



C.R.P.Nos.3490 and 3492 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.Nos.3490 and 3492 of 2022
and
C.M.P.Nos.18585 and 18588 of 2022

S.Immanuvel Thamilselvan

... Petitioner (in both CRPs)

VS

1.Indira Gandhi

Rep. by her Power Agent N.Sekar
S/o.G.Narayanaswamy
Door No.2/9, Kanniappan Street,
Shanthi Nagar, Ramapuram,
Chennai – 89.

2.D.Natarajan

... Respondents (in both CRPs)

Prayer in C.R.P.No.3490 of 2022: Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to set aside the Fair and Decretal Orders passed in R.C.A.No.25 of 2018 by the Subordinate Court, Poonamallee dated 29.07.2022 confirming the Fair and Decretal Orders passed in R.C.O.P.No.56 of 2014 by the learned Principal District Munsif Court cum Rent Control Court, Poonamallee dated 31.08.2018.



C.R.P.Nos.3490 and 3492 of 2022

Prayer in C.R.P.No.3492 of 2022: Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to set aside the Fair and Decretal Orders passed in R.C.A.No.16 of 2018 by the Subordinate Court, Poonamallee dated 29.07.2022 confirming the Fair and Decretal Orders passed in M.P.No.154 of 2016 in R.C.O.P.No.56 of 2014 by the learned Principal District Munsif Court cum Rent Control Court, Poonamallee dated 30.07.2018.

For Petitioner : Mr.C.Ravichandran
(in both CRPs)

For R1 : Mr.M.Muruganantham
(in both CRPs)

COMMON ORDER

These Civil Revision Petitions are arising out of rent control proceedings.

2. The tenant is the revision petitioner.

3. The 1st respondent herein filed a rent control eviction petition against the petitioner and the 2nd respondent herein in R.C.O.P.No.56 of 2014 on the file of the learned Principal District Munsif cum Rent Controller,



C.R.P.Nos.3490 and 3492 of 2022

Poonamallee. She sought for eviction on the grounds of willful default and owners occupation. While the eviction petition was pending, the 1st respondent herein filed an application under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 in M.P.No.154 of 2016 seeking direction to the petitioner to pay the arrears of rent of Rs.2,88,750/- upto the month of May-2016 and also for direction to evict him, if he failed to pay the arrears.

4. The learned Rent Controller by order dated 30.07.2018 directed the petitioner herein to pay arrears of rent at the rate of Rs.2,500/- per month from 21.11.2014 to 21.07.2018 (44 months) a sum of Rs.1,10,000/- within 30 days from the date of order to the 1st respondent herein. It was also further ordered that in case of default the eviction order will follow.

5. The petitioner herein failed to pay the arrears of rent as directed and consequently, the proceedings in main RCOP was stopped and eviction order was passed in main RCOP on 31.08.2018. Aggrieved by these orders, the petitioner has preferred an appeal before the Rent Control Appellate



C.R.P.Nos.3490 and 3492 of 2022

Authority, Poonamallee. The Appellate Authority confirmed the findings of the Rent Controller. Aggrieved by the same, the petitioner/tenant is before this Court.

6. The Civil Revision Petition in C.R.P.No.3492 of 2022 is arising out of an order passed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 directing the petitioner to pay arrears of rent.

7. The Civil Revision Petition in C.R.P.No.3490 of 2022 is arising out of an order passed in main rent control petition stopping further proceedings owing to default of the petitioner to pay arrears as directed in Section 11(4) application.

8. The 1st respondent herein laid rent control eviction petition in R.C.O.P.No.56 of 2014 treating the petitioner herein as the tenant. According to her, the demised property is a residential building was originally belong to the 2nd respondent herein and the same was purchased by the 1st respondent by



virtue of Sale Deed dated 15.11.2006. It was also stated that the petitioner was tenant under the 2nd respondent, the original owner of the building. The agreed rent was Rs.2,500/- per month. It was further stated by the 1st respondent in her petition that after purchase, she informed the petitioner about the fact of purchase and the petitioner was also attorned to the tenancy in favour of the 1st respondent by agreeing to pay the rent to her. The 1st respondent further stated in her petition that the petitioner is a chronic defaulter and he committed default in payment of rent and consequently, sought for eviction on the ground of willful default and the 1st respondent also sought for eviction on ground of owners occupation as she required the building for her own occupation as she did not possess any other building of her own in the very same city.

9. The petitioner herein filed a counter affidavit denying the attornment of tenancy in favour of the 1st respondent. The petitioner herein admitted his tenancy arrangement with the 2nd respondent. But however, it was his case that purchase of the property by the 1st respondent was not at all intimated to him and he never attorned as a tenant under the 1st respondent. Therefore, in



C.R.P.Nos.3490 and 3492 of 2022

the absence of jural relationship of the landlord and tenant, the eviction petition was not maintainable before the Rent Controller.

10. The learned counsel for the petitioner assailing the concurrent orders of the Court below mainly contended that the 1st respondent never informed about the purchase of demised property from the 2nd respondent and therefore, there was no attornment of tenancy by the petitioner under the 1st respondent. The learned counsel further submitted that in the absence of jural relationship of the landlord and tenant, the rent control petition filed before the Rent Controller is not at all maintainable. The learned counsel further submitted that the 1st respondent herein filed a suit in O.S.No.434 of 2009 on the file of the learned District Munsif, Poonamallee for recovery of possession against the petitioner herein and subsequently, the Rent Control Act was extended to the area in which the demised building is situated and thereafter, the 1st respondent herein filed the present petition for eviction.

11. It is the contention of the learned counsel for the petitioner that under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, only the



execution of the decree for eviction is barred and entertainment of the suit is not at all barred and therefore, having invoked common law remedy to file a suit for eviction, the petitioner is not entitled to invoke the provisions of the Rent Control Act.

12. The learned counsel for the 1st respondent contended that the petitioner herein is squatting on the property without paying any amount either to the 1st respondent or to the 2nd respondent. The learned counsel further submitted that even as per the admitted case of the revision petitioner, he is a tenant under the 2nd respondent. The 2nd respondent sold the property to the 1st respondent and the same was intimated to the petitioner herein. But however, he neither paid the rent to the 1st respondent nor to the 2nd respondent. But he has been squatting on the property for more than a decade without paying any rent. The learned counsel by taking this Court to the order passed by the Court below submitted that the petitioner is a chronic defaulter and hence, the order of eviction passed by the Court below need not be interfered with.



13. Heard the arguments of the learned counsel for the petitioner and the 1st respondent and perused the records.

14. As far as the contention of the learned counsel for the petitioner that purchase of the suit property by the 1st respondent was not at all informed to him and there was no attornment of the tenancy by the petitioner under the 1st respondent is concerned, the 1st respondent earlier filed a suit for recovery of possession against the revision petitioner in O.S.No.434 of 2009. The said suit was laid by the 1st respondent when the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was not extended to the area in which the demised property is situated.

15. Along with the copy of the plaint in that suit, the Sale Deed in favour of the 1st respondent/plaintiff was annexed as Plaint Document No.1. The legal notice issued by the 1st respondent/plaintiff to the petitioner/defendant therein was annexed as Plaint Document No.9. The postal acknowledgement card signed by the petitioner herein and the reply by him were annexed as Plaint Document Nos.10 and 11. The plaint copy in



C.R.P.Nos.3490 and 3492 of 2022

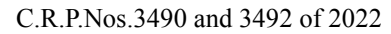
O.S.No.434 of 2009 and written statement filed by the petitioner in

O.S.No.434 of 2009 were marked as Exs.P3 and P4 in the present petition in

M.P.No.154 of 2016 in R.C.O.P.No.56 of 2014.

16. The perusal of the plaint and written statement in O.S.No.434 of 2009 would make it clear that atleast in the year 2009 the petitioner should have acquired knowledge about the purchase of the property by the 1st respondent from the 2nd respondent. Therefore, the petitioner should have paid rent to the 1st respondent atleast from the year 2009. It is not the case of the revision petitioner that he has been paying rent to the 2nd respondent. It is the admitted case of the revision petitioner that he entered the demised premises as tenant under the 2nd respondent. He has not let in any evidence to show that he has been paying rent to the 2nd respondent without default.

17. In the light of Ex.P3 and Ex.P4, the petitioner had knowledge of purchase of the property by the 1st respondent from the 2nd respondent. However, he has not taken any steps for deposit of rent by filing appropriate application under Section 8 of the Tamil Nadu Buildings (Lease and Rent





C.R.P.Nos.3490 and 3492 of 2022

filing of the eviction petition to date of passing order in Section 11(4)

application. Even after filing of the eviction petition by the 1st respondent, the petitioner has not chosen to pay the rent or has not taken any steps to deposit the rent before the Rent Controller by invoking Section 8 of the Rent Control Act. By taking into consideration all these aspects, the Rent Controller rightly directed the petitioner to pay arrears of rent from 21.11.2014 to 21.07.2018 within a period of 30 days.

21. Since the petitioner failed to pay rent as directed by the Rent Controller, the Rent Controller has no other option but to order eviction in view of the mandatory provisions of the Act. Therefore, the contention made by the learned counsel for the petitioner that there was no jural relationship of the landlord and tenant and there was no attornment of tenancy in favour of the 1st respondent, are not acceptable to this Court.

22. As far as the contention of the learned counsel for the petitioner that the suit filed by the 1st respondent for eviction of the petitioner before the Civil Court is maintainable and hence, he is not entitled to invoke the



provisions of the Rent Control Act is concerned, the said submission of the learned counsel cannot be countenanced. Even according to the learned counsel for the petitioner, the execution of the decree for eviction is barred under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. If the execution of the decree for eviction is barred, no purpose will be served by entertaining a suit for eviction by the Civil Court. Therefore, it cannot be said the 1st respondent is not entitled to invoke the provisions of Rent Control Act seeking eviction of the petitioner after extension of provisions of the said Act to the area in which the demised building is situated.

23. It would be pertinent to refer to the judgement of the Hon'ble Apex Court in *East India Corporation Ltd. vs. Shree Meenakshi Mills Ltd.* reported in *MANU/SC/0265/1991 = 1991 (2) SCR 310*, wherein it was held as follows:-

“8. Section 10 of the Act, as seen above, prohibits eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of that Section or Sections 14 to 16. These provisions as well as the other provisions of the Act are a self contained code, regulating the relationship of parties,



WEB COPY



C.R.P.Nos.3490 and 3492 of 2022

*creating special rights and liabilities, and, providing for determination of such rights and liabilities by tribunals constituted under the statute and whose orders are endowed with finality. The remedies provided by the statute in such matters are adequate and complete. Although the statute contains no express bar of jurisdiction of the civil court, except for eviction of tenants "in execution or otherwise", the provisions of the statute are clear and complete in regard to the finality of the orders passed by the special tribunals set up under it and their competence to administer the same remedy as the civil courts render in civil suits. Such tribunals having been so constituted as to act in conformity with the fundamental principles of judicial procedure, the clear and explicit intendment of the legislature is that all questions relating to the special rights and liabilities created by the statute should be decided by the tribunals constituted under it. Although the jurisdiction of the civil court is not expressly barred the provisions of the statute explicitly show that, subject to the extra-ordinary powers of the High Court and this Court, such jurisdiction is impliedly barred, except to the limited extent specially provided by the statute. See in this connection the principle stated by this Court in *Dhulabhai and Ors. v. The State of Madhya Pradesh & Anr.* MANU/SC/0157/1968 : [1968] 3 SCR 662. See also *Secretary of State v. Mask & Co.* 1939 1A*



222; *Raleigh Investment Co. Ltd. v. Governor General in Council 1946 IA 50 and Barraclogh v. Brown and Ors. [1897] AC 615.*

9. Judged by this test, the jurisdiction of the civil court in respect of eviction of tenants is barred except to the extent and subject to the conditions prescribed under Section 10. The second provision to Section 10(1) reads:

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

10. What is stated in the second proviso to Section 10(1) is the sole circumstance in which the civil court is invested with jurisdiction in matters of evictions. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a civil court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy



WEB COPY

and the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these conditions are satisfied, the civil court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned, in Section 10 or Sections 14 to 16, notwithstanding that the Court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease, or, his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

11. Significantly, the jurisdiction of the civil court can be invoked only where the controller comes to a decision, and records a finding, that the denial or claim by the tenant, as aforesaid, is bona fide. If the Controller were to come to the opposite conclusion, no question of invoking the jurisdiction of the civil court would arise. But the decision of the controller is concerned solely with the bona fides and not the correctness or validity, of the denial or claim, for these difficult questions of title are by the statute reserved for decision by the appropriate



WEB COPY

civil court which is the more competent forum in such matters (See the principle discussed in Magiti Sasamal v. Pandap Bissoi MANU/SC/0341/1961 : [1962] 3 SCR 673. In such an event, the civil court will become competent to pass a decree for eviction on any of the grounds mentioned in Section 10 or Sections 14 to 16. On the other hand, if the decision of the controller is that the tenant's denial or claim is not bona fide the jurisdiction of the civil court cannot be invoked by the landlord and the Controller will then be the competent authority to order eviction, after affording the parties a reasonable opportunity of being heard, on any one of the grounds specified under the statute, including the ground that the tenant has, without bona fide, denied the landlord's title or claimed right of permanent tenancy. What is significant is that the decision of the Controller, duly recorded by him, as regards the bona fide denial or claim by the tenant is the condition precedent to the invocation of power of the civil court. Any suit instituted by the landlord for eviction of a tenant from a building falling within the ambit of the Act, otherwise, than as stipulated by the section, is, therefore, incompetent for lack of jurisdiction of the Court and any decree of the Court in such a suit is null and void and no effect."



C.R.P.Nos.3490 and 3492 of 2022

24. In view of the discussions made above, the order of eviction passed by the Rent Controller and confirmed by the Appellate Authority, are not liable to be interfered with by this Court.

25. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

30.11.2022

Index : Yes / No
Speaking Order : Yes / No

dm

To

- 1.The Subordinate Court,
Poonamallee.
- 2.The Principal District Munsif Court
cum Rent Control Court, Poonamallee.



WEB COPY



C.R.P.Nos.3490 and 3492 of 2022

S.SOUNTHAR, J.

dm

C.R.P.Nos.3490 and 3492 of 2022

30.11.2022