



CRP.No.4100 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CRP.No.4100 of 2022
and CMP.No.21288 of 2022

P.Dhanakotti

... Petitioner

Vs.

M/s.Young Men Christian Association,
represented by its General Secretary

P.Asir Pandian,
YMCA Building,
No.223, NSC Bose Road,
Chennai-600 001.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 27.09.2022 made in M.P.No.4 of 2022 in R.C.O.P.No.77 of 2019 on the file of the X Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.T.Muruga Manickam, Senior Counsel
for Mr.N.Jothi

For Respondent : Mr.V.R.Thangavelu



CRP.No.4100 of 2022

ORDER

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This Civil Revision Petition on hand has been instituted challenging the fair and decreetal order dated 27.09.2022 made in M.P.No.4 of 2022 in RCOP.No.77 of 2019 on the file of the X Court of Small Causes, Chennai.

2. The revision petitioner is the tenant and the respondent filed RCOP No.77 of 2019 for eviction, more specifically under Section 10(3)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The rent control proceedings was instituted mainly on the ground that the respondent/landlord require the subject premises for the benefit of the institution and for development activities. The revision petitioner/tenant filed M.P.No.4/2022 under Section 29 of the Act on the ground that the respondent/landlord is a Christian Charitable Trust and exempted from the provisions of the Act and thus the petition itself is not maintainable and to be rejected.

3. The RCOP Court adjudicated the issues and formed an opinion



CRP.No.4100 of 2022

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that the revision petitioner/tenant pleaded that the respondent/landlord is a charitable trust, however the respondent has produced a document stating that it is a society registered under the Tamil Nadu Societies Registration Act and not exempted under the provisions of the Act and accordingly, the miscellaneous petition was dismissed.

4. The learned Senior Counsel for the revision petitioner mainly contended that the petitioner is a charitable trust and the revision petitioner has filed a document to establish the same. Even in such circumstances, waiver option is to be exercised by the respondent/landlord by obtaining Leave from the Court concerned, which has not been obtained admittedly and thus the RCOP Court has committed an error in rejecting the miscellaneous petition. The learned Senior Counsel for the petitioner relied upon the judgement of this Court in the case of *Sha Poosaji Mangilal v. The South Indian Humanitarian League, represented by its Secretary* reported in *CDJ 2009 MHC 029*, wherein it was held that for exercising waiver option, proper permission must be obtained.



WEB COPY



CRP.No.4100 of 2022

5. In the case of *H.Nayeemullah v. Madras E-Nusrathul Islam and New Mosque, rep by its Muthavalli M.Nisar Ahmed, Periamet, Chennai* reported in *CDJ 2010 MHC 7525*, this Court held as under:

“5...It is seen from the judgement relied upon by the learned counsel for the respondent that when an exemption under Section 29 of the Act was given in favour of the landlord it is open to the landlord to waive the benefit and file petition under the provision of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. But it is also stated that if a particular owner is not willing to avail benefit of exemption, necessary averments must be made in the petition. Admittedly, in this case, no such waiver is pleaded. Therefore, the Judgment relied upon by the respondent is not applicable to this case.

6. Nevertheless, it is the contention of the respondent that it is a private wakf, which is disputed by the revision petitioner. According to me, this fact has to be gone into only in the trial, and cannot be done in the interlocutory application. Further, as rightly contended by the learned counsel for the respondent that against any order passed by the Rent Controller, only appeal lies under Section 23 of the Act and therefore, this Civil Revision Petition is dismissed and it is open to the petitioner to raise the issue about the maintainability before the Court below and the Court below is also directed to frame such issue and pass orders in accordance with law while deciding the Rent Control application finally. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.”

Relying on the above judgement, learned Senior Counsel for the



CRP.No.4100 of 2022

WEB COPY

revision petitioner contended that the RCOP Court has committed an error in rejecting the miscellaneous petition filed under Section 29 of the Act.

6. The learned counsel for the respondent objected by stating that even as per the Lease Agreement dated 01.10.2010, the respondent represented themselves as Society registered under the Tamil Nadu Societies Registration Act and thus, there is no ambiguity in respect of the status of the respondent institution.

7. Under Section 10(3)(b) of the Act, the respondent is entitled to file an application for eviction of the tenant if the premises are required for development of the institution. In this context, the respondent/landlord, in their application filed under Section 10(3)(b) of the Act, has stated in para 9 that the petition premises is required for the purpose of the intended activity, to place in the entire compound and the Hon'ble High Court had already granted permission for development of a portion of the property, now petitioner has intention to develop the entire property, for which, possession of the petition



premises has to be obtained and demolished.

8. When the purpose for development of the institution has been specifically stated in para 9 of the application filed before the RCOP Court, the application filed under Section 10(3)(b) of the Act is entertainable regarding exemption under Section 29 of the Act. The revision petitioner is unable to establish that the respondent is a charitable institution, but the respondent has produced a lease agreement, stating that it is a Society registered under the provisions of the Tamil Nadu Societies Registration Act.

9. Thus, this Court do not find any infirmity in the order passed by the RCOP Court. The parties are at liberty to raise all other grounds at the time of adjudication of the RCOP proceedings. The Trial Court is directed to dispose of the RCOP as expeditiously as possible.

10. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.



CRP.No.4100 of 2022

04.01.2023

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Index :Yes/No

Speaking Order :Yes/No

Jvm

Copy to:

The Court of Small Causes -X,
Chennai.

S.M.SUBRAMANIAM, J.

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CRP.No.4100 of 2022

CRP.No.4100 of 2022

04.01.2023