



S.A. (MD).Nos.14 of 2021 and etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A. (MD).Nos.14,15,22,29,31,33,34,42 & 44 of 2021

and

C.M.P (MD)Nos.121,124,259,390,394,397,400,460 & 479 of 2021

Rasaiya	... Appellant in SA(MD)No.14/2021
Jeyasingh	... Appellant in SA(MD)No.15/2021
Prakash	... Appellant in SA(MD)No.22/2021
Subaiah	... Appellant in SA(MD)No.29/2021
Joransan	... Appellant in SA(MD)No.31/2021
Marthandan	... Appellant in SA(MD)No.33/2021
Thangaraja	... Appellant in SA(MD)No.34/2021
Maragatham Ammal	... Appellant in SA(MD)No.42/2021
Thilagavathi	... Appellant in SA(MD)No.44/2021

Vs.

The Tisayanvilai Town Panchayat,
Through, it's Executive Officer,
Tisayanvilai,
Radhapuram Taluk,
Tirunelveli District.

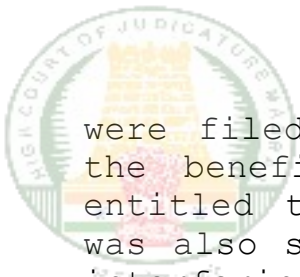
...Respondent in all SAs

COMMON PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against Judgment and Decree dated 13.02.2020 passed in A.S.Nos.116, 118, 117, 109, 113, 112, 115, 114 and 111 of 2014 respectively, on the file of the Sub Court, Valliyoor, reversing the judgment and Decree dated 27.08.2014 passed in O.S.Nos.123 of 2013, 43/2012, 42/2012, 41/2012, 45/2012, 44/2012, 122/2013, 40/2012 and 39/2012 respectively on the file of the Principal District Munsif Court, Valliyoor.

For Appellant	: Mr.V.Meenakshisundaram
For Respondent	: Mr.V.R.Shanmuganathan Special Government Pleader (In all Second Appeals)

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

All these appellants are the plaintiffs in O.S.Nos.123 of 2013, 43 of 2012, 42 of 2012, 41 of 2012, 45 of 2012, 44 of 2012, 122 of 2013, 40 of 2012 & 39 of 2012, on the file of the Principal District Munsif Court, Valliyoor. The appellants are the tenants of shops belonging to the respondent Town Panchayat. The suits



were filed for declaration that the plaintiffs were entitled to the benefits of G.O.Ms.92 dated 03.07.2007 and that they are entitled to continue as tenants till 2021. Permanent injunction was also sought for restraining the defendant/Town Panchayat from interfering with their enjoyment of the property.

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2. The suits were resisted by the Town Panchayat contending that the suits as framed are not maintainable. It was also claimed that all the plaintiffs owe huge amount towards arrears of rent. The Town Panchayat also took a plea that the plaintiffs are not entitled to the benefit of G.O.Ms.No.92 dated 03.07.2007 and this Court had repeatedly held that the above said Government order does not require the local authority to renew the lease at an enhanced rent. The Government Order is only advisory in nature and not mandatory. A further contention was raised by the respondent Town Panchayat to the effect that the suits in the absence of notices under Section 350 of Tamil Nadu District Municipalities Act are not maintainable.

3.At trial, no oral evidence was let in. However, Exs.A1 to A4 were marked, on the side of the plaintiffs in all suits. Exs.B1 to B6 were marked on the side of the defendants in O.S.Nos.123 of 2013 and 122 of 2013. In rest of the Suits, Exs.B1 to B5 were marked on the side of the defendants.

4.Upon consideration of the evidence on record, the trial Court decreed the Suits.

5.Aggrieved, the Municipality preferred appeals in A.S.Nos.116, 118, 117, 109, 113, 112, 115, 114, 111 of 2014. The lower Appellate Court concluded that the suits as framed are not maintainable. It also referred to the decisions of this Court, wherein, it was held that G.O.Ms.No.92 dated 03.07.2007 is only directory in nature and not mandatory and therefore, there cannot be decreed for declaration and permanent injunction, directing the Panchayat to renew the lease at an enhanced rent. On the above conclusion, the lower Appellate Court allowed the appeals and dismissed the suits. Hence, these Second Appeals.

6.I have heard Mr.V.Meenakshisundaram, learned counsel appearing for the appellants and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the sole respondent.

7.At the time of admission, the following question of law was framed in the Appeals.

"(i) Whether the lower Appellate Court was right in concluding that the Suit as framed is not

<https://hcservices.ecourts.gov.in/hcservices/> maintainable?"



8. Mr.V.Meenakshisundaram, learned counsel appearing for the appellants in all Second Appeals would vehemently contend that the declaratory Suit to the effect that the plaintiff would be entitled to the benefit of G.O.Ms.No.92 dated 03.07.2007 cannot be said to be barred, either under the provisions of the Tamil Nadu District Municipalities Act or under the provisions of the Tamil Nadu Panchayats Act.

9.Contending contra, Mr.V.R.Shanmuganathan, the learned Special Government Pleader would submit that though there is no bar in the Tamil Nadu Panchayat Act, since the respondent is a Town Panchayat, the provisions of the Tamil Nadu District Municipalities Act would apply and hence Suit, without presuit notice is barred under Section 350 of the said Act. Section 350 of the said Act reads as follows:-

350.Institution of suits against municipal authorities, officers and servants

- (1)No suit for damages or compensation shall be instituted against the municipal council, any municipal authority, officer or servant, or any person acting under the direction of the same, in respect of any act done in pursuance or execution or intended execution of this Act or any rule, by-law, regulation or order made under it or in respect of any alleged neglect or default in the execution of this Act, or any rule, by-law, regulation, or order made under it until the expiration of one month after a notice has been delivered or left at the municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought, and the name and the place of abode of the intending plaintiffs; and the plaint shall contain a statement that such notice has been so delivered or left.
- (2)Every such suit shall be commenced within six months after the date on which the cause of action arose or in case of a continuing injury or damage during such continuance or within six months after the ceasing thereof.
- (3)If any person to whom any notice is given under sub section (1) tenders amends to the plaintiff before the suit is instituted, and if the plaintiff does not recover in any such action more than the amount so tendered he shall not recover any costs incurred after such tender by the person to whom such notice has been given, and the defendant shall be entitled to costs as from the date of tender.



(4) Where the defendant in any such suit is [the chairman, the executive authority, or] a municipal officer or servant, payment of the sum, or any part of any sum, payable by him in, or in consequence of, the suit whether in respect of costs, charges, expenses, compensation for damages or otherwise may be made, with the sanction of the council, from the municipal fund.

10.A reading of the provision would show that suit for damages or compensation in respect of any act done in pursuance or execution or intended execution of the Act namely the Tamil Nadu District Municipalities Act, 1920, or any rule, by-law, or order under the Act are alone barred and other Suits cannot be said to be barred under Section 350 of the Act.

11.Suits, against which these appeals arise cannot be termed as suits for damages or compensation, pursuant to something done under the Act. G.O.Ms.No.92 is passed by the Government, giving certain benefits to certain tenants of local bodies. The lower Appellate Court was not right in coming to the conclusion that the suits are not maintainable. However, the second limb of the reason of the lower Appellate Court will have to be sustained. The lower Appellate Court had concluded that in view of the decisions of this Court in **P.Muthusamy Vs.State of Tamil Nadu, reported in 2014 5 MLJ 129**, there cannot be a permanent injunction, restraining the Town Panchayat or local authority to confer the benefits of G.O.Ms.No.92 to all its tenants. The same view has been affirmed in **C.Vinoba and 34 others Vs. The Commissioner, Palladam Municipality, Palladam reported in 2015 (3) CTC 170**.

12.In view of the said proposition of law, I do not think that the learned Appellate Judge could be faulted for dismissing the suits. The discretion to follow or not to follow the Government order is with the local authority. Therefore, the prayer for declaration also cannot be granted, as it has been held by this Court that G.O.Ms.No.92 cannot be held to be mandatory, it is only directory and it is for the local body to decide, whether to vest the benefits under the said Government order on its tenants or not.

13.In view of the same, while answering the questions of law in favour of the appellants, all the Second Appeals fail on the ground that decree for declaration and permanent injunction cannot be granted. Accordingly, all the Second Appeals are



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dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1.The Subordinate Judge, Valliyoor.

2.The Principal District Munsif, Valliyoor.

3.The Section Officer-2 copies

V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+9 CC to Mr.D.NALLATHAMBI, Advocate (SR-2672 to 2680[F] dated
01/02/2021)

Common Judgment made in

S.A. (MD) .Nos.14,15,22,29,31,33,34,42 & 44 of 2021

and

C.M.P (MD) Nos.121,124,259,390,394,397,400,460 & 479 of 2021

Dated 27.01.2021

KM (10.03.2021) 5P 14C