



C.R.P(MD)No.2300 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.09.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.2300 of 2011

Margaret Vijayalatha

... Petitioner/Respondent/
Petitioner-Landlord

Vs.

1.Johnson Somasundaram Manickaraj
2.Janaki Manonmani Saroja

Respondents/Appellants/
Respondents-Tenants

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the Judgment and Decree, dated 31.03.2011 passed in R.C.A.No.3 of 2010 on the file of the learned Principal Subordinate Judge, Rent Control Appellate Authority, Tenkasi, reversing the Judgment and Decree, dated 29.06.2010 passed in R.C.O.P.No.12 of 2008 on the file of the learned Principal District Munsif, Rent Controller, Tenkasi and allow this Civil Revision Petition.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.D.Nallathambi



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ORDER

This Civil Revision Petition has been filed to set aside the Judgment and Decree, dated 31.03.2011 passed in R.C.A.No.3 of 2010 on the file of the learned Principal Subordinate Judge, Rent Control Appellate Authority, Tenkasi, reversing the Judgment and Decree, dated 29.06.2010 passed in R.C.O.P.No.12 of 2008 on the file of the learned Principal District Munsif, Rent Controller, Tenkasi.

2.The petitioner/respondent/petitioner-landlord has filed a petition in R.C.O.P.No.12 of 2008 on the file of the Rent Controller (Principal District Munsif), Tenkasi, to evict the respondents from the petition scheduled property and to hand over the vacant possession of the petition scheduled property to the petitioner. The said R.C.O.P was allowed by a fair and decreetal order dated 29.06.2010 on the file of the Rent Controller (Principal District Munsif), Tenkasi. Assailing the same, the respondents/tenants in the aforesaid R.C.O.P, preferred an appeal in R.C.A.No.3 of 2010 on the file of the Appellate Rent Controller/Principal Subordinate Judge, Tenkasi. The Appellate Rent Controller allowed the appeal preferred by the tenants as against the



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order made in R.C.O.P.No.12 of 2008, by a Judgment and Decree, dated 31.03.2011. Assailing the same, the petitioner/landlord has filed this Civil Revision Petition.

3.For the sake of convenience, the parties are referred to as their rank in R.C.O.P.No.12 of 2008.

4.The case of the petitioner/landlord in R.C.O.P.No.12 of 2008 is as follows:-

The petition scheduled property is originally a Government poramboke land for which tax was assessed in the name of the petitioner/landlord's father-in-law, namely M.S.Durairaj. The petitioner/landlord was maintaining her father-in-law and mother-in-law during their lifetime and had spent upto Rs.4 lakhs for their medical expenses by using her Srithana jewellery and was also maintaining the petition scheduled house. Overwhelmed by the affection of the petitioner/landlord, her father-in-law gave a consent letter to the Municipality concerned to transfer the tax assessment in the name of the petitioner/landlord. After the plaint scheduled house was constructed in S.No.21/8, no patta was issued by the Revenue

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Department. Thereafter, the petitioner/landlord herself by paying an amount of Rs.29,040/- through Chalan No.73 to the Government on 30.10.2007 obtained a separate patta in her name. Accordingly, the tax assessment for the petition scheduled house was also assessed by the Municipality in the name of the petitioner/landlord and the electricity connection in A.C.No.390 also stands in her name. The first respondent/tenant is the brother of the petitioner/landlord's husband and the second respondent/tenant is the wife of the first respondent. The second respondent alone is residing in the petition scheduled property along with her daughters, namely Priya Grace and Vimala Grace. The second respondent's son namely Immanuvel Sham Durairaj was working in Hyderabad at that point of time and the other two daughters of the second respondent were also already married and living in their respective matrimonial homes. During the lifetime of the second respondent, the first respondent/tenant married another woman, namely Darsingh Selvabai. Since the first respondent/tenant deserted the second respondent/tenant and her children, the petitioner/landlord's husband brought them to Tenkasi and made them to reside in the petition scheduled property. The petitioner/landlord resided in the house belonging to the father-in-law. Since the respondents/tenants were close relatives, the petitioner/landlord



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received a nominal amount of Rs.200/- as a monthly rent from the respondents from the 11th month of 2000. However, from 04.04.2008, the respondents/tenants failed to pay the rent and even without getting permission from the petitioner/landlord, they transferred the electric motor in the petition scheduled house. They have made up their mind to the extent of denying the title of the petitioner/landlord and are not maintaining the petition scheduled property and are committing waste. Since the respondents/tenants committed wilful default in payment of rent and since they were not maintaining the petition scheduled house by unlawfully claiming the right of the petition scheduled property, the aforesaid R.C.O.P.No.12 of 2008 came to be filed in the Court of the Rent Controller, Principal District Munsif, Tenkasi, by the petitioner/landlord.

5.The case of the respondents/tenants is as follows:-

The respondents have denied the entire narration of the petitioner/landlord in toto. The respondents had submitted that the petitioner conniving with her husband utilizing the ill-health of her father-in-law forged certain documents, on the basis of which she managed to transfer patta of the petition scheduled property in her

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name on 03.10.2007. The petitioner and the second respondent have married the sons of one M.S.Durairaj and hence, they both are the daughter-in-laws of the same family. Having come to know the fraudulent transfer of patta with respect to the petition scheduled property by the petitioner in her favour, the first respondent had promptly filed an appeal before the Revenue Divisional Officer. As alleged by the petitioner/landlord, she never resided in any portion of the petition scheduled property at any point of time. The petition scheduled property originally belonged to the first respondent's father M.S.Durairaj. The said M.S.Durairaj executed a Will on 21.12.2005 with regard to the properties belonging to him. As per the said Will, a life interest in the petition scheduled property was given to the respondents by the executant of the said Will and as per the said Will, after the lifetime of the respondents 1 and 2, their son Immanuel Sham Durairaj has been bequeathed with a right of absolute title and ownership of the petition mentioned property. The said M.S.Durairaj died on 22.11.2008. After his death, the said Will, dated 22.12.2005 came into force. Hence, the petitioner has no matter of right over the petition scheduled property. The petitioner's father-in-law M.S.Durairaj was a retired Head Constable and the mother-in-law was a retired Headmistress and both of them received pension for their lifetime.



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Hence, the contention of the petitioner that she maintained her in-laws out of her Srithana jewelry is absolutely untrue and it is only out of their pension, the in-laws of the petitioner led their life. Another pertinent point is that the petitioner's husband himself had filed a petition before the Sub Court, Tenkasi to declare him as an insolvent. That apart, the first respondent was working in different places and hence, the second respondent resided permanently in the petition scheduled property which belonged to them. By making use of the fact that the first respondent was working out of station, the petitioner along with her husband has gone to the level of forging the documents and on the strength of which taking steps to evict the respondents from the petition scheduled property in the proceedings before the Rent Controller. Hence, the tale of the default of payment of rent by the respondents from 04.09.2008 and that of the relationship of landlord and tenant between the petitioner and the respondents is absolutely in correct.

6.Before the Rent Controller, on the side of the petitioner, she herself was examined as P.W.1 and her husband was examined as P.W.2 and 24 documents were marked as Ex.P.1 to Ex.P.14 and on the side of the respondents, the first respondent herself was examined as

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R.W.1 and one Rebai Jailani was examined as R.W.2 and four documents were marked as Ex.R.1 to Ex.R.4.

7. Based on the oral and documentary evidence, the Rent Controller framed three issues and after a full-fledged trial, allowed the said R.C.O.P.No.12 of 2008 on the basis of the following findings:-

(i) Title:-

7(i). The respondents denied the title of the petition scheduled property in favour of the petitioner/landlord on the basis of one Will which was executed by the second respondent's father-in-law M.S.Durairaj on 21.12.2005. The said Will was marked on the side of the respondents through one of its attestors, namely Rebai Jailani as Ex.R.4. The Rent Controller observed that for claiming title of the petition scheduled property against the petitioner on the basis of Ex.R. 4-Will, the respondents have to prove that the execution of the said Will. But nothing of that sort which would prove the title of M.S.Durairaj was produced on the side of the respondents. However, against the same, on the side of the petitioner/landlord Ex.P.1-patta, which stood in the name of the petitioner, was produced. Though the



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respondents claimed that the petitioner had obtained the said patta on the basis of certain forged documents and an appeal as against the grant of patta in the name of the petitioner is also pending before the Revenue Divisional Officer, they were not able to produce any evidence with regard to the appeal preferred before the Revenue Divisional Officer. As per the available evidence, the Rent Controller, on the basis of the patta in the name of the petitioner and the tax assessment of the petition scheduled property/electricity connection of the petition scheduled house which stood in the name of the petitioner, concluded that the petitioner had absolute title over the petition scheduled property. That apart, the Rent Controller negated the contention of the respondents/tenants as malafide.

(ii) Rent:-

7(ii). As per the case of the petitioner, the respondents were paying a monthly rent of Rs.200/- from the 11th month of 2000 and she committed a default in payment of rent from 04.04.2008. Though the respondents have denied the title of the petitioner with respect to the petition scheduled property, they have not denied the default in payment of rent committed by them. Hence, the Rent Controller

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concluded that the admitted fact of non-payment of rent by the respondents would amount to a wilful default in payment of rent.

(iii) Eviction:-

7(iii). The Rent Controller, having decided that a wilful default in payment of rent had been committed by the respondents, held that the same itself would be a ground for eviction. On that basis, the Rent Controller came to the conclusion that the respondents were liable to be evicted from the petition scheduled property for their wilful default in payment of rent.

8.Assailing the same, the respondents/tenants preferred an appeal in R.C.A.No.3 of 2010 on the file of the Appellate Rent Controller/Principal Subordinate Judge, Tenkasi to set aside the fair and decretal order of the Rent Controller/Principal District Munsif, Tenaksi in R.C.O.P.No.12 of 2008.

9.The Appellate Rent Controller/Principal Subordinate Judge, Tenkasi, set aside the fair and decretal order of the Rent Controller/Principal District Munsif, Tenaksi in R.C.O.P.No.12 of 2008

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and allowed the appeal in R.C.A.No.3 of 2010, by Judgment and Decree, dated 31.03.2011, for the following reasons:-

(i) Title:-

9(i). The Appellate Rent Controller observed that the Rent Controller had not considered the oral and documentary evidence produced on both sides. The case of the petitioner turned futile on the filing of the counter by the respondents disputing the landlord-tenant relationship between the petitioner and the respondents. The Rent Controller failed to appreciate that the petitioner and the respondents belonged to the same family of one M.S.Durairaj. On the sole ground that a title dispute cannot be decided by a Rent Controller and that it could only be decided by a civil Court, the Rent Controller ought to have dismissed the said R.C.O.P. The Rent Controller failed to appreciate the pleading of the petitioner stating that the second respondent/tenant was brought to the petition scheduled property only by the petitioner/landlord's husband on the desertion of the second respondent by the first respondent by marrying another woman. The Rent Controller failed to appreciate that the petitioner has impleaded the second respondent's husband as the first respondent while claiming that the second respondent alone got the property on lease.



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Nowhere, in the entire pleading of the petitioner, the role of the first respondent as a tenant has been put forth. The Rent Controller failed to appreciate that the Government would always grant patta only to a long-term occupier of the poramboke land and the admitted fact of both the petitioner and the second respondent is that the occupier was only their father-in-law one M.S.Durairaj. The Rent Controller also did not appreciate the fact that the 'B' memorandum which is marked as Ex.P.14 has been issued not to the petitioner, but only to the husband of the petitioner. Hence, the petitioner has miserably failed to prove how she managed to get a patta in her name when 'B' memorandum has been issued in the name of her husband. These factual aspects would clearly prove that the crux of this case is nothing but a civil dispute pertaining to the title of the petition scheduled property, which could be decided only by a competent civil Court.

(ii) Rent:-

9(ii). The petitioner/landlord has claimed that there was a tenancy agreement between her and the respondents and a rent of Rs. 200/- per month was fixed and the tenancy agreement commenced in November 2007. Thereafter, a wilful default with effect from 12/25



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04.04.2008 in payment of rent was committed by the second respondent, which necessitated the filing of the said R.C.O.P. No evidence as to the wilful default in payment of rent and act of waste committed in the petition scheduled property has been put forth by the petitioner/landlord and the Rent Controller has fairly observed that the petitioner did not prove that the respondents/tenants committed an act of waste in the petition mentioned property. The Rent Controller had proceeded on the presumption that the Will, dated 21.12.2005 as pleaded by the respondents/tenants failed because it came into force on a subsequent date to the date of issue of the patta which stands in the name of the petitioner/landlord. Hence, the Rent Controller concluded that the will could never come into effect as no property was left in the name of M.S.Durairaj and that the Will is an invalid one. Such a presumption could be correct only if the pre-existing title to the petition scheduled property in favour of M.S.Durairaj was divested by Ex.P.1-patta. It is a settled proposition of law that the revenue records are not conclusive proof of title. The Rent Controller proceeded to conclude the entire case in favour of the petitioner/landlord by treating Ex.P.1 as a patta, but alas it is nothing but a land assignment order. The Rent Controller also miserably failed to appreciate Ex.P.9-a memo sent by the Taluk office to the petitioner with respect to the

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classification of the property assigned and Ex.P.10-a letter received by the petitioner in which the petition scheduled property and other properties were classified as poramboke lands till 31.12.2006 and from 18.09.2007 onwards such lands had been reclassified into Natham poramboke. The Rent Controller failed to appreciate that, though superficially, Ex.P.1-patta may appear to confer the title on the petitioner/landlord, a close perusal of the records with regard to the land, especially Ex.P.1 would reveal that it did not refer to any superstructure in the petition scheduled property. In fact, Ex.P.1 patta has been obtained by misrepresenting the petition scheduled property as vacant land. Since the said land had been converted into a Natham poramboke from 18.09.2007 and as per the petition averments there had been a pre-existing house even before the said assignment order, the Appellate Rent Controller concluded that the assignment order in favour of the petitioner/landlord for a vacant Natham poramboke land has been obtained fraudulently by the petitioner/landlord by not disclosing a pre-existing house in the aforesaid land, on which basis the Appellate Rent Controller came to a conclusion that an assignment order obtained by fraud cannot confer any title on the alleged landlord and hence the relationship of landlord and tenant could not be claimed by the petitioner. Thus, the Appellate Rent Controller concluded that



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unless and until the relationship of the landlord and tenant is absolutely proved by the petitioner/landlord, the question of default in payment of rent cannot be substantiated and the case of the second respondent/tenant that she had been living in the petition scheduled property as a daughter-in-law and not as a tenant is a bona fide one and the same can be elucidated from the pleading of the petitioner herself who had pleaded that the second respondent was brought and permitted to live in the petition scheduled property by her husband himself on the second respondent being deserted by the first respondent.

10.Since the relationship between the landlord and tenant is not proved, the question of eviction will not arise.

11.For these reasons, the Appellate Rent Controller allowed R.C.A.No.3 of 2010. Assailing the same, this Civil Revision Petition came to be filed.

12.Heard Mr.M.Saravanan, learned counsel appearing for the petitioner and Mr.D.Nallathambi, learned counsel appearing for the respondents and perused the materials available on record.

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13.The entire case of the petitioner/landlord was challenged by the respondents/tenants' counter, wherein it has been pleaded that the relationship of landlord and tenant does not exist between the petitioner and the second respondent. The counter clearly elaborated that the petitioner/landlord and the second respondent/tenant were the daughters-in-law of one M.S.Durairaj. That apart, the second respondent has been residing in the petition scheduled property not as a tenant, but as the rightful wife of the said M.S.Durairaj's son, namely, Johnson Somasundaram Manickaraj. In furtherance to the same, it has been clearly pleaded in the counter that making use of the situation that the first respondent had married another woman and has been living in another place named Idayarkadu, the petitioner and her husband were trying to chase away the second respondent and her unmarried daughters from the petition scheduled property forcibly on the basis of forged and concocted documents. The entire decision of the Rent Controller was concluded on the basis of Ex.P.1-patta which stands in the name of the petitioner/landlord, by misconstruing the fact that Ex.P.1 is not a patta, but a land assignment order in favour of the petitioner.



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14.The pleadings and evidence of the petitioner as P.W.1 would clearly prove that originally the said land assignment stood in the name of the father-in-law of the petitioner and the second respondent, which was then managed by the petitioner to be issued in her name. The circumstance under which she managed to get a land assignment order in her favour has not been proved properly by the petitioner. That apart, she herself has admitted that the second respondent and the petitioner are close relatives and that the land assignment originally stood in the name of their father-in-law M.S.Durairaj. The petitioner has also not pleaded the reason for impleading the second respondent's husband as the first respondent, while she has contended that it is only the second respondent, who has entered into a lease with her. Though it is alleged by the petitioner that the tenancy commenced from the 11th month of 2007, while deposing her evidence as P.W.1, she has deposed that she has given the petition scheduled property in rent to the second respondent by an oral rental agreement from the 12th month of 2007. This would precisely prove that the petitioner herself was not pretty sure about the date from which the tenancy commenced between her and the second respondent. When there is a specific pleading by the petitioner that the second respondent was brought to Tenkasi and was settled in



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the petition scheduled property by her husband in the event of the second respondent being deserted by the first respondent, the question of mentioning the second respondent as a tenant will never arise. The Rent Controller failed to appreciate the description of the property with respect to the petition scheduled property incorporated in the Will executed by the father-in-law of the second respondent on 21.12.2005 which has been marked as Ex.R.4 bequeathing the petition scheduled property in favour of the second respondent's son, reserving life interest over the same in favour of the respondents 1 and 2.

15.The very perusal of the Will itself would prove that the intention behind the petitioner impleading the second respondent's husband as the first respondent in the said R.C.O.P. Obviously, these aspects would prove that the petitioner has adopted a shortcut to evict the second respondent from the petition scheduled property instead of filing a proper civil suit to resolve the civil dispute which is persisting between her husband and the respondents. Another pertinent point that the Rent Controller miserably missed is the date of commencement of the tenancy. The petitioner in her evidence as P.W.1 deposed that she lived with her in-laws during their lifetime and that her father-in-law, namely M.S.Duraiaraj died on 22.11.2008. Her

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mother-in-law died on the very next day that is on 23.11.2008 and at that point of time, the petitioner along with her in-laws resided in the northern portion of the petition scheduled house and the respondents together resided in the southern portion of the petition scheduled house. If that significant admission made by the petitioner herself is appreciated, then her claim that the alleged tenancy commenced by the 11th month of 2007 fails. Though she has pleaded that the tenancy commenced from the 11th month of 2007, she deposed in her evidence that the same commenced from the 12th month of 2007. Both could not be correct and the real fact is that the petitioner with her family and the respondents were living together along with their in-laws in the petition scheduled property as a joint family in the northern and southern portion of the said house respectively. In view of the same, the entire case of the petitioner has evolved out of a civil dispute between the petitioner and the respondents.

16.The ***Hon'ble Division Bench of the High Court of Kerala in RC.Rev.No.82 of 2022, dated 12.01.2023 [P.K.Sajeev and others Vs. Eldho P.Mathew and others]*** has decided as follows:-



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"4.The second proviso to Section 11(1) of the Act denotes the competency and the jurisdiction of the Rent Control Court to consider the question at the first level. As seen from the second proviso, the Rent Controller has to prima facie satisfy that the denial of title or the claim of permanent tenancy is bona fide. It is after recording prima facie satisfaction or bona fides of the dispute, the Rent Controller can direct the landlord to sue for eviction of the tenant in a Civil Court. It is then for the Civil Court to decide on a title and pass a decree for eviction on enumerated grounds under the Act, if the Civil Court is satisfied with the title of the landlord."

17.This Court in **C.R.P(NPD)No.3854 of 2009, dated 15.11.2007 [P.Pongaiyan and others Vs. Saradhambal]** has held as follows:-

"16. In all the above judgments, the Courts have held that when the respondent denies the title of the petitioner, the Courts have to consider the said claim and find out whether the denial of the petitioners' title is bonafide or malafide. If the denial is bonafide, the Rent Controller or Appellate Authority must record that the denial of the title is



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bonafide. In the judgment relied on by the learned counsel for the petitioners, it has been held that in rent control proceedings, title can be incidentally considered by the Court. When the Rent Controller or Appellate Authority holds that denial of title by the respondent is bonafide, the remedy available to the petitioner is to approach the Competent Civil Court for possession of petition premises."

18.In another case of this Court in ***C.R.P(MD)No.1686 of 2018, dated 30.08.2018 [Ganesan Vs. Nallappa Reddiyar]***, in a similar case, has elaborately discussed about a civil dispute which was filed before the Rent Controller and the relevant portion of which is extracted as follows:-

"8.As far as the legal position is concerned, when there is a dispute regarding landlord and tenant relationship, if the title of the landlord is disputed, after getting into possession recognising his title, such denial of title is hit by Section 116 of the Indian Evidence Act. If there is a bona-fide dispute regarding the title and if anybody intends to evict the person in possession based on the title, his remedy is to approach the civil Court, alleging the possession as illegal or unauthorised."



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19. In fully consonance with the aforesaid orders, I am of the considered view that even in this case on considering the pleading of the second respondent/tenant that the relationship as tenant and landlord does not exist between the petitioner and the second respondent, the Rent Controller ought to have proceeded *prima facie* to satisfy that the denial of the title is *bona fide*. It is only after recording *prima facie* satisfaction on *bona fides* of the dispute the Rent Controller could direct the landlord to issue for eviction. However, the Rent Controller proceeded on the basis of Ex.P.1, which is actually a land assignment order, considered the same as patta and decided that the petitioner has absolute title over the petition scheduled property. The Rent Controller miserably failed to record the circumstances under which the land originally which was assigned in the name of the father-in-law of the second respondent came to be assigned in the name of the petitioner. The Appellate Rent Controller has fairly decided that the denial of the title by the tenant is *bona fide* and had concluded that the remedy available to the petitioner is only to approach the competent civil Court for possession of the petition scheduled property and the house situated thereat.

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20. With these observations, this Court is not inclined to interfere with the order passed by the Appellate Rent Controller. Hence, the Judgment and Decree, dated 31.03.2011 passed in R.C.A.No.3 of 2010 on the file of the learned Principal Subordinate Judge, Rent Control Appellate Authority, Tenkasi is confirmed and the Judgment and Decree, dated 29.06.2010 passed in R.C.O.P.No.12 of 2008 on the file of the learned Principal District Munsif, Rent Controller, Tenkasi, is set aside. Accordingly this Civil Revision Petition stands dismissed. There shall be no order as to costs.

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NCC : Yes
Index : Yes
Internet : Yes
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To

1. The Principal Subordinate Judge,
Rent Control Appellate Authority,
Tenkasi.
2. The Principal District Munsif,
Rent Controller,
Tenkasi.
3. The Record Keeper,
Vernacular Section,

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Madurai Bench of Madras High Court,
Madurai.

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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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