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C.R.P (PD). No.516 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.03.2023**

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THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (PD). No.516 of 2022
and C.M.P.No.2748 of 2022

E.Kanniappan

...Petitioner

Vs

1. N.Chandrasekaran
2. N.Hemalatha
3. N.Uma
4. R.Vijayalakshmi

..Respondents

Prayer : Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1973 praying to set aside the judgment and decree dated 09.09.2021 passed in R.C.A.No.24 of 2017 on the file of the Subordinate Court at Poonamallee confirming the judgment and decree dated 09.06.2017 passed in R.C.O.P.No.40 of 2010 on the file of the Principal District Munsit at Poonamallee.

For Petitioner : Mrs.Chitra Sampath,
Senior Counsel for Mr.S.Sai Shankar

For Respondents : Mr.B.Ganesha Moorthy



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ORDER

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Challenging the order dated 09.09.2021 passed in R.C.A.No.24 of 2007 by the learned Subordinate Judge, Poonamallee, the tenant has preferred this Civil Revision Petition.

2.Originally, R.C.O.P.No.40 of 2010 was filed by the respondents/landlords for eviction on the ground of wilful default in payment of rent. The said R.C.O.P. was allowed on the ground of default, own use and occupation. Challenging that, the tenant has preferred R.C.A.24 of 2007 on the file of the Subordinate Court, Poonamallee. On hearing both sides, the Appellate Authority dismissed the appeal, confirming the finding of the Rent Controller. Challenging the concurrent findings of the Courts below, the tenant has preferred this revision.

3.Learned counsel for the revision petitioner/tenant submits that already O.S.No.126 of 1999 was filed by the landlords/respondents herein on the file of the District Munsif Court, Poonamallee, for termination of tenancy and recovery of possession and the same was decreed in favour of the landlords/respondents on 27.09.2004 on merits. Till date, the said decree is in force. So, the landlords are not entitled to invoke the provisions under the



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Tamil Nadu Buildings (Lease and Rent) Control Act. As per the judgement passed in the earlier suit in O.S.No.126 of 1999, the tenancy was terminated.

So, the petitioner herein is no longer a tenant under the respondents/landlord for complying with the orders of the Courts below. Both the Courts below have erroneously ordered eviction by invoking the Rent Control proceedings. Hence, he prays for setting aside the order of the Appellate Authority.

4. By way of reply, the learned counsel for the respondents argues that at the time of filing of the earlier suit, the provisions of the said Rent Control Act was not extended in respect of the area in dispute. Subsequently, due to the jurisdictional change, the Village was upgraded as Municipality, due to which, the Rent Control Act got automatically extended. Therefore, the respondents/landlords had filed R.C.O.P for eviction by invoking the said Rent Control Act and the Courts below have rightly allowed the petition and ordered eviction, which needs no interference by this Court.

5. The learned counsel for the revision petitioner has produced an order of this Court dated 13.12.2022 made in C.R.P.Nos.1616 and 1617 of 2019, wherein, the learned Judge has relied on the judgement of the Hon'ble Supreme Court in C.A.No.2816 of 2022 in the case of Shankarlal Nadani Vs



Sohanlal Jain in which the judgment reported in **2017 (4) SCC 202**

(Rajender Bansal and Others Vs Bhuru (Dead) Through legal representatives and Others) was relied on, wherein, it has been held as follows:

“18.1. Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated.

18.2. If during the pendency of the suit, the Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of the civil court to dispose of a suit validly instituted.

18.3. In order to oust the jurisdiction of the civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of the Rent Act became available in respect of the said area/premises/tenancy.

18.4. In case the aforesaid position is not accepted



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and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, unexecutable after the application of these Rent Acts in respect of such premises. This would not be in consonance with the legislative intent.”

6. Relying on the said proposition, coming to the facts of the case in hand, the suit was filed by the landlords/respondents herein in O.S.No.126 of 1999 and the decree was passed in favour of landlords on 27.09.2004. As per the decree, the tenancy was terminated, said decree is still in force. The revision petitioner/tenant is no longer a tenant under the respondents herein. At that time, the Rent Control Act would not be applicable to the place where the rented property was situated. Therefore, the respondents/landlords are entitled to work out their remedy by executing the decree in O.S.No.126 of 1999 and not through the R.C.O.P proceedings. Therefore, the findings rendered by the Courts below are set aside, as Rent Control Proceedings is not applicable to the facts of this case, since already tenancy was terminated much prior to the extension of the jurisdiction of the rent control proceedings.



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7. Accordingly, the order passed by the learned Subordinate Judge, Poonamallee in R.C.A.No.24 of 2017 dated 09.09.2021 is set aside and the Civil Revision Petition is hereby allowed. Liberty is given to the respondents to work out their remedy by filing appropriate execution application before the Execution Court as early as possible in the manner known to law. The period pertaining to the R.C.O.P proceedings is ordered to be excluded. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

Speaking Order: Yes

Index : Yes/No

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To

1. The learned Subordinate Judge, Poonamallee
2. The Principal District Munsif, Poonamallee.
3. The Section Officer, V.R.Section, High Court, Madras



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