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CRP.No. 450 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 450 of 2021

Chandiran

.. Petitioner

Versus

Lourdu Marie Santho (Died)

1. Periyannayagam

2. Anthonia Santho

.. Respondents

Civil Revision Petition filed under Section 25 of Pondicherry Building Lease and Rent Control Act, 1980, praying to set aside the judgment and decree dated 21.02.2020 passed in RCA.No. 39 of 2018 on the file of the Second Additional District Judge, Puducherry, confirming the fair order and decretal order dated 31.10.2018 passed in RCOP. No. 51 of 2012 on the file of the Court of Rent Controller-II, Puducherry.

For petitioner : Mr. P. John Bosco

For Respondents : Mrs. R. Swarnalatha

ORDER

The revision petitioner suffered an order of dismissal dated 31.10.2018 passed by the learned Rent Controller in RCOP. No. 51 of 2012 and it was also confirmed by the Appellate Authority in RCA.NO. 39 of 2018 dated 21.02.2020. Aggrieved by the concurrent orders of dismissal, the present

Civil Revision Petition is filed.



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2. As per the averments in RCOP. No. 51 of 2012, the revision petitioner has purchased the property in question by means of a registered sale deed dated 27.03.2012, registered as Document No. 1732 of 2012 on the file of District Registrar, Pondicherry, executed by Smt. Rajalakshmi, Daughter of late. Kandasamy and others. According to the revision petitioner, the property in question was originally owned by one Kandasamy. The property was allotted to Mr. Kandasamy by the Secretary, Health Education and Association Welfare Department, Pondicherry through the order of allotment dated 18.11.1967 registered as Document No.2341 of 1967, on the file of District Registrar Office, Pondicherry. According to the revision petitioner, the original owner Kandasamy had let out the property for rent in favour of the husband of the first respondent for a monthly rent of Rs.200/- and he settled in Ennore, Chennai. For the purpose of collecting the rent from the husband of the first respondent, he used to visit Pondicherry once in six months. The said Kandasamy died and after his death, his legal-heirs repeated demands and attempted to collect the rent from the respondents herein, but they could not. While so, after the purchasing the property, the revision petitioner got attorned the tenancy in his favour and therefore, he demanded payment of rent from the respondents. As the respondents did not pay the rent to the revision petitioner he had sent a notice dated 06.12.2012 calling upon the respondents to pay the



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rent from 27.03.2012 *interalia* made a demand to vacate the premises. A reply dated 17.12.2012 was sent by the respondent denying the averments in the notice. It is specifically stated in the reply notice dated 17.12.2012 that the tenancy could not have been attorned in favour of the petitioner and they also refused to handover the vacant possession of the premises. It is further stated that the respondents are residing in the petition mentioned premises on their own right. It is in those circumstances, the petitioner has filed RCOP. No. 51 of 2012 under Section 10 (2) (i) (b) (vii) and 3 (9) (i) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 praying to evict the respondents from the schedule mentioned property on the ground of willful default in payment of rent and for having denied his lawful title.

3. A counter affidavit was filed by the respondents 2 and 3 repudiating the petition averments. According to the respondents, Mr.Kandasamy originally leased out the property in favour of the husband of the first respondent and he paid rent to Kandasamy regularly till his death. However, on 08.09.1988 the husband of the first respondent entered into an agreement of sale with Kandasamy to purchase the property. Subsequently on 30.03.1989 an unregistered sale deed came to be executed in favour of the husband of the first respondent. The first respondent died on 24.09.2012



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leaving behind the respondents as his legal heirs. During her life time, on 30.03.1989 itself, the first respondent had executed a Will in favour of the respondents 2 and 3. It is also stated that even on 30.03.1989 when Mr.Kandasamy executed the unregistered sale deed in favour of the husband of the first respondent, the original title deeds have been handed over to the husband of the first respondent. Further on the strength of the Will executed by the first respondent, the respondents 2 and 3 have constructed separate houses where they are residing now and electricity service connection was also given to the premises and it stands in the name of the second respondent. Therefore, it is submitted that there is no landlord and tenants relationship between the petitioner and the respondents 2 and 3 and they prayed for dismissal of the Civil Revision Petition.

4. Before the learned Rent Controller, on behalf of the petitioner, he examined himself as PW1 and Rajalakshmi, one of his vendors and daughter of Late. Kandasamy was examined as PW2 and Ex.P1 to Ex.P8 were marked. On behalf of the respondent, the second respondent examined himself as RW1 and S. Anbajagane was examined as RW2 and Exs.R1 to Ex.R14 were marked. The learned Rent Controller dismissed the original petition by concluding that there is no landlord and tenants relationship between the



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parties. It was also concluded that even though the respondents claimed right through the unregistered sale agreement under Ex.R3 and the unregistered sale deed will not confer any title to the property, the unregistered sale deed was of the year 1989 and the petitioner claiming right over the property purchased by him only in the year 2012. However, after purchase there is nothing on record to show that the lease itself was terminated at the instance of the petitioner. When the respondents denied the title of the petitioner the petitioner ought to have filed a Civil Suit for declaration of his title. As the dispute pertains to title, it cannot be adjudicated by the Rent Control Court and it is proper for the petitioner to file a Civil Suit. Accordingly, the learned Rent Controller dismissed the original petition.

5. Aggrieved by the order of dismissal dated 31.10.2018 passed in RCOP. No. 51 of 2012, the revision petitioner filed RCA. No. 39 of 2018. The Appellate Court also concurred with the conclusion arrived at by the learned Rent Controller and held that there is no attornment of tenancy in favour of the petitioner. It was also held that the petitioner cannot be presumed to be the landlord of the respondents. When it is claimed by the petitioner that he is the landlord, it is his duty to prove the subsisting tenancy between him and the respondents. When the petitioner admitted that he has not received any rent



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from the respondents or he has not produced any receipts to establish that the respondents were tenants under Kandasamy and subsequently purchased the property through an unregistered sale deed, such rival claim over the title to the property can be adjudicated only by a competent Civil Court. Accordingly, the Appellate Authority dismissed the Rent Controller's appeal.

6. The learned counsel appearing for the petitioner would vehemently contend that the Rent Controller as well as the Appellate Authority erroneously shifted the burden of proof on the petitioner to prove that there existed the landlord and tenancy relationship between the parties. It is the specific case of the petitioner is that he has purchased the property on 27.03.2012 by means of a registered sale deed and within four months therefrom, he claimed right over the property and issued a notice dated 06.07.2012 calling upon the respondents to pay the arrears of rent from June, 2012 and also to vacate the property and hand over the vacant possession to him. The notice dated 06.07.2012 would establish that the petitioner had attained the tenancy and claimed a legal right over the property as a owner. Even though the respondents claimed a right over the property through an unregistered agreement of sale, the Court below failed to take note of the fact that the unregistered agreement will not confer any right, title or interest over



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the property. On the other hand, the petitioner purchased the property through a registered sale deed dated 27.03.2012 and it partakes the character of a valid and legal document.

7. According to the learned counsel for the petitioner, the respondents 2 and 3 made a claim for right over the property on the basis of unregistered agreement of sale. It is needless to mention that if for any reason the vendor did not execute a registered sale deed in their favour, they ought to have filed a suit for specific performance to obtain a sale deed in their favour, but they did not do so. On the other hand, the respondents are squatting over the property on the strength of an unregistered agreement of sale said to have been executed by the deceased Kandasamy. Further, there is nothing to show that the respondents are residing in the property in their own rights except as tenants, under the vendor of the petitioner. In fact, the petitioner examined one of her vendors as PW2 and she has categorically stated that during the life time of her father Kandasamy, the respondents did not pay any rent to him. Such a statement of PW2 would make it abundantly clear that the respondents continue to reside in the property in question only as a tenant under Kandasamy and they have never claimed title from Kandasamy.



8. As regards the observations made by the Rent Controller as well

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as the Appellate Authority that the petitioner has to only approach the Civil Court for remedy, the learned counsel for the petitioner would vehemently contend that such an observation is legally not sustainable. In this context, the learned counsel for the revision petitioner placed reliance on the decision of this Court in the case of **S. Sugumaran v. Seenu alias Natarajan**, reported in **2000 (1) LW 897**, wherein it was held that mere denial of title by the tenant will not oust the jurisdiction of the Rent Control Court. The learned Rent Controller will have to scrutinize the evidence and conclusion will have to be arrived thereof as to whether denial of title by the tenant is bona fide or mala fide. In Paragraph Nos. 13 and 14 it was held as follows:-

13. The above decision was approved by a Division Bench of Kerala High Court in the decision reported in (1995) 1 Ker LT 553, Aboobacker v. Girija, wherein the Division Bench held thus,

"We too are of the view that the Court whose jurisdiction stands ousted must have the satisfaction that there are strong or at least substantial grounds or sufficient materials in supported the plea being upheld by the Civil Court must be fairly on the higher side...."

It is clear from the above decisions that a mere denial will not oust the jurisdiction of the Rent Controller. Court will have to scrutinize the evidence and conclusion will have to be arrived. While arriving at the conclusions, the Court will have to find whether there are materials in support of the plea being upheld the Civil Court and if the case is tried by the Civil Court, there is higher chance of success. In this case, Rent Controller has not entered such a finding. Mere production of Ex.A1 and evidence of RW2 were held as sufficient to oust the jurisdiction. Even



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evidence of RW2 was not fully considered by the learned Rent Controller.

14. If this is the scope of enquiry, to consider the question of bona-fide denial of title, I do not think that appellate authority went wrong in re-appreciating evidence rendered by Rent Controller and entered his finding as to scope of bona-fides. Much reliance was placed on the evidence of RW2 by the Rent Controller. Before proceeding with the evidence of RW2, it must be noted that landlord Rohini alias Usha specifically denied execution of Ex.R1. RW2 is one of the witness to Ex.R1. Nowhere in his evidence he said that he saw Rohini signing Ex.R1. According to him, he went to Respondent to purchase gunny bags and respondent asked him to accompany him. Respondent took RW2 to Rohiniammal's house where he saw Rohiniammal and her mother. According to him, she asked respondent whether he got agreement prepared along with advance of Rs.50,000/- and respondent produced agreement to Rohiniammal's mother and mother and daughter after going through the document and after receiving advance stated that sale price is Rs.1,40,000/- and he can pay balance amount when she gives title deeds and other documents. It is also said that sale could be concluded at an early date because there is a clause that he will not pay rent from that date onwards. There is no statement in the chief examination that he saw Rohiniammal signing Ex.R1 agreement. In cross-examination he only said that he does not know where Ex.R1 got typed and he also did not read the contents of Ex.R1. He saw Rohiniammal for the first and last time. He further said that when he was taken by respondent, Ex.R1 was complete in form. He also saw Rohiniammal's mother for the first and last time and he further said that he can identify her and she will be more than 75 years. He also did not see other witnesses previously. Even in subsequent portion of cross examination also she did not say that he saw Rohiniammal affixing her signature.

9. Similarly the learned counsel for the petitioner placed reliance on the decision of this Court in the case of **Margaret Getty Rene Gonselvez v.**



St. Therasa Church, Mahe and Others reported in **2022 (3) LW 447**,

wherein in Paragraph No.12 it was specifically held that the dispute with respect to the ownership of the property raised by a tenant can very well be gone into by the Rent Controller by appreciating the oral and documentary evidence. In Paragraph No. 12 it was held as follows:-

"12. At the outset, it must be noted that the learned Rent Controller Court in its order dated 18.09.2006 in RCOP.No. 7 of 2009 has rendered a finding that in exercise of the powers conferred under the Pondicherry Buildings (Lease and Rent Control) Act, 1969 it cannot go into the question of title. This conclusion reached by the Rent Controller is *per se* illegal. It is true that the Rent Controller had the trappings of the Civil Court and it is empowered to go into the question of title *inter se* between the parties to the original petition. When there is dispute with respect to title among the parties or if a tenant disputes the ownership of the landlord, such questions can very well be gone into by the Rent Controller by appreciating the oral and documentary evidence. Therefore, the finding rendered by the learned Rent Controller declining to go into the question of title among the wrangling parties cannot be countenanced by this Court. Therefore, the reasoning assigned by the learned Rent Controller that it has no power to deal with the dispute over the title is liable only to be interested by this Court. In this context, this Court is fortified by the decision of this Court made in S.Sugumaran's case (cited supra) wherein it was held as follows:-

"12.....It is clear from the above decisions that a mere denial will not oust the jurisdiction of the Rent Controller. Court will have to scrutinize the evidence and conclusion will have to be arrived. While arriving at the conclusion, the Court will have to find out whether there are materials in support of the plea being upheld by the Civil Court and if the case is tried by the Civil Court,



there is higher chance of success. In this case, Rent Controller has not entered such a finding. Mere production of Ex.R1 and evidence of RW2 were held as sufficient to oust the jurisdiction. Even evidence of RW2 was not fully considered by the Rent Controller."

10. The learned counsel for the petitioner also relied on the decision of the Rajasthan High Court in **Devendra Singh and Ors v. State of Rajasthan and Ors**, reported in **AIR 2002 (Rajasthan) 66**, wherein also it was held that the status of a tenant will not be improved by virtue of an agreement of sale entered into with the original owner. As long as the agreement of sale did not culminate into that of a sale deed, the status of the tenant will remain as a tenant only. In Paragraph No. 8 of the Rajasthan High Court decision, it was held as follows:-

"8. I have given my anxious consideration to the rival contentions, and have gone through the pleadings of the parties, and the documents produced by them. Admittedly even at the time of sale of each portion of the property in question as purchased by each of the petitioner its value was more than Rs.100/- and in view of the clear language of Section 54 of the Transfer of Property Act any transfer of such property could be made only by a registered document. It is significant to note that Section 54 comprehends the value of the property, as distinguished from the purported consideration of alienation, and therefore, even if the property worth more than Rs.100/- is transferred for the consideration of less than Rs.100/ it cannot be so done without a registered document. In this view of the matter, sine the document in favour of the petitioners is admittedly unregistered, it cannot have the effect of conferring any title



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on them. In that view of the matter, the petitioners are not entitled to challenge the sale of the land, sold as land belonging to respondent No.8. At this stage, I may observe that the respondent 8 earlier filed a writ petition being No. 1624 of 1984 seeking to challenge the order of confirmation of sale, so also the sale certificate, and that writ petition has already been dismissed by a Division Bench of this Court vide order dated 18.09.1992 (Annexure R-5/1). Admittedly the respondent 8 has not taken any further proceedings thereafter. At this very place I may also point out that two sets of writ petitions were filed by the same learned counsel. Writ Petition No.1624/1984 was admitted on 28.06.1984 wherein the interim stay granted was only staying the recovery of the amount, while the other three writ petitions were admitted on 23.08.1984, and on that day they were ordered to be connected with Writ Petition No.1624/1984. Thereafter, all the four writ petitions did come to be listed on 29.09.1986, on which date the stay in W.P. No. 1624/1984 was confirmed, while it was not pressed in the other three writ petitions. It is in this background that writ petition No. 1624/1984 was dismissed by the Division Bench, and at that time the other three writ petitions were not got heard, or were not connected, in what circumstances, is not known. Be that as it may the fact remains that in these circumstances in view of the dismissal of the writ petition No. 1624/1984, and that the dismissal having not been brought to the notice of the Court, while arguing the other writ petitions, though they were also argued by the same learned counsel, petitioners cannot be allowed to challenge the validity of the auction proceedings on the anvil of procedural illegalities or irregularities."

11. The learned counsel for the revision petitioner further placed reliance on the decision of this Court in **S.M. Sultan Rowthar v. Kothandarama Naidu** reported in **2000 (2) R.C.R. (Rent) 403**. In that case,

it was held that the Rent Controller has to satisfy himself that denial of title



made by the tenant is bonafide. If the denial of title is malafide then the Rent

Controller has to pass an order of eviction, to evict the tenant. In Paragraph

Nos. 25 and 30 it was held as follows:-

"25. To consider the question as to whether there is bonafide or not, Court must have the satisfaction that there are substantial grounds or sufficient materials in support of the plea and Court must also form an opinion that chance of plea taken by tenant is likely to be upheld by Civil Court or there is fair chance of success by tenant. Only on such satisfaction Rent Controller will be justified in finding thta denial of title is bonafide. I that is the evidence that has to be let in, can it be said that the claim of first respondent is bonafide. He admitted that he is a tenant of Pattammal by executing a registered lease deed. He also admitted payment of rent and regularly paying rent till sale deed was executed. The fact that petitioner has obtained right of Pattammal is not disputed. Merely because there is no attornment, can it be said that denial is bonafide, especially taking into consideration the definition of landlord under Rent Control Act read with Section 109 of Transfer of Property Act.

30. Appellate authority has simply stated that because the litigation is pending between the parties, denial is bonafide. Merely because third person claims title to the property, that by itself may not be a ground to hold that denial is bonafide. Appellate Authority did not consider the settled legal principles when it held that there is bonafide in the denial nor it has considered the scope of enquiry when such contention is taken. As was held in Thangappan's case, Court has to go into the evidence to test the veracity of denial and only then the question as to whether there is bonafide or not could be decided."

<https://www.mhc.tn.gov.in/judis> 12. By placing reliance on the aforesaid decisions, the learned



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counsel for the petitioner would vehemently contend that the Rent Controller as well as the Appellate Authority erroneously refused to enter into a finding with respect to bonafides of the respondents and tenant to dispute the title of the property in favour of the petitioner. On the other hand, the learned Rent Controller as well as the Appellate Authority directed the petitioner to workout his remedy by filing a Civil Suit instead of examining the dispute with respect to title to the property. The learned counsel, therefore, prayed for allowing this Civil Revision Petition.

13. Per contra, the learned counsel appearing for the respondents would submit that even on 30.03.1989, when the agreement of sale was entered into between the deceased Kandasamy and the husband of the first respondent, title deeds pertaining to the property have been handed over to the husband of the first respondent. Further, the husband of the first respondent was put in possession of the property and from that date, the respondents are in possession and enjoyment of the premises in question as a owner thereof. The respondents also in their reply dated 17.07.2012 has categorically denied the assertion of the petitioner as regards the ownership of the property in question. Above all under Ex.R4 dated 05.09.1988, a consent letter was executed by the legal heirs of the deceased Kandasamy in favour of the husband of the first



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respondent consenting to handover possession of the property. Thus it is submitted that the respondents are in possession of the property in question on their own rights and therefore, the claim of the petitioner for ownership of the property is not bona fide. As there is no landlord and tenancy relationship between the parties, the prayer for eviction of the respondents on the ground willful default in payment of rent will not arise. Further, under Ex.R7 the first respondent had executed a registered Will in favour of the respondents 2 and 3 and after the death of the first respondent, the Will came into force. On the strength of Ex.R7, the respondents 2 and 3 have also constructed two separate houses and residing there. The learned Rent Controller as well as Appellate Authority have carefully considered the above aspects and come to a definite conclusion that the claim of the petitioner for title has not been established besides that the respondents are in possession of the property on their own right. The respondents claimed title from the very same owner, namely, Kandasamy, who has executed the unregistered agreement of sale dated 08.09.1988 (Ex.R3) and put the respondents in possession of the property in question. Therefore, the learned counsel for the respondents prayed for dismissal of the Civil Revision Petition.

14. Heard both sides and perused the materials available on record.



WEB COPY **15.** Originally, this Civil Revision Petition was filed as against the respondents 1 to 3. However, pending the revision petition, the first respondent died and her legal heirs are already on record as respondents 2 and 3 and they have contested this case.

16. At the outset it must be stated that both the Rent Controller as well as the Appellate Authority have refused to go into the question of title and directed the petitioner to file a civil suit to establish his title. This conclusion on the part of the Rent Controller as well as the Appellate Authority are legally not sustainable. It is well settled that whenever there is a dispute with respect to title, the Rent Control Court as well as the Appellate Authority have to examine the same, scrutinize the evidence and render a finding that the denial of title is bonafidee or not. In this context, the learned counsel for the petitioner placed reliance on several judgments mentioned supra. Among those decisions, in the decision of this Court in S.M. Sultan Rowthar v. Kothandarama Naidu (mentioned supra) it was authoritatively held that the Court must have the satisfaction that there are substantial grounds or sufficient materials in support of the plea and Court must also form an opinion that chance of plea taken by tenant is likely to be upheld by Civil Court or



there is fair chance of success by tenant. Therefore, it is evident that the Rent Controller has to go into the question of denial of title by the tenant and to render a finding as to whether it is bonafidee or malafidee. Such question can very well be gone into by the learned Rent Controller and the refusal on the part of the learned Rent Controller as well as the Appellate Authority to go into the question of title among the wrangling parties cannot be countenanced by this Court. Therefore, on this Court, the orders passed by the learned Rent Controller as well as the Appellate Authority are liable to be set aside.

17. As regards the ownership of the property, it must be stated that the respondents have not produced any documents to prove their title. Even as admitted by them, the husband of the first respondent, under Ex.R3 dated 08.09.1988, had only entered into an agreement of sale. An unregistered document will not create or confer title to the property in favour of the respondents. On the other hand, the petitioner purchased the property through a registered sale deed dated 27.03.2012 (Ex.P1), registered as Document No.1732 of 2012. Soon after purchasing the property the petitioner raised a demand for payment of rent and asserted that the tenancy has been attorned in his favour. When the respondents did not pay rent, a notice dated 06.07.2012 was issued *interalia* seeking eviction of the respondents. On receipt of the



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notice, a reply notice dated 17.07.2012 was sent by the respondents. It is needless to mention that the issuance of notice dated 06.07.2012 is in compliance with Section 106 of the Transfer of Property Act. Further, the agreement of sale dated 08.09.1988 (Ex.R3) is clearly hit by the provisions of Section 53A of the Transfer of Property Act and it will not confer any right in favour of the respondents. It is needless to mention that by virtue of the unregistered Agreement of Sale, the title to the property would have been vested with the vendor of the respondents continuously until it was sold in favour of the petitioner on 27.03.2012. In any event, the unregistered agreement of sale will not create or confer any right, title or interest in favour of the respondents in the property. It is also an admitted fact that pursuant to Ex.R3 dated 08.09.1988 the respondents have not taken any steps to get a sale deed registered in their favour. Therefore, the possession of the respondents in the property would be presumed to be in the capacity of tenant. If that be so, the respondents have an obligation to pay rent to the petitioner from 27.03.2012. The deed on which the petitioner purchased the property would only make the position clear that there exist the landlord and tenancy relationship among the petitioner and the respondents. By virtue of the sale deed under Ex.P1 dated 27.03.2012, the transferee/the petitioner become the landlord of the premises in question by operation of law. Both the Rent



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Controller as well as the Appellate Authority have failed to take note of the above aspects and it warrants interference of this Court.

18. For all the above reasons mentioned above, the order dated 21.02.2020 passed in RCA.No. 39 of 2018 on the file of II Additional District Judge, confirming the order dated 31.10.2018 passed in RCOP. No. 51 of 2012 on the file of the learned Rent Controller, Pondicherry, are set aside. The Civil Revision Petition stands allowed. No costs. The respondents are directed to vacate and hand over the vacant possession of the property in question to the revision petitioner within a period of three months (i.e.) 30th September, 2023.

07.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM

To

1. The II Additional District Judge, Puducherry
2. The Court of Rent Controller-II, Puducherry.
3. The Section Officer, High Court, Madras.



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V. BHAVANI SUBBAROYAN, J

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