



C.R.P.Nos.1510 & 1478 of 2020
and C.M.P.Nos.8608 & 8889 of 2020

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DATED : 18.10.2022

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.Nos.1510 & 1478 of 2020

and

C.M.P.Nos.8608 & 8889 of 2020

V.T.A.Noor Mohammed ... Petitioner in both CRPs

Vs.

1.M.Sameem Sitara @ Sameem Hussain

2.S.A.Mohammed Rias ... Respondents in C.R.P.No.1510 of 2020

Sameem Hussain ... Respondent in C.R.P.No.1478 of 2020

Common Prayer: Civil Revision Petitions filed under Section 25 of the Tamilnadu Building Lease and Rent Control Act, 1960 against the fair and decreetal orders dated 16.03.2020 passed in R.C.A.Nos.8 & 9 of 2017 on the file of the Rent Control Appellate Authority and Sub Judge, Tiruvarur, upholding the fair and decreetal orders dated 10.08.2017 in R.C.O.P.Nos.18/2015 & 2/2014 on the file of the Rent Controller and District Munsif, Tiruvarur.

In both C.R.Ps :

For Petitioner : Mr.B.Ramamoorthy

For Respondents : Mr.M.Thamizhavel



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COMMON ORDER

These petitions have been filed against the fair and decreetal orders dated 16.03.2020 passed in R.C.A.Nos.8 & 9 of 2017 on the file of the Rent Control Appellate Authority and Sub Judge, Tiruvarur, upholding the fair and decretal orders dated 10.08.2017 in R.C.O.P.Nos.18/2015 & 2/2014, respectively. on the file of the Rent Controller and District Munsif, Tiruvarur.

2.The present petitioner is the tenant in the premises owned by the respondent. The building is a shop bearing No.99 on the old market road in Vijayapuram Ellaiaimman South Street, Tiruvarur. The monthly rent was Rs.1,100/- for which receipts also were issued. The respondent / landlord was constrained to approach the Court in RCOP.No.18 of 2015 on three counts.

- 1) The irregular payment of rents which was nothing less than wilful default in payment of rent.
- 2) The petitioner/tenant made many structural alterations to the shop



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3) The respondent herself wanted the shop for her own use.

The Rent Controller/District Munsif, Tiruvarur, decreed the RCOP.No.18 of 2015 ordering for the eviction of the petitioner/tenant. This was confirmed in RCA.No.8 of 2017. In the earlier RCOP.No.2 of 2014, the Rent Controller had allowed the petitions by allowing the tenant to remit the arrears of rent till April 2014 at the rate of Rs.1,100/- per mensum in the Court till the eviction of the premises. This was confirmed in the appeal by the tenant in RCA.No.9 of 2017. Since all these verdicts were against the tenant, the present revision petition.

3. There are two different set of cases. RCOP.No.2 of 2014 was initially filed by the revision petitioner (tenant) praying for deposit of rental arrears since the respondent/landlord had refused to accept the rent at one stage. According to the tenant who was the petitioner in RCOP.No.2 of 2014, the rent payable was only Rs.550/- as the rental



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receipts were showing Rs.550/- as rent and Rs.550/- as amenities and not Rs.1,100/- as rent while the contention of the landlord was that the rent was Rs.1,100/-. The learned Rent Controller decreed the same in favour of the landlord and declared that the actual rent was Rs.1,100/-. Though the petition was allowed the rent was fixed as Rs.1,100/- only. In the RCA.No.9 of 2017 filed by the tenant the order of the learned Rent Controller in RCOP.No.2 of 2014 was upheld. According to the tenant the refusal of acceptance of rent was only to establish that there is wilful default in rent payment to enable eviction of the tenant. However, the landlord had contended that the rent was remitted through money order to a wrong address which was returned as unclaimed. It was also contended by the landlord that the tenant had effected structural changes to the shop and with neighbouring shops bearing Nos.97 and 98 also belonging to the landlord such structural changes were detrimental to the building as such. It was also pointed out that in O.S.No.133 of 2014 filed by the landlord an Advocate Commissioner was appointed by the District Munsif, Tiruvarur, who in his report had confirmed the structural changes made by the tenant to the shop.



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4.The petition in RCOP.No.2 of 2014 was allowed permitting the tenant to remit the rental arrears from April 2014 at the rate of Rs.1100/- in the Court till the eviction proceedings get concluded in RCOP.No.18 of 2015. The tenant filed RCA.No.9 of 2017 against the orders dated 10.08.2017 of the Rent Controller in RCOP.No.2 of 2014 in which he disputed that the actual rent was only Rs.550/- and not Rs.1100/- as the receipts contained the rent particulars as Rs.550/- for rent and Rs.550/- for amenities which was not as per the oral rental agreement agreed upon by both the parties. The tenant in his appeal had also contended that the shop was rented to his ancestors by the ancestors of the landlord and he himself was the fifth generation tenant and therefore, the orders of the rent controller in RCOP.No.2 of 2014 allowing him to remit the rental arrears at the rate of Rs.1100/- in the Court was erroneous.

5.After analysing the oral documentary evidence adduced on both sides the Rent Control Appellate Authority upheld the orders of the Rents Controller in RCOP.No.2 of 2014 as against which the present



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CRP.No.1478 of 2020 has been filed by the tenant.

6.Simultaneously, there was also another petition filed by the landlord and one Mohammed Riaz in RCOP.No.18 of 2015 under Section 10 (2) (i), 10 (2) (b) (iii), 10 (3) (c) and Section 12 of the Tamilnadu Building Lease and Rent Control Act against the tenant seeking for his eviction from the demised premises. The tenant had resisted this RCOP by contending that he never defaulted in the payment of rent and also the contention of the landlord that the rent was sent by money order to a wrong address is totally false. According to the tenant this shop was rented out to him as a fifth generation tenant and first of his ancestor who was tenant had taken this shop on rent in 1937. It was also pointed out by him that the second petitioner Mohammed Riaz was in no way connected with this agreement between him and the first petitioner. It was also his contention that there was no damage to the building by way of any alleged structural alterations as claimed by the landlord and this reason was invented only to evict him from the premises. The tenant also objected to the contention of the landlord that



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she required the shop for her own use and occupation though she was owning many other shops in the same locality. The learned Rent Controller after full contest allowed the petition. On the following grounds :

- 1) Acts of waste.
- 2) Demolition and reconstruction due to the dilapidated condition of the building.
- 3) The premises being put to different use other than the one agreed upon.

7.The rent controller ordered for eviction within two months and also ordered for payment of arrears of rents at Rs.1100/- per mensem for four months.

8.The tenant went on an appeal in RCA.No.8 of 2017 in which the orders of the Rent Controller was upheld vide orders dated 16.03.2020. Aggrieved over the same, CRP.No.1510 of 2020 is filed by the tenant.



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9.Heard Mr.B.Ramamoorthy, learned counsel appearing for the revision petitioner and Mr.M.Thamizhavel, learned counsel appearing for the respondents.

10.The learned counsel appearing for the revision petitioner/tenant contended that out of the different grounds the wilful default in payment of rent, acts of waste, requirement for own use and occupation and the absolute need for demolition and reconstruction both the lower Courts had held that only the acts of waste, demolition and reconstruction due to dilapidated condition of the building and the premises put to different use other than agreed for were substantiated through oral and documentary evidence and all the other grounds were negated by both the Courts. In fact, even while holding that the acts of waste as clearly proved, both the Courts had to rely upon the Advocate Commissioner's report who was appointed in O.S.No.133 of 2014. According to the learned counsel, even as per, the said report there was only laying of new tiles on the floor which was undertaken to renovate the interiors and enhance the appearance of the shop. It was also



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contended that the thatches of the roof were replaced with new one which could in no way affect the structural strength of the building and therefore, both the Courts erred in their conclusion. Furthermore, it was contended that since it was an oral agreement which was in existence since 1937, the allegation of putting the premises to different use other than what was agreed upon does not hold any conviction. As regards the age and condition of the building the arguments of the learned counsel for the revision petitioner/tenant was that demolition and reconstruction of shop 99 alone is never feasible when shops 97 & 98 shared a common roof and no action to evict the other two shops was initiated by the landlords thereby exposing the real intentions behind this litigation. It was further contended that at no point of time default of rent happened and also agreed upon by both the Courts below and therefore, the eviction order was contrary to law .

11.Per contra, the learned counsel appearing for the respondent/landlord made it clear that the Courts below had rightly concluded regarding the acts of waste and the absolute need for



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demolition and reconstruction. His further arguments was that though the eviction was prayed for on different counts it was not necessary that all the grounds need to be established and accepted for eviction. Therefore, according to the learned counsel for the respondent it was a clear case of genuine prayer for eviction keeping in mind the age of the building and serious threat posed to the building by the major structural changes effected by the tenant.

12.On going through all the related oral and documentary evidence it is true that there was no wilful default in payment of rent by the tenant. In fact the quantum of rent itself was the subject matter in RCOP.No.2 of 2014 because it was contended by the tenant then that Rs.550/- was the rent component and that if that amount is considered there was no default in payment of rents. However, the rent receipts were for Rs.1100/- and the landlord then took a plea that the tenant had deliberately sent the rent to the wrong address in order to establish refusal to receive the rent. Nevertheless, this issue was settled in RCOP.No.2 of 2014 and upheld in RCA No.9 of 2017. The quantum of



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rent was again reiterated in RCOP No.18 of 2015 and in RCA.No.8 of

2017. The eviction ordered by both the Courts below had in fact held that there was no wilful default in payment of rent. It is also clear that the rental agreement was only oral and was in vogue since 1937 and therefore, change of use of the premises also do not carry any conviction. As regards the acts of waste, while both the Courts held that the acts of waste was adequately substantiated by the findings of the Advocate Commissioner in O.S.No.133 of 2014 on the file of the District Munsif Court, Tiruvarur, the tenant had a different version to narrate in which he has strongly contended that laying of tiles on the floor and replacing of thatches on the roof could not have affected the structural stability of the entire building. In this regard, it is essential for us to know the age of the building and also the location of shop in the midst of a row of shops. It has been admitted by the tenant himself that shops 97 & 98 are the adjoining ones sharing a common roof. It has also been admitted by him that his great grandfather was a tenant in the same shop since 1935. Therefore, it can be easily inferred that the building is quite old taking into consideration the average age of any building. It is also a well settled



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fact that even in heritage buildings of importance structural alterations are not carried out and strictly prohibited in order to keep the building intact and preserve its unique identity. Both the Courts below were right in accepting the Advocate Commissioner's report filed in O.S.No.113 of 2014.

13.The tenant's contention that there was no action initiated for the demolition and reconstruction of the other two shops bearing No.97 & 98 cannot be the sole reason for dismissing the eviction petition. Therefore, I do not see any reason to interfere with the orders passed by the Courts below.

14.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

- 1.The Sub Judge, Tiruvarur.
- 2.The Rent Controller and District Munsif, Tiruvarur.
- 3.The Section Officer, VR Section, High Court, Madras.

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