



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05.10.2021
DELIVERED ON	10.11.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(MD)No.59 of 2021

and

C.M.P. (MD)Nos.491 & 3296 of 2021

1.N.V.Athmaram
2.Vasanthi
3.Sabaressh
4.Balaji

... Petitioners/Petitioners/Respondents/
Tenant

Vs.

S.N.Venkatachalapathy Iyer and Sons
Private Trust,

represented by its present Trustee,

V.Jawhar

...Respondent/Respondent/Petitioner/
Landlord

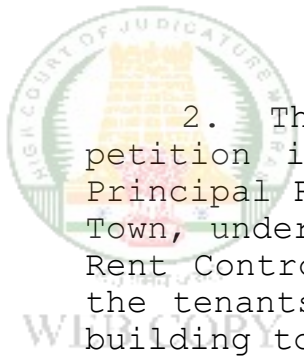
PRAYER: Petition filed under Section 25 of the Tamil Nadu Building (Lease & Rent) Control Act, 1960, to allow the Civil Revision Petition and set aside the fair order and decreetal order dated 13.10.2020 made in R.C.A.No.14 of 2019 on the file of Rent Controller Appellate Authority (Principal Sub-Court), Madurai, confirming the fair and decreetal order dated 30.11.2018 made in R.C.O.P.No.346 of 2014 on the file of the learned Principal Rent Controller (Principal District Munsif Court), Madurai Town.

For Petitioners : Mr.Ajmalkhan, Senior Counsel for
Ajmal Associates

For Respondent : Mr.R.Suriyanarayanan

O R D E R

The Civil Revision Petition has been filed to set aside the fair order and decreetal order, dated 13.10.2020 in R.C.A.No.14 of 2019 passed by the learned Rent Controller Appellate Authority (Principal Sub-Court), Madurai, confirming the fair and decreetal order, dated 30.11.2018 in R.C.O.P.No.346 of 2014, passed by the learned Principal Rent Controller (Principal District Munsif Court), Madurai Town.



2. The respondent herein/petitioner/landlord has filed a petition in R.C.O.P.No.346 of 2014, on the file of the learned Principal Rent Controller (Principal District Munsif Court), Madurai Town, under Section 10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for eviction and also seeking direction to the tenants to vacate and hand over the peaceful possession of the building to the landlord. The learned Rent controller authority has ordered for eviction and also issued direction to the tenants to vacate the petition mentioned property and surrender the possession of the same, within a period of two months. Against the eviction order, dated 30.11.2018, the tenants have preferred an appeal in R.C.A.No.14 of 2019 on the file of the Rent Control Appellate Authority (Principal Sub Court), Madurai, and the same was dismissed and confirmed the order, dated 30.11.2018 in R.C.O.P.No.346 of 2014 passed by the learned Principal Rent Controller (Principal District Munsif), Madurai Town. Aggrieved over the same, the tenants are before this Court.

3. This Civil Revision Petition has been filed on the ground that the Courts below ought to come to the conclusion that the eviction petition filed by the respondents is not maintainable in law. The Courts below ought to have seen that admittedly all the trustees are not made parties and therefore, the application for eviction at the instance of the trust is clearly not maintainable. The Courts below have failed to see that there is no original document filed by the alleged landlord to show that P.Jawahar is the present trustee and he has been authorised to continue the eviction proceedings. The learned Rent Control Appellate Authority without analyzing the order of the Rent Controller has simply affirmed the same.

4. Heard Mr. Ajmalkhan, for Ajmal Associates, learned senior counsel appearing for the petitioners/tenants and Mr. R. Suriyanarayanan, learned counsel appearing for the respondent/Trust. Perused the material documents available on record.

5. The learned counsel appearing for the revision petitioners herein/tenants have raised an objection regarding jurisdiction. Further, he contented that since the respondent herein/petitioner/landlord is a private trust, it ought to have issued notice under Section 106 of Transfer of Property Act. They have no right to file an eviction petition under the Rent Control Act.

6. The Rent Control Original Petition has been filed by S.N. Venkatachalapathy Iyer and Sons, Private Trust through its present Trustee.

7. The Judgment reported in **(1984) 1 MLJ 106**, in the case of **Sri**

<https://hcservices.ecourts.gov.in/hcservices/>



La Sri Siva Shanmugha Arumugha Vs. S. Subramanian and Another,
wherein this Court has held as follows:

.....

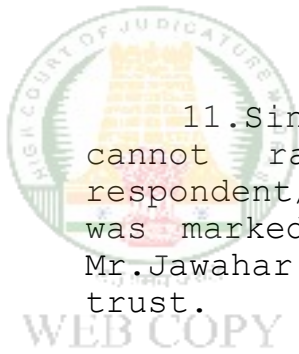
"8. An appeal was preferred by the defendants and on the point "Whether the suit is not maintainable and if so whether the remedy of the plaintiff is to seek the provisions of the Tamil Nadu Buildings (Leave and Rent Control) Act?", the lower Appellate Court came to the conclusion that the law as it stood on the date when the judgment was rendered will have to be administered by the Court, that on the date when the matter came up for enquiry and decision of the Court, the Government order had been introduced, taking away the private trust from the sphere of exemption and on the date when the judgment was rendered by plaintiff, being a private trust, was one which came under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, the lower Appellate Court held that the Trial Court ought to have applied only the law as it then stood, namely, when the matter was taken up for trial and when the judgment was rendered and since on the date of the trial and judgment, the exemption had been taken away in respect of private trusts the suit is not maintainable. It was further held by the lower Appellate Court that the remedy of the plaintiff is only under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and that in view of the decision in *Ethirajammai V. Hassan Khanoo alias N.M. Hassan*, the suit is not maintainable and the remedy of the plaintiff is only under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and accordingly the appeal was allowed by the lower Appellate Court and the judgment and decree of the Trial Court were set aside."

So, the R.C.O.P. No. 346 of 2014 is applicable to private trust.

8. Further, the respondent trust has not raised any objection regarding jurisdiction before the Rent Control Court.

9. The next objection is all the parties are not parties to the proceedings. There is a dispute regarding the administration of trust among the Trustees. The tenants have filed 11(4) petition and deposit the rent in Court without arrears.

10. The revision petitioners/tenants have admitted the property belonged to the trust and they have also paid rent to them. They have filed 11(4) petition only after filing of RCOP for eviction which cannot cure the defects of wilful default.



11. Since the tenants have admitted the ownership of trust they cannot raise an objection regarding the trusteeship. The respondent/landlord have filed a Minutes of the trust and the same was marked as Ex.P.5, which gives power to one of the trustee Mr. Jawahar and Mr. Jawahar, has filed this petition on behalf of the trust.

12. The learned counsel appearing for the revision petitioners has relied upon the Judgment reported in **2017(1) CTC 56** in the case of **V. Chandrasekaran Vs. Venkatanaicker Trust Rep. By its Manager, Thiru. E. V. K. S. Elangovan & Ors**, wherein the Hon'ble Supreme Court held as follows:

.....
"11. We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court."

22. The other decisions relied on by the learned counsel for the respondents reported in AIR 2013 Gujarat 58 (Vasant Nature Cure Hospital and Pratibha Maternity Hospital Trust and Others Vs. Ukaji Kamaji and Others) also could be seen not applicable to the facts and circumstances of the case on hand. In this case, unlike the decision relied on, the trust has laid the suit, rep. By its Manager. No material placed to show that the Manager has been authorised to lay the suit. Further, in this case covered in the above decision, all the trustees were subsequently joined as plaintiffs. However, in our case, the suit has not been laid by the trust, rep. By its trustee/trustees".

Here Ex.P.5 resolution was passed in favour of the respondent/trust. So, the tenants cannot question right to sue, that too they ought not raised the plea in revision without contesting the fact in Rent Control Tribunal.

13. In all the aspects, the respondent/landlord has proved the
<https://hcservices.courts.gov.in/hcservices/> So, both the Courts below have rightly allowed the



claim of the land lord/trust.

14.Finally, this Civil Revision Petition stands dismissed by confirming the fair and decreetal order, dated 13.10.2020 in R.C.A. No.14 of 2019 passed by the learned Rent Controller Appellate Authority (Principal Sub-Court), Madurai, confirming the fair and decreetal order, dated 30.11.2018 in R.C.O.P.No.346 of 2014, passed by the learned Principal Rent Controller (Principal District Munsif Court), Madurai Town. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Rent Controller Appellate Authority/
Principal Sub-Court, Madurai.
2. The Principal Rent Controller/
Principal District Munsif Court,
Madurai Town.
3. The Section Officer, V.R.Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-34165[F] dated 11/11/2021)

C.R.P (MD) No.59 of 2021
10.11.2021

VR (CO)

KB (25.11.2021) 5P 6C