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C.R.P.(N.P.D).No.1996 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2021

PRONOUNCED ON : 25.01.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D)No.1996 of 2021 and
C.M.P.No.15184 of 2021

Ramesh Salunkhe

...Petitioner

Vs.

Pramila Jain

...Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.09.2021 in R.L.T.A.No.5 of 2021 on the file of the II Additional Judge, City Civil Court, Chennai, confirming the order dated 10.03.2021 passed by the XII Small Causes Court, Chennai in R.L.T.O.P.No.3 of 2019 and allow the revision.

For Petitioner : Mr.G.Rajagopalan Senior Advocate for
M/s.S.T.Raja

For Respondent : Mr.OmPrakash Senior Advocate for
M/s.K.Bakthavachalu



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ORDER

This Civil Revision Petition is filed challenging the order passed by the learned II Additional Judge, City Civil Court, Chennai in R.L.T.A.No.5 of 2021 confirming the order of the learned XII Judge, Small Causes Court, Chennai in R.L.T.O.P.No.3 of 2019.

2. The respondent as a petitioner filed an application under Section 21 (2) (a) and Section 21 (2) (g) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 for the relief of evicting the petitioner from the schedule property and claiming a compensation of Rs.3000/- per month from 01.06.2019 till the termination of the tenancy under Section 23 of the said Act.

3. The averments made in the application, in brief, are as follows:

The respondent/applicant purchased the petition premises along with the entire building in auction sale conducted by Purasaiwakkam Benefit Fund Limited in 2002 and became absolute



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owner of the land and building at premises bearing door No.134, N.S.C.Bose Road, Chennai. Applicant wrote a letter to the respondent to attorn the tenancy in her favour. Respondent attorned the tenancy and was paying the monthly rent of Rs.1500/- regularly. The erstwhile landlord filed C.S.No.160 of 2005 before this Court to declare auction sale as null and void. Respondent and other tenants were parties to the suit. Respondent has not raised any claim regarding the advance amount said to have been paid to erstwhile landlord Babu Narashimma Rao. This Court in application No.1070 of 2005 directed all the tenants including the respondent to pay the monthly rent and arrears to the applicant. C.S.No.160 of 2005 was dismissed and O.S.A.No.217 of 2018 filed by Babu Narashimma Rao is pending. Respondent has been regularly paying rent from 2002 onwards. There exist relationship of landlord and tenant between respondent/applicant and petitioner/respondent. Applicant is carrying on business as a dealer in diamond, gold, silver, precious stones and artificial works. She wants to renovate the entire building by giving facelift consistent with the business requirements to attract customers. She wants to construct a strong room, modern lift



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facilities in the premises. She is carrying on business in several places in city and wants to shift the entire business to one place. The purpose of purchasing the property is locating entire business in this premises. Applicant genuinely requires the premises for her own use. There is no rental agreement entered into between the respondent/applicant and petitioner/respondent. Petitioner/respondent has not paid any rental advance or security to the applicant. Applicant has written a letter to the respondent enclosing a rental agreement for perusal and that was received by the respondent. Respondent has written a letter dated 27.04.2019 stating he paid Rs.3,75,000/- as rental advance to the erstwhile landlord Babu Narashimmia Rao. Applicant replied to the letter on 30.04.2019 denying the contents. Respondent again wrote a letter dated 03.05.2019, but he has not come forward to enter into a written agreement with the applicant, which is mandatory under Section 4 (2) of the Act 2017 and therefore, he is liable to be evicted. Applicant issued a legal notice dated 08.05.2019 stating that the premises occupied by the respondent is required for her business purpose and terminated the respondent's tenancy ending with 31.05.2019. Respondent was called



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upon to quit and deliver the vacant possession of the portion of the building on or before 01.06.2019. Respondent replied the legal notice with false, frivolous, vexatious, unacceptable and untenable contentions. A suitable rejoinder was sent. Respondent issued a sur-rejoinder. Respondent failed and neglected to vacate the premises. Therefore, this application.

4. Petitioner/respondent filed counter denying the averments made in the application and contended that he was inducted as a tenant by Babu Narashimmia Rao for a rent of Rs.1000/- per month. He paid a sum of Rs.3,75,000/- as advance. Respondent purchased the premises under occupation through auction during 2002. This auction was challenged by Babu Narashimmia Rao by filing C.S.No.160 of 2005 and it was dismissed. Appeal in O.S.A.No.217 of 2018 was filed before this Court. When the appeal proceedings is pending between owners of the property, present eviction proceedings is against law. Applicant has accepted the respondent as tenant and received a monthly rent of Rs.1500/- per month from 2007 till date. Despite, the litigation with



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original landlord, respondents is paying the monthly rent at Rs.1500/- per month from 2007 without any default. Applicant issued a letter dated 15.04.2019 enclosing a rental agreement by enhancing the rent from Rs.1500/- per month to Rs.15,000/- per month and demanded three months rental advance of Rs.45,000/-. Advance of Rs.3,75,000/- paid to the previous owner was suppressed. Respondent sent a reply to pay the agreed rent of Rs.1500/- instead of Rs.15,000/-. There had been exchange of notices between the parties. Without considering the hardship of the respondent, this application is filed. Unless conditions under Section 9 (2) of the Act is satisfied, applicant cannot maintain the petition. The application is not maintainable either in law or facts and therefore liable to be dismissed.

5. During the enquiry before the learned Rent Court, PW1 and RW1 were examined. Exhibits P1 to P26 were marked on the side of the petitioner. Exhibits R1 and R2 were marked on the side of the respondent.



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6. On considering the oral and documentary evidence, the Rent Court allowed the petition under Section 21 (2) (a) of the Act and directed the petitioner/respondent to vacate the building. This was confirmed by the Rent Tribunal. Against the said order this Civil Revision Petition is preferred is preferred. Though the application was filed under Section 21 (2) (a) and 21 (2) (g) of the TNRRRLT Act, the respondent/applicant not pressed the petition filed under Section 21 (2) (g). Therefore, both the Courts have considered the only ground under Section 21 (2) (a) for disposal.

7. The learned counsel for the petitioner/tenant submitted that the respondent purchased the petition mentioned premises under occupation through Auction under condition “as it whereas basis” during the year 2002. This auction was challenged by the erstwhile original owner Babu Narashima Rao by filing C.S.No.160 of 2005 and the same was dismissed. Aggrieved, an appeal is preferred in O.S.A.No.217 of 2018 and it is pending. The conduct of the respondent/landlord in claiming the enhanced rent of Rs.15,000/- per



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month is arbitrary, unreasonable and is against Section 4 (2) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (herein after referred as TNRRRLT Act, 2017). Petitioner has challenged the constitutional validity of Sub-Section 2 of Section 21 of the TNRRRLT Act, 2017 in W.P.No.2648 of 2021, which is pending before this Court. This fact was also brought to the notice of the learned Appellate Authority. Without considering the same, orders had been passed in haste. Section 4(2) of the TNRRRLT Act, 2017 provides time limit of 575 days to enter into the rental agreement. This case has been filed before the expiry of 575 days and therefore, it is not maintainable.

8. One more submission advanced by the learned counsel for the petitioner is that Section 4 of TNRRRLT Act, 2017 deals with the Tenancy Agreement.

Section 4 (1) of the TNRRRLT Act, 2017 deals with a new tenancy and tenancy agreement to be entered into between the landlord and tenant after commencement of this Act.



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Section 4 (2) of the said Act deals with entering into the tenancy agreement in respect of a tenancy, which had come into existence before the commencement of the Act, and when there is no agreement in writing. This provision requires the landlord and tenant to enter into an agreement in writing with regard to that existing tenancy within a period of 575 days from the date of commencement of this Act.

Section 4(3) deals with the registration of the agreement entered under Section 4 (1) and 4 (2) of the said Act and also the written agreement entered into between the landlord and tenant before the commencement of this Act.

9. Among these three categories, this case fits into the second category i.e., there is already an existing tenancy but there is no written agreement. In the case on hand, the landlord and tenant are required to enter into the tenancy agreement in respect of the existing tenancy. No new terms can be included in the existing tenancy agreement. What is required under Section 4 (2) of the Act is that the terms of the existing oral tenancy have to be reduced into writing as a



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tenancy agreement. However, in the case before hand, the respondent instead of entering into the tenancy agreement with existing terms, by incorporating new terms, had required the petitioner to enter into a new tenancy agreement by asking him to pay a sum of Rs.15,000/- per month, which is contrary to the rent paid at Rs.1500/- per month previously. The advance paid by the petitioner to the tune of Rs.3,75,000/- was also not considered and that was a reason why the petitioner has not come forward to execute the tenancy agreement sent by the respondent. However, both the Courts below on misreading of the provisions and on wrong understanding of the facts, have come to the conclusion that the petitioner had not come forward to enter into the tenancy agreement with the respondent and therefore the respondent is liable to be evicted under Section 21 (2) (1) of the said Act. Therefore, the learned counsel for the petitioner prays for setting aside the orders of the Courts below.

10. In response, the learned counsel for the respondent/landlord submitted that TNRRRLT Act, 2017 has replaced Tamil Nadu Buildings (Lease and Rent Control) Act by repeal. After this



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Act came into force, no person was allowed to take any premises on rent except by written agreement. In the case before hand, the respondent sent a notice to the petitioner requiring him to enter into a tenancy agreement. However, the petitioner refused to enter into the tenancy agreement by giving flimsy and unreasonable reasons. The alleged rent of Rs.1,500/- was fixed decades ago. The respondent cannot be expected to continue with the old minimum rent after purchasing the property and hence the respondent requested the petitioner to enter into the new tenancy agreement as per Law. When the petitioner failed to do so, he has to face the consequences. He has not produced any material to show the payment of advance of Rs.3,75,000/- paid to the former owner. Taking all these facts into consideration, both the Courts below have correctly decided the matter and directed the petitioner to vacate and handover the vacant possession to the respondent. Therefore, he prayed for sustaining the order of the Courts below and for dismissal of this Civil Revision Petition.



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11. I have considered the rival submissions and perused the materials available on record.

12. Section 4 of TNRRRLT Act, 2017 deals with the tenancy agreement. It reads as follows:

“4. Tenancy Agreement.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing.

(2) Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a period of five hundred and seventy five days from the date of commencement of this Act:

Provided that where the landlord or tenant, fails to enter into an agreement under this sub-section, the landlord or tenant shall have the right to apply for termination of the tenancy under clause (a) of sub-section (2) of section 21.

(3) Every agreement referred to in sub-section (1)



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and sub-section (2) and any tenancy agreement in writing already entered into before the commencement of this Act, shall be registered with the Rent Authority by the landlord or tenant, by making an application in the Form specified in the First Schedule within such time as may be prescribed.

(4) Omitted.

(5) Omitted.

(6) Omitted.

13. From the reading of the above Section, we can understand that there are three situations possible when entering into a tenancy agreement. The first situation is that entering into a tenancy after the commencement of the new Act. The tenancy itself is created after commencement of the Act and therefore the tenancy agreement will also have to be executed after commencement of the Act. This is dealt under section 4 (1) of the Act.

14. Next situation is that there is an existing tenancy. There is no written agreement between the landlord and tenant. Possibly,



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the tenancy agreement was an oral agreement. The landlord and tenant might have orally agreed on certain amount of advance, certain amount of rent, certain modes of payment of rent etc., Section 4 (2) of the TNRRRLT Act, 2017 requires that the existing oral tenancy agreement has to be reduced into writing and a tenancy agreement has to be executed between the landlord and tenant with regard to the terms of the existing tenancy. The period fixed for executing this tenancy agreement is 575 days from the commencement of this Act. The proviso to this Section gives an option to landlord or tenant to apply for termination of tenancy if the landlord or tenant fails to enter into an agreement.

15. The third situation is that there is already a tenancy prior to the commencement of this Act. The tenancy is evidenced by a written agreement. In all these three situations, the tenancy agreement has to be registered with the authority. For the purpose of disposal of this petition, we are concerned only with Sub Sections 1,2 and 3 of Section 4 of the TNRRRLT Act, 2017, especially Sub Section 2 of section 4 of the TNRRRLT Act, 2017.



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16. In the case before hand, there is no dispute with regard to the fact that the petitioner is a tenant in respect of the petition premises even before the purchase of the property by the respondent in auction. It is claimed by the petitioner that the petitioner purchased the property under the condition “as it whereas basis”. Therefore it is claimed by the petitioner that whatever the tenancy agreement he had with his previous owner, has to be continued with the subsequent owner, namely the respondent. It is further submitted that the respondent cannot impose any new terms of tenancy than what was agreed under the previous tenancy.

17. As explained above, Section 4 (2) of the TNRRRLT Act makes it clear that in case of tenancy created before the commencement of this Act, where there is no written tenancy agreement, a tenancy agreement has to be entered into between the landlord and tenant with regard to "**that tenancy**", i.e., the existing tenancy.



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18. In this legal background, we have to assess the evidence available in this case. Ex.P1 is the copy of the letter dated 15.04.2019 sent by the respondent/landlord to the petitioner/tenant. This letter reads that the respondent / landlord enclosed a rental agreement as per the new Act viz., TNRRRLT Act, 2017 for perusal of the tenant and requested him to do the needful. This rental agreement incorporated several terms inclusive of fixing monthly rent at Rs.15,000/- per month and security deposit of three months at Rs.45,000/-. The period of tenancy was fixed from 01.05.2019, 31.05.2019 etc., After receiving the said letter, the tenant sent Ex.P2 reply stating that he was inducted as tenant by the former owner Babu Narashima Rao during the year 1998 for a rent of Rs.1000/- per month and he paid a sum of Rs.3,75,000/- as advance. Then he claimed that after the property was purchased by the respondent, he was paying Rs.1,500/- per month as rent to the respondent without any default. Thus he requested to maintain the monthly rent of Rs.1,500/- in the rental agreement. It was replied



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through Ex.P3 letter by the respondent/landlord that she is not concerned or connected with the advance amount of Rs.3,75,000/- allegedly paid by the petitioner /tenant to the former owner Babu Narasimma Rao. It is further stated that she has not received any advance. She admitted that the petitioner was paying monthly rent at Rs.1,500/-. Since the petitioner is governed by the new Act, the terms and conditions have to be incorporated in the agreement as per the new Act. Therefore, she cannot accept the old rent and new rent claimed at Rs.15,000/- is very reasonable. Then on 03.05.2019, the petitioner sent Exhibit P4 rejoinder to the respondent reiterating the payment of Rs.3,75,000/- as advance and rent at Rs.1,500/- per month. It was followed by Ex.P.5, legal notice dated 08.05.2019, claiming that the petitioner was paying Rs.1,500/- as monthly rent and respondent requires the building for her business purpose and with an information that the tenancy is terminated w.e.f., 31.05.2019. The respondent sent Ex.P6 reply notice reiterating the advance of Rs.3,75,000/- paid and the payment of Rs.1,500/- as rent and that the respondent cannot enhance the rent. It was replied through Ex.P7 with a request to vacate and deliver possession.



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19. From these letters and notices, it is clear that the petitioner was paying Rs.1,500/- as monthly rent to the landlord after purchase of the premises. In fact, it is admitted in the application that respondent was paying a monthly rent of Rs.1500/-. Of course, there is a dispute with regard to the advance amount of Rs.3,75,000/- said to have been paid to the former owner. Respondent states that she is not concerned with or connected with the said amount. It is clear from the evidence of P.W.1 that the monthly rent prior to the commencement of this Act was paid at Rs.1,500/-. PW1 in his evidence, had deposed that “a sum of Rs.1,500/- was received as monthly rent till April 2019”. He also admitted that the petitioner has sent a reply expressing his willingness to execute the tenancy agreement for a monthly rent of Rs.1,500/-. The question now looms large is whether the respondent/landlord can impose and direct the petitioner to pay a sum of Rs.15,000/- per month as rent when he was actually paying a rent of Rs.1,500/- per month.



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20. The answer to the question is clearly indicated in section 4 (2) of the TNRRRLT Act, 2017. Section 4 (2) of the TNRRRLT Act, 2017 requires the landlord and tenant to enter into an agreement in writing i.e., tenancy agreement with regard to that tenancy. "***That tenancy***" means the tenancy created before the commencement of the Act. Therefore, the respondent cannot unilaterally fix the monthly rent Rs.15,000/- to the petitioner as the tenancy agreement should only refer the terms that were existing prior to the commencement of this Act. In the case before hand, the rent was paid at Rs.1500/-per month before the commencement of TNRRRLT Act, and therefore, the unilateral demand made by the respondent to execute a tenancy agreement on a monthly rent of Rs.15,000/- per month is contrary to the legal requirement under Section 4(2) of the TNRRRLT Act, 2017. However, both the Courts below on misreading of the provisions, had found that the landlord is entitled to fix the rent unilaterally and the tenant has no option except to enter into a tenancy agreement, even it is unreasonable claim. That is not



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proper and not on the basis of correct reading of the legal provisions and the scope of the act. *"The new Law aims to regulate the rent as per the terms and conditions of the agreement to be entered into between the owner of the premises and the tenant. It also aims to balance the rights and responsibilities of the landlord and the tenant and provide regulation of the rent as per the agreement."*

21. The next aspect is that the tenancy agreement stipulated under Section 4 (2) of the TNRRRLT Act, 2017 can be executed within a period of 575 days from the date of commencement of the Act. This Act came into force and commenced from 22.02.2019. In that case, the petitioner still has time to enter into the tenancy agreement with the respondent. But the petition was filed within a period of 575 days on 01.07.2019 and it is a premature petition. Both the Courts below have misconstrued this 575 days and the learned Rent Controller found that this period relates only to the period for entering a tenancy agreement and not for approaching the Rent Court for termination, once there is a failure to enter into the agreement.



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22. In the case on hand, the petitioner has not refused to enter into the tenancy agreement with the respondent. He is prepared to enter into the tenancy agreement with the respondent as per the existing terms. That is what is required under Section 4 (2) of the TNRRRLT Act, 2017. Without entering into the meaningful discussion with the petitioner, the respondent rushed to the Court, when there is no express refusal on the part of the petitioner to enter into a tenancy agreement, of course with the existing terms. In fact, it is the respondent, who shut the door once for all by categorically saying in her letter in Exhibit P3 that she does not want any communication or exchange of letters from the petitioner regarding the rental agreement.

23. No doubt that, there is a lacuna in TNRRRLT Act to meet the situation, where there is no agreement between the landlord and tenant with regard to the quantum of rent, advance amount and other aspects in an existing tenancy and where there is no written agreement.



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However, it cannot be used as a tool for evicting a tenant by making fanciful and unreasonable claim of rent or by denying the agreed rent.

24. One more aspect canvassed by the learned counsel for the respondent/landlord is that as per Section 38 (5) of the TNRRRLT Act, 2017, there is no provision for revision or appeal available under the said Act. He further submitted that the scope of judicial interference under Article 227 of the Constitution of India, is limited and this Court cannot act as a Court of appeal and should not interfere with the decision of the inferior Courts, unless there is manifest miscarriage of justice. He relied on the following judgments in support of this proposition. Delhi High Court in **CM.(M) No.1041 of 2011, CM.Nos.16799 of 2011 and 16800 of 2011 (Jasbir Singh Vs. Manjit Kaur and Others)**, observed that,

26. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should



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interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered resulting into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

It is observed in the judgment reported in (1975) 1 Supreme Court Cases 858 (Bathutmal Raichand Oswal Vs. Laxmibai R.Tarta and another), that,



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8. Here, when we turn to the judgment of the High Court, we find that the High Court has clearly misconceived the scope and extent of its power under Article 227 and overstepped the limits of its jurisdiction under that Article. It has proceeded to reappreciate the evidence for the purpose of correcting errors of fact supposed to have been committed by the District Court. That was clearly impermissible to the High Court in the exercise of its jurisdiction under Article 227.

25. However, the learned counsel for the petitioner submitted that the High Court in its power of superintendence over the Subordinate Courts under its territory can always interfere with the proceedings of the Courts below, if the proceedings result in miscarriage of justice by improper application of law.

He relied on the judgment reported in **1983 AIR SC 473 (Mithu Vs. State of Punjab)** for the proposition that if a provision of law is unconstitutional, that must be struck down. It is observed in this



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judgment that,
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A savage sentence is anathema to the civilized jurisprudence of Article 21. The sentence of death, prescribed by Section 303 of the Penal Code for the offence of murder committed by a person who is under a sentence of life imprisonment, is arbitrary and oppressive so as to be violative of Articles 21 and 14. Accordingly, Section 303 is declared unconstitutional and void and is struck down. All cases of murder will now fall under Section 302 and there shall be no mandatory sentence of death for the offence of murder.

26. The reading of the judgments cited by the learned counsel for the respondent shows that High Court cannot unnecessarily interfere with the decision of the Tribunal or inferior Court and judicial interference should be limited. The interference should be limited only to keep the authorities or Courts within their bounds and in cases where it



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results into manifest, mis-courage of justice.

27. In the case before hand, both the Courts below have wrongly interpreted Section 4(2) Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 and came to the conclusion that even in case of existing tenancy, the landlord can unilaterally fix a fancy rent and the tenant has no choice except to accept the terms of the landlord. This is against the fundamental principle of law especially Section 4(2) of TNRRRLT Act. The respondent/landlord clearly admitted in the application, exchange of notices and during evidence that the monthly rent was only Rs.1500/- Therefore, the landlord cannot enhance the rent ten times higher, taking advantage of the introduction of TNRRRLT Act, with the only motive to steamroll and evict the tenant.

28. It is observed in **Timbak Vs. Ram Chandra** reported in **AIR 1977 SC 1222**, that,



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"It is also well established that it is only when an order of the Tribunal is violative of the fundamental basic principles of justice and fair play or a patent or flagrant error in the procedure of law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution."

29. This is a fit case requiring the interference from this Court under Article 227 of Constitution of India to undo the manifest miscarriage of justice committed in this case to the petitioner.

30. Therefore, this Court finds that the judgment of learned II Additional Judge in R.L.T.A.No.5 of 2021 confirming the judgment of learned Small Causes Rent Court, in R.L.T.O.P. No.3 of 2019 is illegal and has to be necessarily set aside and accordingly set aside.

31. With regard to the striking down of Section 21 (2) (a) of TNRRRLT Act, there is already a Writ Petition in W.P.No.12648 of



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2021 is pending in this regard and this Court does not want to express any opinion in this regard.

32. In conclusion, this Court finds that the judgment of learned II Additional Judge in R.L.T.A.No.5 of 2021 confirming the judgment of learned Small Causes Rent Court, in R.L.T.O.P. No.3 of 2019 is illegal and has to be necessarily set aside and accordingly set aside. This Civil Revision Petition is allowed with costs of the petitioner. Consequently, connected miscellaneous petition is closed.

Ep/Vum

25.01.2022

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Internet:Yes/No

Speaking Order: Yes/No



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To

1. The II Additional Judge,
City Civil Court,
Chennai.
2. The learned XII Judge,
Small Causes Court,
Chennai.
3. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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