rent Control Original Petition in respect of the petition premises. The petitioners in CRP.NPD.No.2389 of 2014 filed petition in RCOP.No.1127 of 2012 for fixation of fair rent in respect of the petition premises. They also filed petition for eviction on the ground of demolition and reconstruction in RCOP.No.799 of 2012. In both the petitions, respondents filed counter and also filed petition to decide the issue of maintainability as that the petition premises is exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act. The petition filed in RCOP.No.1127 of 2012 was allowed. The petition in RCOP.No.799 of 2012 was dismissed. Aggrieved by the said orders, the petitioners as well as the respondent in RCOP.No.1127 of 2012 filed CRP.NPD.No.2389 of 2014. The respondent in RCOP.No.799 of 2012 filed CRP.PD.No.4244 of 2013.

7. Though two orders have challenged in two civil revision petitions, in both the civil revision petitions, issue is same with regards to the maintainability of Rent Control proceedings in respect of the petition

premises. The landlords and tenants are same and petition premises is also same in both the civil revision petitions. Admittedly, the petitioners in CRP.NPD.No.2389 of 2014 (hereinafter called as landlord) purchased the petition premises by the registered sale deed dated 09.06.2011 vide document No.197 of 2011 in the Office of the District Registrar, Chennai North from the Madrase Bakhiyathus Salihat. According to the landlord, it is a Society registered under the Societies Registration Act. Thereafter, the respondent in RCOP.No.1127 of 2012 (hereinafter called as tenant) attorn the tenancy and recognized the landlord as landlord and paid rent to them continuously. Thereafter, the landlord filed petition for eviction on the ground of demolition and reconstruction in RCOP.No.799 of 2012. When the said petition was pending, the landlord also filed petition for fixation of fair rent in RCOP.No.1127 of 2012. In both the petitions, the tenant filed his counters and stated that the petition premises originally belong to Madrase Bakhiyathus Salihat, a wakf bearing registration No.GS.No.423 under the supervisory control of the Tamil Nadu Wakf Board. The purchase of the said property is in violation of Section 51 of Wakf Act, 1995 and as such the sale itself is *void abinitio*. Therefore, the petition filed before the learned Rent Controller is not maintainable since

the petition premises is exempted under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, the tenant filed petition to decide the preliminary issue of maintainability of both the petitions filed by the landlords as exempted from the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act. In the petition for fixation of fair rent, petition for maintainability is allowed. In the petition for eviction on the ground of demolition and reconstruction, the petition for maintainability was dismissed. The points for consideration are that

- (i) Whether the property is a wakf property or not?*
- (ii) Whether the tenant is estopped from questioning the title of the petition premises when he attorn the tenancy and recognized the landlord as landlord and continuously paid the rents?*

8. The learned Rent Controller in RCOP.No.1127 of 2012 allowed the petition on the ground that the petition premises is a wakf property and it is proved by Ex.P1 which is marked by the tenant. Ex.P1 is information obtained under the Right to Information Act stating that the petition premises is wakf property. Therefore the sale in favour of the landlord itself is hit under the provisions under Section 51 of Wakf Act.

Therefore, the petition is not maintainable since it is exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act.

9. The learned Rent Controller in respect of RCOP.No. 799 of 2012 concluded that Ex.P1 information obtained under RTI Act is pertaining to other property and Door No. differs. Therefore, Ex.P1 has no substance. Further concluded that the issues raised by the tenant is mingled with facts and law and it can be decided with the main eviction petition. Therefore, only on the basis of Ex.P1 i.e. information obtained under the RTI Act, the learned Rent Controller came to conclusion that the petition premises is wakf property.

10. In the case on hand, Except Ex.P1, no other iota of evidence produced by the respondent to declare that the petition premises is a wakf property. It cannot be concluded that the petition premises is a wakf property. Therefore, the petition premises is not wakf property and it has to be decided only before the wakf tribunal as contemplated under Section 85 of Wakf Act, when the petition premises is wakf property. Accordingly, the first point is decided in favor of the landlord.

11. In support of her contention with regard to the second point, the learned Senior Counsel relied upon the judgment in the case of ***Nisha Rani Mookherjee Vs. Puran Chand Jain*** reported in ***(2004) 10 SCC 637***, wherein it is held as follows:

8.The expression "landlord" has been defined in the Act in Section 2 (d) and reads as follows:

"2.(d) 'landlord' includes any person who, for the time being, is entitled to receive or but for a special contract would be entitled to receive the rent of any premises, whether or not on his own account;"

9.In view of the undisputed position that the landlady was receiving rent, she is certainly covered by the definition of "landlord" as appearing in the Act.

12. In the case on hand, the tenant attorn the tenancy and recognized landlord as landlord of the petition premises. Therefore, the tenant cannot question the title and nature of the property.

13. She also relied upon the judgment in the case of ***S.Thangappan Vs. P.Padmavathy*** reported in **(1999) 7 SCC 474**, wherein it is held as follows:

The definition of landlord is very wide to include any person who is receiving or is entitled to receive the rent. The explanation includes even a tenant to be landlord under this Act. In the present case it is not in dispute that the appellant was inducted into tenancy by the predecessor of the respondent. After such induction he had been paying rent first to the predecessor of the respondent No.1 from 1962 and then to the respondent No.1 since 1980. The appellant in his cross examination has admitted this by stating that he came as a tenant under one Shivlingam who is the elder brother of Respondent No.1 and from 1980 onwards he had been paying rent to respondent No.1. It is in this background we have to test the submission for the appellant with respect to the default and denial of title. It is clear as is also finding recorded that the appellant himself approached the Devasthanam subsequently to execute the tenancy of the disputed premises in question to him. In order to appreciate the conduct of the appellant in denial of title of the Respondent No.1 we herewith record the finding of the trial court in this regard;

The petitioner strongly and curiously would contend that since he came to know all of a sudden that Arulmigu

Audikesava Perumal Peyalwar Devasthanam is the true owner of the petition premises, he stopped the payment of rent to the petitioner. In fact, the said Devasthanam never demanded the rent from the respondent at any point of time, at their own accord. Further, the said Devasthanam never intimated to the respondent that they are the owners of the petition premises. The above said Devasthanam had not informed the petitioner that the said Devasthanam is the true owner of the petition premises. For the first in the history, the 1st respondent writes a letter Ex.R.1 dt. 28.3.83 stating that he may be recognised as a tenant under the said Devasthanam in respect of the petition premises, as he considered that the said Devasthanam is the true owner of the petition premises. Thus the respondent himself gives right and title to the said Devasthanam.

The said Arulmighu Audikesavaperumal Peyalwar Devasthanam sent a reply to the 1st respondent on 4.5.83, which is marked as Ex. R.3 in this petition. Even in Ex.R.3, the said Devasthanam had not examined any right and title over the petition premises and the said devasthanam had not even admitted their ownership over the petition premises. Therefore, I hold that the contention of the respondent that the petitioner has no right or title over the petition premises, is not true even for a moment.

With reference to the subsequent event the other submission for the appellant is with reference to the Devasthanam suit, viz., the affidavit by the respondent in which it is urged he admits to be lessee of Devasthanam and thus his averment in the present proceeding being the owner of the premises is wrong. This also would be of no avail. Firstly, we are not called up to examine the said suit. The respondent No.1 was not even impleaded hence was not a party there. This apart relationship between the appellant and the respondent is of tenant and landlord under the Act while relationship between the respondent and Devasthanam may be of lessee and lessor in a different set of fact. This would make no difference. The definition of landlord is under [Section 2 \(6\)](#) and under its explanation even tenant is treated to be landlord. The aforesaid two decisions, viz., Mangat Ram and others (supra) and D. Satyanarayan (supra) neither render any help to the appellant nor could it be distinguished as not to apply to the facts of the present case. On the contrary the two decisions squarely applies to the present case. [Section 116](#) of the Indian Evidence Act deals with the principle of estoppel against a tenant where he denies the title of his landlord. [Section 116](#) reads as under;

116. Estoppel of tenant and of licensee of person in possession - No tenant of immovable [roperty, or person claiming through such tenant, shall, during the continuance

of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such licence was given.

The Hon'ble Supreme Court of India held that the denial of title cannot be held to be bonafide as the tenant was aware that he was inducted into tenancy by the landlord. Section 116 of the Indian Evidence Act deals with the principle of estoppel against the tenant where he denies title of his landlord.

14. It is also relevant to extract Section 116 of the Indian Evidence Act as follows:

116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such

person had a title to such possession at the time when such licence was given.

15. The above provision puts an embargo on a tenant of an immovable property during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are "at the beginning of the tenancy", This is indicative of the sphere of the operation of this Section. So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord's title. Thus, this principle of estoppel debars a tenant from denying the title of his landlord from the beginning of his tenancy.

16. As rightly pointed out by the Senior Counsel, when the tenant attorn the tenancy and recognized the landlord as landlord of the petition premises, the respondent is estopped from disputing the title of the landlord. The tenant not only attorn the tenancy and recognized the landlord as landlord of the petition premises and also continuously paid rents. In fact the tenant also filed petition for depositing the rents and also filed suit for injunction from forcible eviction without due process of law.

17. In view of the above discussion, the order dated 21.01.2014 passed in MP.No.288 of 2013 is perverse, illegal and liable to be set aside. Accordingly, the civil revision petition in CRP.NPD.No.2389 of 2014 is allowed and the order dated 21.01.2014 passed by the XI Small Causes Court Judge, Chennai in MP.No.288 of 2013 in RCOP.No.1127 of 2012 is set aside.

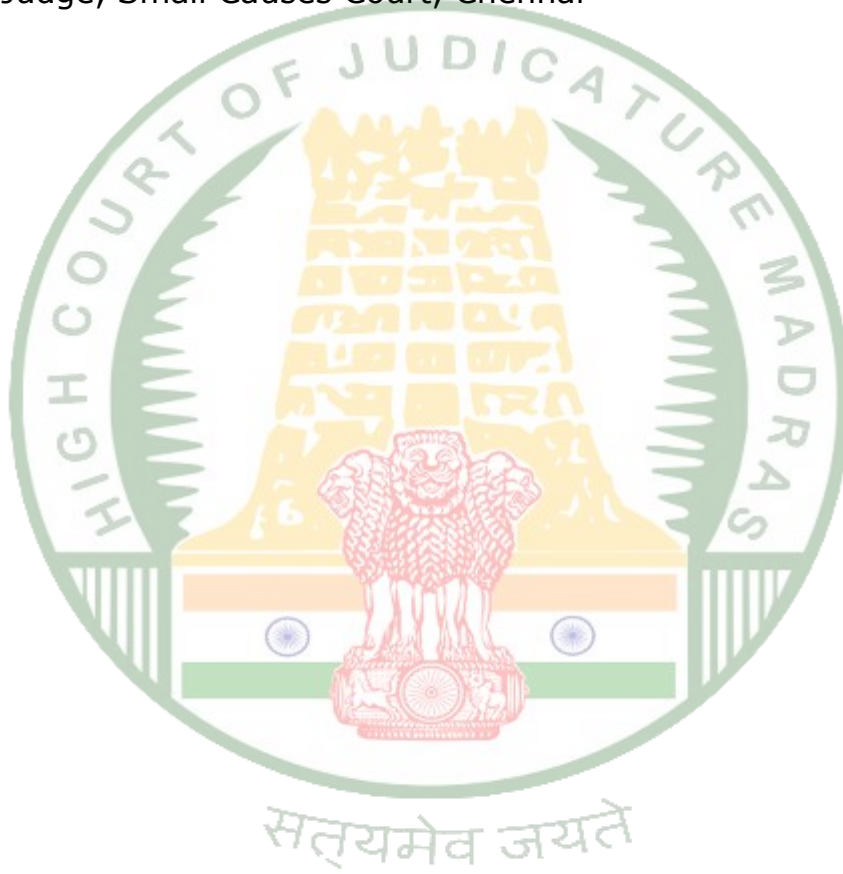
18. In view of the above order, this Court finds no irregularity or infirmity in the order dated 13.09.2013 passed by the court below in MP.No.165 of 2013 in RCOP.No.799 of 2012 and accordingly, the civil revision petition in CRP.PD.No.4244 of 2013 is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

- 1.The XVI Judge, Small Causes Court, Chennai
- 2.The XI Judge, Small Causes Court, Chennai



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G.K.ILANTHIRAIYAN,J.

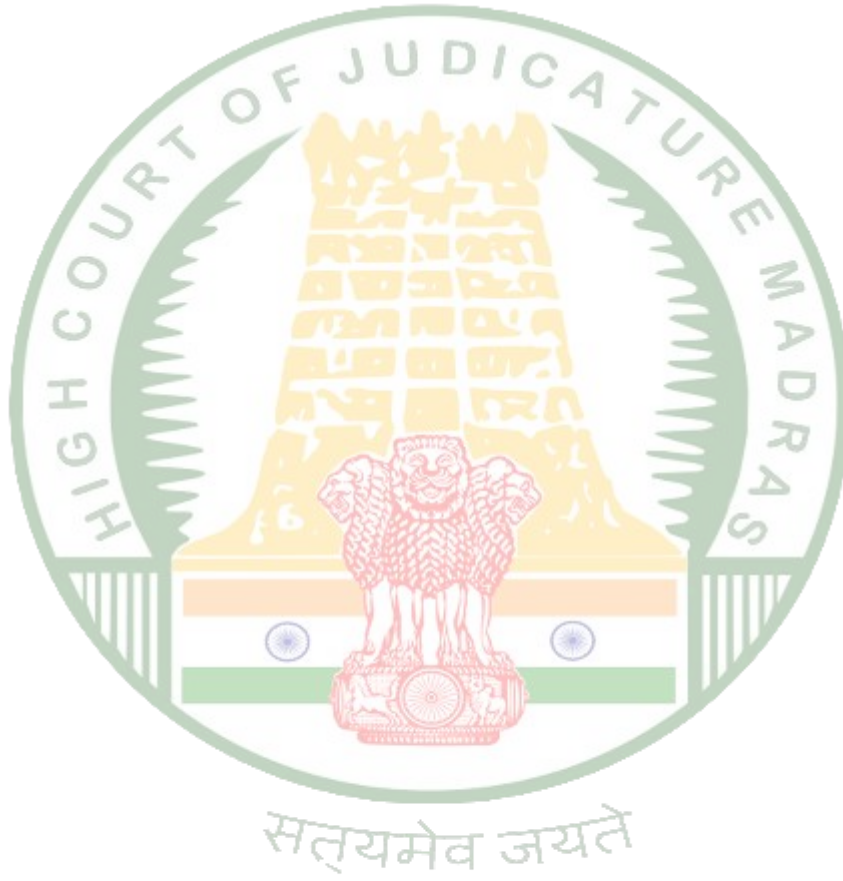
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