



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.162 of 2023

and

C.M.P.No.1345 of 2023

Mr.Vijayraj Bhandari

... Petitioner

Vs.

1.Mr.Suresh Kumar J

2.Mr.Naresh Kumar J

3.Mr.J.Mukesh

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 26.10.2022 passed by the learned VI Additional City Civil Court (Rent Tribunal) at Chennai, dated 26.10.2022 in R.L.T.A.No.63 of 2022 dismissing the appeal and confirming the order dated 25.04.2022 passed by the X Court of Small Causes at Chennai (Rent Authority) in R.L.T.O.P.No.790 of 2021.

For Petitioner : Mr.T.V.Ramanujam, Senior Advocate
For Mr.A.K.Raghevulu

For Respondents : Mr.Rahul K.Jain



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C.R.P.No.162 of



ORDER

The Civil Revision Petition has been instituted to set aside the order dated 26.10.2022 passed in R.L.T.A.No.63 of 2022 confirming the order dated 25.04.2022 passed in R.L.T.O.P.No.790 of 2021.

2. The revision petitioner is the tenant. The respondents instituted Eviction Proceedings in R.L.T.O.P.No.790 of 2021 under Section 21(2)(a) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. The Rent Court adjudicated the issues elaborately and allowed the original petition under Section 21(2)(a) of the Tamil Nadu Act 42 of 2017. The revision petitioner / tenant was directed to vacate and hand over vacant possession of the subject premises to the respondent / landlord within a period of one (1) month.

3. The revision petitioner / tenant filed an appeal in R.L.T.A.No.63 of 2022 and the Rent Tribunal also considered the grounds raised between the parties and formed an opinion that the findings of the Rent Court is in consonance with the provisions of the Act and the landlord would be able to establish the ground for eviction under Section 21(2)(a) of the Act.



Accordingly, the appeal filed by the revision petitioner was dismissed. Thus, the revision petitioner is constrained move the present Civil Revision Petition.

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4. The learned Senior Counsel appearing on behalf of the revision petitioner mainly contended that the revision petitioner / tenant was ready and willing to enter into an agreement as per the existing grounds based on the existing terms and conditions and it is he, who the landlord declined to enter into an agreement and therefore, the Rent Court and the Rent Tribunal has committed an error in ordering an eviction.

5. The learned Senior Counsel relied on the judgment of this Court passed in **Ramesh Salunkhe Vs. Pramila Jain** dated 25.01.2022 in C.R.P.(NPD) No.1996 of 2021 wherein, this Court made the following observations:-

“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



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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 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."

6. Relying on the above observations of this Court, the learned Senior Counsel for the petitioner reiterated that once the tenant is willing to continue the lease and ready to enter into an agreement under the new Act, refusal on the part of the landlord would dis-entitle him from seeking an order of eviction



from the Rent Court and this aspect was not considered by the Rent Court as well as the Rent Tribunal in the appeal.

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7. This Court had considered the very same ground in the case of ***Mahendra Kumar Vs. Santhosh Kumar*** in C.R.P.No. 4331 of 2022 dated 05.01.2023. In the above case, the similar ground has been raised by the tenant and the scope of the Tamil Nadu Act 42 of 2017 and the purpose and object as well as the spirit also are considered by this Court elaborately. The relevant paragraphs are as under:-

“18. The learned counsel for the petitioner relied on the judgment of Court in the case of Ramesh Salunkhe Vs. Pramila Jain reported in [2022- 1-L.W.481], the Court made an observation in paragraph 9 as follows:

“9. 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 tenancy agreement.”



19. *The observations made by the Court in the case (cited supra) are with reference to the facts and circumstances of the issues decided. However, those observations cannot be followed as legal principle, since the facts and circumstances of each case is to be considered and the distinguishable factors are to be considered for arriving a conclusion. Reading of the observation in the above judgment would reveal that it was made in the context of the facts and therefore, cannot be followed as a precedent in other case.*

20. *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*



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C.R.P.No.162 of



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 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.

21. The spirit and language employed in the judgment (cited supra) 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 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



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

22. 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



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C.R.P.No.162 of



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.

23. 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 under the Constitution and the Statutes cannot be infringed nor be taken away. If the landlord refused to enter into an agreement in writing under the New Act, then the



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C.R.P.No.162 of



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.

24. Thus, the Miscellaneous Petition to stay the R.L.T.O.P. proceedings under the provisions of the New Act is not entertainable, more specifically, under Section 36(1)(a) of the Act. In the present case, the grounds raised for filing the Miscellaneous Petition to stay R.L.T.O.P. proceedings is also untenable as rightly concluded by the Rent Court. Thus, the findings of the Rent Court is in consonance with the spirit and the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. Therefore, the Rent Court shall dispose of the main application taking note of the purport of Section 36(6) of the New Act.”

8. In the present case, the revision petitioner was inducted as a tenant in respect of the subject premises in the year 2004 and continued to occupy the premises. The Eviction Petition was filed on account of the failure to enter into an agreement as contemplated under Section 4(2) read with Section 21(2)(a) of



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the new Act. The said grounds raised by the respondent / landlord was established before the Rent Court, which was confirmed by the Rent Tribunal in the appeal. The revision petitioner could not be able to establish that he entered into an agreement with the respondent / landlord as under the new Act, which is to be registered and in the absence of any such agreement, this Court do not find any infirmity in respect of the orders passed by the Rent Court and the Rent Tribunal.

9. Accordingly, the order dated 26.10.2022 passed in R.L.T.A.No.63 of 2022 confirming the order dated 25.04.2022 passed in R.L.T.O.P.No.790 of 2021 are confirmed. Consequently, the Civil Revision Petition in Cr.P.No.162 of 2023 stands dismissed. No Costs. Connected Miscellaneous Petition is closed.

10. The revision petitioner / tenant is directed to vacate the subject premises and hand over the vacant possession to the respondent / landlord within a period of one (1) month from the date of receipt of a copy of this order.



C.R.P.No.162 of



25.01.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Judge,
VI Additional City Civil Court (Rent Tribunal),
Chennai.
- 2.The Judge,
X Court of Small Causes,
Chennai.



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C.R.P.No.162 of



S.M.SUBRAMANIAM, J.

skr

C.R.P.No.162 of 2023

25.01.2023