



C.R.P.Nos.3951, 4168, 4211, 4212 & 4240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.Nos.3951, 4168, 4211, 4212 & 4240 of 2022

and

C.M.P.Nos.20578, 21790, 22067, 22226 & 22076 of 2022

C.R.P.No.3951 of 2022

Ashok Kumar Kothari

... Petitioner

Vs.

1. Rajiv B.Sampt
2. Neela Sampat
3. Punit Sampat

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 03.09.2022 made in R.L.T.A No.54 of 2021 against the R.L.T.O.P. No.309 of 2019 on the file of the IV Additional City Civil Court, Chennai and thereby allow the Civil Revision Petition.

C.R.P.No.4168 of 2022

Lalith Kumar Sethia

... Petitioner



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Vs.

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1. Rajiv B.Sampt
2. Neela Sampat
3. Punit Sampat

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 03.09.2022 made in R.L.T.A No.52 of 2021 on the file of IV Additional City Civil Court, Chennai, in R.L.T.O.P. No.356 of 2019 on the file of the XVI Small Causes Court, Chennai and thereby allow the Civil Revision Petition.

C.R.P.No.4211 of 2022

P.Sohanlal

... Petitioner

Vs.

1. Rajiv B.Sampt
2. Neela Sampat
3. Punit Sampat
4. Mrs.Paras Devi
5. Chandrakala
6. Ms.Rekha

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 03.09.2022 made in R.L.T.A No.53 of 2021 on the file of IV Additional City



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Civil Court, Chennai, by confirming the orders made in R.L.T.O.P. No.307 of 2019 on the file of the XVI Small Causes Court, Chennai, and thereby allow the Civil Revision Petition.

C.R.P.No.4212 of 2022

Sheetal Chand Gothi

... Petitioner

Vs.

1. Rajiv B.Sampt
2. Neela Sampat
3. Punit Sampat

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 03.09.2022 made in R.L.T.A No.55 of 2021 on the file of IV Additional City Civil Court, Chennai, by confirming the orders made in R.L.T.O.P. No.310 of 2019 on the file of the XVI Small Causes Court, Chennai, and thereby allow the Civil Revision Petition.

C.R.P.No.4240 of 2022

Prashandchand Burd

... Petitioner

Vs.



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1. Rajiv B.Sampt
2. Neela Sampat
3. Punit Sampat

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 03.09.2022 made in R.L.T.A No.56 of 2021 on the file of IV Additional City Civil Court, Chennai, by confirming the orders made in R.L.T.O.P. No.308 of 2019 dated 25.10.2021 on the file of the XVI Small Causes Court, Chennai, and thereby allow the Civil Revision Petition.

For Petitioners
in all the five CRPs. : Ms.Vasudha Thiagarajan

For Respondents
in all the five CRPs. : Mr.K.P.Ashok

COMMON ORDER

The Civil Revision Petitions have been instituted under Article 227 of the Constitution of India against the order dated 03.09.2022 passed in RLTA Nos.54, 52, 53, 55 & 56 of 2021, confirming the order passed in RLTOP Nos.309, 356, 307, 310 & 308 of 2019 respectively.



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2. The revision petitioner in CRP No.3915 of 2022 is the tenant in occupation of the commercial premises owned by the respondent landlord. As per the agreement between the parties, the monthly rent was fixed at Rs.885/- for the Commercial Shop No.5, 1st Floor, No.33, General Muthiah Street, Sowcarpet, Chennai-79.

3. The petitioner states that he paid a sum of Rs.1,55,000/- as advance to the respondent/landlord on 19.05.1994 and continued to be in occupation of the premises for the past about 28 years and is still running the business. The respondent landlord had initiated RCOP No. 891 of 2014, for fixation of fair rent under Act 18 of 1960 and the same was followed by RCOP No.167 of 2015 for eviction on the ground of willful default and owner's occupation. During the pendency of the said proceedings, New Tenancy Act ie., Tamil Nadu Act 42 of 2017, came into force. Thus, the respondent landlord withdrew the RCOP and sent a legal notice to the revision petitioner to vacate the premises and hand over vacant possession to the landlord.



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4. The revision petitioner sent a reply by stating that he is ready and willing to continue in the commercial premises by entering into a new agreement under the New Act and therefore, the respondent shall enter into an agreement with the petitioner tenant. Instead of entering into an agreement the landlord/respondent has chosen to file RLTOP for eviction of the revision petitioner from the premises on the ground of willful default, no agreement between the parties and for owners occupation. The said RLTOP filed by the respondent was allowed by the Rent Court and the revision petitioner preferred an appeal before the Rent Appellate Court which confirmed the order passed by the Rent Court. Thus the petitioner is constrained to move the revision petition before this Court.

5. The learned counsel for the petitioner mainly contended that the notice issued by the respondent was promptly responded by the revision petitioner and in reply the revision petitioner has categorically stated that he was always ready and willing to enter into a rental agreement with the respondent/landlord on the prevailing terms and conditions and monthly



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rent. It is further stated that the respondent/landlord refused to enter into a rental agreement with an ulterior motive to evict the revision petitioner from the premises. When such a reply notice was given in clear terms by the revision petitioner, the Rent Court ought not to have ordered eviction of the petitioner from the premises. The Rent Court as well as the Rent Appellate Court had failed to consider that the respondent instituted a proceeding under the New Act with an ulterior motive to evict the revision petitioner and thus the revision petition is to be considered.

6. Perusal of the order passed by the Rent Court reveals that there is no agreement in writing, entered into, between the landlord and the tenant. Section 4(1) of the New Act contemplates *“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 a agreement in writing.”*

7. In the present case, the petitioner states that he was ready and willing to enter into an agreement with the respondent/landlord and the



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respondent refused to do so and therefore, the Rent Court had committed an error.

8. Right to property is a Constitutional right under Article 300-(A) of the Constitution of India. Property Right cannot be taken away without any authority of law. Landlord has got an absolute right to deal with his property at his choice. Right to Property cannot be interfered with by any person, least by the tenant. Right of the tenant is restricted only with reference to the terms and conditions of the lease agreement agreed between the landlord and the tenant, which is a contract. Thus, the right of tenant is a Statutory right limited to the extent of terms and conditions agreed between the parties in the contract. Thus, no tenant has got an enforceable right against the landlord for entering into an agreement for tenancyship or to dictate terms and conditions. The offer made either by the tenant or by the landlord is to be accepted by the other party and shall be reduced in writing. Only if any written agreement has been entered into between the landlord and tenant, then only the enforceability of terms and conditions are to be considered and not otherwise. It is needless to state that conditions agreed



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cannot be void or voidable, but must be in accordance with law. Burden to establish that there is a written rental agreement in force is on the person, who is approaching the Court or defending the case. Absence of written tenancy agreement is a ground for eviction under the New Act. Thus, the right of property of a landlord to lease out his property is absolute and cannot be interfered with by the tenant or infringed by any person.

9. The spirit and language employed in the case of ***Ramesh Salunkhe Vs. Pramila Jain*** reported in ***[2022-1-L.W.481]***, are that the landlord and tenant are required to enter into an agreement in respect of existing tenancy. It is an observation made to clarify that the New Act requires a written tenancy agreement for the purpose of granting the relief. A tenancy expired or the decision taken by the landlord to terminate the tenancy, is a right exercised and the Court cannot interfere. In respect of the oral tenancy, the parties are at liberty to take a decision either to enter into a written agreement of tenancy or to terminate the tenancy. The Court or anyone of the party cannot compel any person to enter into a written agreement for tenancy, since right to terminate the tenancy under the Act



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cannot be taken away. When the New Act contemplates right to terminate the tenancy in the absence of any written agreement, the Court cannot compel any one of the party to enter into a written agreement and it is always an absolute right vested on the parties either to enter into a written agreement or to terminate the tenancy. Thus, incorporating new terms and conditions at the time of entering into a written tenancy agreement is the choice of the parties and Court cannot compel the parties in this regard. Therefore, the observations made in the judgment (cited *supra*), it is made clear that if at all any tenancy agreement exists, then the landlord cannot change the terms and conditions in the agreement. Therefore, it is unambiguous that in an existing written tenancy agreement, no new terms and conditions can be incorporated without the consent of both the parties. If there is a oral tenancy, the said question would not arise at all. Therefore, a distinction is to be drawn with reference to the existing tenancy agreement in writing, which is in force and the renewal of tenancy agreement in writing or entering into a new tenancy agreement. At the time of renewal of agreement on expiry of the tenancyship, the parties are at liberty to agree new terms and conditions and more so, the landlord is empowered to



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incorporate new conditions by way of an offer, which is his right and acceptance is the choice of the tenant.

10. Question arises, in case, the tenant already in occupation of the premises and expressing his willingness to enter in to a written agreement. In such circumstances, again the choice comes to the landlord, whether to enter into a written agreement or to terminate the tenancy. Such a right is an absolute property right of the landlord, which cannot be taken away. In order to regulate the tenancyship, the New Act contemplates and provides an opportunity to landlord and tenant to enter into a written tenancy agreement, which is to be registered. Therefore, it is the choice of the landlord and tenant to enter into a written agreement of tenancy after the enforcement of the New Act. In respect of the expired tenancy and with reference to the oral tenancy, the landlord has got an absolute right to take a decision either to terminate the tenancy or to enter into a written agreement of tenancy with the tenant.



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11. The absolute right of property vested on the landlord cannot be taken away nor anyone can compel the landlord to enter into a written tenancy agreement. Any such compulsion would result in infringement of the right of property under Article 300-(A) of the Constitution of India. Thus, the Court cannot direct the landlord to enter into a written tenancy agreement with the tenant. When the right of the parties exists, the Courts are bound to protect such rights of either of the parties. Right to deal with the property by the landlord cannot be infringed nor be taken away. If the landlord refused to enter into an agreement in writing under the New Act, then the tenant has no option, but to vacate and hand over the vacant possession to the landlord, failing which, the landlord gets a right to file an application for eviction under the provisions of the New Act.

12. In the present case, the Rent Court elaborately adjudicated the issues with reference to the ground raised between the tenant and landlord. Admittedly, there was no rental agreement between the parties. Contention of the revision petitioner that he was ready and willing to enter into a rental



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agreement but the landlord refused to do so, deserves no merit consideration.

13. In the context of the principles considered above in the present case, default in payment of rent was also established against the revision petitioner/tenant. The Rent Court categorically found that there is no written agreement existing between the parties as stipulated under Section 4(2) of the New Act.

14. The Rent Appellate Court considered the grounds raised by the revision petitioner and concurred with the Rent Court that the eviction order under Section 4(2) and 21(2)(a) of the TNRRRLT Act is justified. The Rent Appellate Court found that the findings of the Rent Court is well reasoned and deserves no further interference. Accordingly, RLTA was dismissed, confirming the fair and decretal order passed on 25.10.2021 by the Rent Court.



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15. In the present Civil Revision Petition, the petitioner has not raised any distinguishable ground for the purpose of further consideration to interfere with the findings of the Rent Court as confirmed by the Rent Appellate Court. The grounds raised before the Rent Court and the Rent Appellate Court are broadly raised in the present Civil Revision Petition. Regarding the readiness of the revision petitioner/tenant to enter into an agreement deserves no merit consideration. The revision petitioner/tenant has no enforceable right to compel the landlord to enter into a rental agreement. In the absence of an enforceable right, Court cannot direct the landlord to enter into a written agreement. Thus, the willingness expressed by the tenant is an offer and acceptance is an absolute right of the landlord and refusal would not provide any ground to claim enforcement. Thus, the ground raised in this regard by the revision petitioner is untenable.

16. The revision petitioner is continuing in the rental premises from the year 1994 onwards and for the past about 28 years. Thus, further continuance of the tenant which is not agreed by the landlord deserves no interference by this Court.



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17. The learned counsel for the petitioners in respective petitions filed the affidavit of undertaking signed by the revision petitioners and the relevant paragraph reads as follows:

In C.R.P.No.3951 of 2022:

“I state that when the matter came up for admission before this Hon'ble Court on 22.12.2022 while confirming the order and decree passed in RLTA No.54 of 2021 has granted me 6 month's time to vacate the premises. Till date the rent of Rs.885/- p.m. has been deducted month on month by the Landlord from the refundable advance amount paid by me, the same may be continued till 30.06.2023, the balance refundable advance amount can be refunded at the time of vacating the premises. As per the said order, I hereby undertake to vacate and handover the vacant possession of the shop portion (premises) forming the subject matter of RLTOP No.309 of 2019 to the respondents herein on or before 30.06.2023.”

In C.R.P.No.4168 of 2022:

“I state that when the matter came up for admission before this Hon'ble Court on 22.12.2022 while confirming the order and decree passed in RLTA No.52 of 2021 has



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granted me 6 month's time to vacate the premises. As per the said order, I hereby undertake to vacate and handover the vacant possession of the shop portion (premises) forming the subject matter of RLTOP No.356 of 2019 to the respondents herein on or before 30.06.2023. In the meantime I shall continue to pay the present monthly rental regularly to the Respondents without fail.”

In C.R.P.No.4211 of 2022:

“I state that when the matter came up for admission before this Hon'ble Court on 22.12.2022 while confirming the order and decree passed in RLTA No.53 of 2021 has granted me 6 month's time to vacate the premises. As per the said order, I hereby undertake to vacate and handover the vacant possession of the shop portion (premises) forming the subject matter of RLTOP No.307 of 2019 to the respondents herein on or before 30.06.2023. In the meantime I shall continue to pay the present monthly rental regularly to the Respondents without fail.”

In C.R.P.No.4212 of 2022:

“I state that when the matter came up for admission before this Hon'ble Court on 22.12.2022 while confirming the order and decree passed in RLTA No.55 of 2021 has granted me 6 month's time to vacate the premises. As per



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the said order, I hereby undertake to vacate and handover the vacant possession of the shop portion (premises) forming the subject matter of RLTOP No.310 of 2019 to the respondents herein on or before 30.06.2023. In the meantime I shall continue to pay the present monthly rental regularly to the Respondents without fail.”

In C.R.P.No.4240 of 2022:

“I state that when the matter came up for admission before this Hon'ble Court on 22.12.2022 while confirming the order and decree passed in RLTA No.56 of 2021 has granted me 6 month's time to vacate the premises. As per the said order, I hereby undertake to vacate and handover the vacant possession of the shop portion (premises) forming the subject matter of RLTOP No.308 of 2019 to the respondents herein on or before 30.06.2023. In the meantime I shall continue to pay the present monthly rental regularly to the Respondents without fail.”

18. In respect of the written undertaking given by the petitioner, the learned counsel for the respondent has no serious objection. Thus, the



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revision petitioner is directed to vacate the premises and handover the vacant possession to the respondent landlord on or before 30.06.2023.

19. In view of the discussions made in the aforementioned paragraphs, this Court do not find any infirmity or perversity in respect of the orders passed by the Rent Court and Rent Appellate Court. Accordingly, the decretal order dated 03.09.2022 passed in R.L.T.A.Nos.54, 52, 53, 55 & 56 of 2021 confirming the order passed in R.L.T.O.P.Nos.309, 356, 307, 310 & 308 of 2019 respectively stand confirmed. Consequently, these Civil Revision Petitions in C.R.P.Nos.3951, 4168, 4211, 4212 & 4240 of 2022 are dismissed. Connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

sha/jeni

22.12.2022

Index:Yes
Internet:Yes
Speaking Order



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To

1.The Judge,
IV Additional City Civil Court,
Chennai.

2.The Judge,
XVI Small Causes Court,
Chennai.



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S.M.SUBRAMANIAM.J.,

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