



C.R.P(MD)Nos.62 to 67 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 21.06.2023

PRONOUNCED ON : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

C.R.P(MD)Nos.62 to 67 of 2021

K.Kulathooran ... Petitioner in all CRPs.

Vs.

R.Mohan	.. Respondent in CRP(MD)No.62 of 2021
Vasanth	.. Respondent in CRP(MD)No.63 of 2021
Soundarajan	.. Respondent in CRP(MD)No.64 of 2021
Raveendran	.. Respondent in CRP(MD)No.65 of 2021
Avudaiyammal	.. Respondent in CRP(MD)No.66 of 2021
P.Krishnan (Died)	
1.Suresh Kumar	
2.Shanmugam @ Velu	
3.Suthan	
4.Satheesh Kumar	
5.Selvam	.. Respondents in CRP(MD)No.67 of 2021

Prayer in all CRPs : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to fair and decretal



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order passed in RCA.Nos.3, 4, 6, 7 & 8 of 2016 dated 14.08.2020 passed by the Rent Control Appellate Authority/Principal Sub Judge, Nagercoil, by confirming the order passed by the Rent Control Tribunal/Principal District Munsif Court, Nagercoil in RCOP.Nos.13, 14, 15, 17 & 19 of 2007 dated 06.01.2016 and direct the respondent to vacate from the petition mentioned premises within a specified period and set aside the same.

In all Cases

For Petitioner : Mr.K.P.Narayana Kumar
For Respondent : Mr.D.Saravanan
(In CRP(MD) Nos.62 to 66/2021
& for R2 in CRP(MD)No.67/2021
For R1 : No Appearance
(In CRP (MD)No.67/2021)

COMMON ORDER

By this common order, all these six Civil Revision Petitions are being disposed of.

2. In these Civil Revision Petitions, the petitioner has challenged the impugned orders all dated 14.08.2020 passed by the Rent Control Appellate Authority (Principal Sub Court) Nagercoil in R.C.A.Nos.3 to 8



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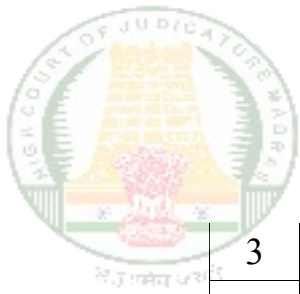
of 2016 confirming the orders dated 06.01.2016 of the Rent Control Tribunal (Principal District Munsif Court), Nagercoil, in R.C.O.P.Nos.13 to 17 & 19 of 2007.

3. The petitioner had initiated rent control proceedings against the respondents on the following three grounds:-

<i>Sl. No.</i>	<i>Provision</i>	<i>Ground</i>
1	Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960	Willful default in paying the monthly rent
2	Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960	Recovery of possession
3	Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960	Demolition of dilapidated building and construction of ne building

4. The dispute pertains to the above mentioned respondents in RCOP.Nos.13 to 17 & 19 of 2007 who are admittedly staying in six row houses. Details of such row houses are given below:-

<i>Sl. No.</i>	<i>C.R.P.(MD) No.</i>	<i>RCA.No</i>	<i>R.C.O.P.No.</i>	<i>Building / House No</i>
1	62/2021	3/2016	13/2017	N.M.C.No.83/225
2	63/2021	4/2016	14/2007	N.M.C.No.82A/223



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3	64/2021	5/2016	16/2007	N.M.C.No.83/226
4	65/2021	6/2016	15/2007	N.M.C.No.84/227
5	66/2021	7/2016	17/2007	N.M.C.No.83A/224
6	67/2021	8/2016	19/2007	N.M.C.No.81/222

5. The Rent Control Proceedings were initially initiated by one Mr.E.Sankarakumar as the President of Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust. After the alleged expiry of term of the said Mr.E.Sankarakumar, as the President of Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust one Kalyanasundaram was elected as the President and therefore, he was impleaded as the second petitioner in the respective R.C.O.Ps.

6. Subsequently, the petitioner was elected as the President of Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust and filed I.A.Nos.23 to 28 of 2012 to implead himself as the third petitioner in the respective R.C.O.Ps. and to permit him to conduct the R.C.O.P in the place of the the said Mr.E.Sankarakumar, as the President of Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust.

7. Respective I.As. were allowed, against which, the respective



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respondents herein had also filed C.R.P.(MD) Nos.1734 to 1739 of 2013

before this Court. This Court, by an order dated 02.09.2014 dismissed all

the C.R.Ps. with the following observations:-

13. It is admitted case that the respondent has been elected as President of the Trust and the petitioner is objecting to implead the respondent as 3rd petitioner on the ground that the respondent has been elected as President of different trust and he has no authority to conduct the case. From the records it is seen that RCOPs are filed originally, by one P.Sankara Kumar, President, Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust. Subsequently, one Kalyanasundaram was impleaded as 2nd petitioner as he was elected as President of Trust. Now, the respondent has filed I.A.Nos.23, 24, 25, 26, 27 and 28 of 2012 in R.C.O.P.Nos.13, 14, 15, 16, 17 and 19 of 2007 to implead him as 3rd petitioner to continue the proceedings in RCOPs. He filed resolution of Trust, which records the newly elected office bearers. As per the said resolution the respondent herein is elected as President. **The petitioner has not produced any material to show that Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust is different Trust from Krishnancoil Vishvakarma Santhathiyar Kamakshiammancoil Trust and the petitioner property belongs only to the earlier trust.** On earlier occasion the resolution by very same Trust was accepted by the Rent Control Court and then President was impleaded as 2nd petitioner. The learned Appellate Authority has appreciated these facts and ordered all the RCAs.



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8. The specific case of the petitioner is that the Rent Control Court as also the Rent Control Appellate Court erred in dismissing R.C.O.Ps. and R.C.As stating the petitioner has no *locus standi* as the property in question is an asset in the name of Krishnancoil Vishvakarma Santhathiyar Kamakshiammancoil Trust and that the petitioner has failed to establish title over the property and also failed to prove a landlord-tenant relationship between the petitioner and the respective respondents.

9. It is the specific case of the petitioner that both the Trusts are known to its members belonging to Viswakarma/Achhari community in Krishnancoil, Nagercoil, Kanyakumari District. However, the Rent Control Court erred in dismissing the respective R.C.O.Ps. vide its separate orders initiated by the petitioner.

10. It is submitted that the further appeals before the Rent Control Appellate Court were dismissed *vide* impugned orders all dated 14.08.2020 during the time when the country was under lock down. It is submitted that if proper opportunity was granted to the petitioner, the petitioner would have explained Exs.P1 to P11 that were filed before the Court.



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11. That apart, it is submitted that the respondent has also admitted in the counter affidavit filed in the respective R.C.O.Ps., that although the Trust is called as Krishnancoil, as the President of Krishnancoil Viswabrahmma Santhathiyar Kamakshiammancoil Trust it is also named as Viswaharma Kamakshiammancoil Trust in the entries in the Revenue Records.

12. It is submitted that during Chief Examination of P.W.1, a specific stand was taken that both the Trusts were one and the same. A reference was made to the following passage from the deposition of the petitioner who was examined as P.W.1 :-

கிருஷ்ணன்கோவில் விஸ்வபிரம்மா சந்ததியர்
காமாட்சி அம்மன் கோவில் டிரஸ்ட்டும்,
கிருஷ்ணன்கோவில் விஸ்வகர்மா காமாட்சி அம்மன்
கோவில் டிரஸ்ட்டும் இரண்டும் ஒரே டிரஸ்ட்தான்.
மேற்படி டிரஸ்ட்டை கிருஷ்ணன்கோவில்
விஸ்வபிரம்மா சந்ததியர் காமாட்சி அம்மன் கோவில்
டிரஸ்ட் என்றும் சொல்லுவார்கள்.

13. It is further submitted that there is no cross examination on this aspect by any of the respondent in the respective R.C.O.Ps. before the Rent Control Court. That apart, it is submitted that during the cross



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examination of R.W.1, the respondent in C.R.P.(MD) No.63 of 2021/ the respondent in R.C.O.P.No.14 of 2017 has also admitted that she is residing at House bearing reference N.M.C.No.82A/223 as a tenant and she was however not paying any rent. Relevant portion of the deposition reads as under:-

நான் என்.எம்.சி. எண்.82எ/223
சலவையாளர் தெரு சி.பி.எச்.சாலை
கிருஷ்ணன் கோயிலில் உள்ள வீட்டில்
வாடகைதாரராக நான் குடியிருக்கிறேன்
என்றால் சரிதான், ஆனால்
வாடகைகொடுப்பதில்லை. மேற்படி வீட்டில்
நான் வாடகை தாரராக குடியிருந்து வருகிறேன்
என்றால் சரிதான். என்னுடைய கட்டிடம் மற்றும்
ஆர்.சி.ஓ.பி. 13, 15, 16, 17, 19 ஆகியவற்றில்
உள்ள கட்டிடங்கள் ஒரே வரிசையில்
அமைந்துள்ளது என்றால் சரிதான்.

14. That apart, the learned counsel for the petitioner would submit that if the case of the respondent in the respective C.R.Ps.was that both the Trusts were different, it was open for the respondent to file a suit for declaration that they are the owners of the property. In this connection, a reference is made to the decision of the Madras High Court (Principal Seat of this Court), Chennai in **G.Radhakrishnan and others Vs. S.Mahendran**, 2015 (1) MWN (Civil) 767, wherein, it has been held as under:-



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12. Exs.P9 is the report filed by the Advocate Commissioner alongwith sketch in O.S.No.335 of 1997 and Ex.P10 is the advocate notice dated 11.10.1997. It is to be noted that the Advocate Commissioner inspected the suit property on 08.03.1998 and in the report, it is specifically stated that four shops constructed in the front portion of the suit property is a single concrete roof. Though the respondent/tenant claims title over one of the shops, i.e. the petition property, he has not produced even single piece of evidence for having constructed superstructure in the petition premises, nor it is the case of the tenant, he joined with the occupants of the other three shops and constructed them under one roof. As rightly contended by the learned counsel for the petitioners, in none of the suits, the tenant sought for declaration of title over the property nor he established his right in the Civil Suits. **If really the tenant is the owner of the petition property, he should have filed suit for declaration of title and for consequential prayer of permanent permanent injunction.** The prayer sought for by the tenant in O.S.No.868 of 1997 is for permanent injunction restraining the landlords from evicting the tenant except by due process of law.

15. That apart, it is submitted that in the absence of any documents to substantiate that the respondents were the tenants in other Trusts, the preponderance of probability would be to infer that the petitioner is the administrators of the properties belonging to the Trust. It is submitted that the respondent were given the properties sometime in 2004. However, the respondents defaulted in paying the rent from 2006 which led to filing of the respective R.C.O.Ps to evict them.



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16. It is submitted that exhibits that were marked on behalf of the respondent are the tax receipts in the name of Arumugam Velayutham. There is no correlation with the said respondent and the said Arumugam Velayutham. It is submitted that even on this ground, the orders passed by the Rent Control Court and the impugned order of the Rent Control Appellate Court upholding the order of the the Rent Control Court are unsustainable and are liable to be interfered.

17. Per contra, the learned counsel for the respondents would submit that the impugned orders are well reasoned and require no interference. It is submitted that there are concurrent findings of fact and therefore, there is no scope for interference in these Civil Revision Petitions under Section 25 of the Act. That part, it is submitted that the petitioner has not produced any documents of Title or any Trust Deed or any another Rental Receipts or Rental Agreements to substantiate that the petitioner is the Administrator/Trustee of the Trust of the property.

18. That apart, it is submitted that the forefathers of the respondents were in possession of the properties and gifted the same to



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the respondents and the respondents are in continuous enjoyment and possession. Even on this count also, the impugned orders does not call for interference in these Civil Revision Petitions.

19. The learned counsel for the respondents also drawn attention to the observations of the Rent Control Curt, wherein, the Rent Control Court has observed as under:-

“18. Moreover, when a Trust property is leased out, resolution would have been passed, which will be reflected in the minute book. No such copy of the resolution or copy of the minute book has been produced. The petitioner has produced the copy of the minute book, Ex.P8 to show the resolution passed in connection with this petition and filing of CRP's before the Hon'ble High Court. At the same time, the respondent has produced a copy of the minute book dated 01.07.2012, which is exhibited as Ex.R.1. When Ex.R.1 was confronted with RW.1, it was admitted to be that of the trust. But the proceedings in Ex.P8 and Ex.R.1 on the particular date are entirely different. Not only the proceedings, the page number, the name and particulars of the trust mentioned at the top of the book also different. There can only be one minute book to record the proceedings and resolutions of a particular trust. **A bare perusal of Ex.P.8 reveals that the proceedings from the period 19.07.209 to 31.03.2015 have been written in single hand writting. When PW.1 in his cross**



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examination has been questioned, he has answered that the secretary for those period was the same person. Even assuming that Ex.P.8 was written by a single person, a book which was maintained for some 6 Years and handled by so many persons regularly would have been subjected to wear and tear process and cannot be so neat; disciplined and; well written without any single damage. While considering the above said facts, as suggested by the respondent, this court is of the view that Ex.P.8 would have been fabricated to suit the case of the petitioner trust. The petitioner in his petition has stated that the respondent has to pay the rent and to obtain the receipt. The above pleadings show that normally receipts for payment of rent will be issued. At the least, the counter-foil for the above said receipts could have been produced by the petitioner herein, but did not. Apart from this, basic document such as rent receipts, pocket diaries or account note, bank deposits or at the least a piece of paper have not been produced to show that the rent has been received from the respondent.”

20. That apart, it is submitted that if the petitioner is aggrieved by the impugned orders of the Rent Control Appellate Court, the petitioner has an opportunity to knock the door of the Rent Control Appellate Court for re-admission of the appeals under Order 41 Rule 19 of the Code of Civil Procedure, 1908. Instead, the petitioner has directly approach this Court.



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21. The learned counsel for the respondents submits that in any event, there are no further grounds for remanding the case as was prayed by the learned counsel for the petitioner and prays for dismissal of these Civil Revision Petitions.

22. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

23. On inquiry as to whether the respondents were paying any rent, it is informed that the respondents therein their predecessors were in possession of the properties for a period of 200 years. It is submitted that constructions were put up by their forefathers and therefore, they are not required to pay any rent. That apart, there are two different Trusts.

24. There is a dispute as to whether the property in respect of which, the petitioner has initiated proceedings under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 belongs to the Trust named Krishnankoil Viswa Brahmma Santhathiyar, Kamatchi Ammankoil Trust or Krishnankoil Viswa Brahmma Samudhaya Trust or Krishnankoil Viswakarma Samudaya Sri Kamatchi Ammankoil Trust.



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Although, the petitioner would say these names have been used interchangeably and that the persons who have filed R.C.O.Ps on behalf of the petitioner were elected as the President of the Trust, there are no documents to substantiate the legal existence of the trust. If there was a Trust for the benefit of the Members of the Community having a temple, it would be a Public Trust and therefore its affairs would be governed by the provisions of the Hindu Religious and Charitable Endowments Act, 1959. If it is Public Trust question of invoking the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 may not arise as there is a special exemption in terms of G.O.Ms.No.2000 dated 16.08.1976. Thus, the Rent Control Original Petition would not have been maintainable.

25. On the other hand, if Krishnankoil Viswa Brahmma Santhathiyar Kamatchiamman koil Trust was a private Trust, the remedy under 1960 Act would have been available for the petitioner to work out the remedy before the Civil Court in terms of Second Proviso to Section 10 of 1960 Act, which reads as under:-

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing



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cause against the application, is satisfied-

- (i) that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, or
- (ii) that the tenant has, after the 23rd October 1945 without the written consent of the landlord,-
 - (a) transferred his right under the lease or sub-let the entire building or any portion thereof, if the lease does not confer on him any right to do so, or
 - (b) used the building for a purpose other than that for which it was leased, or
- (iii) that the tenant has committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building, or
- (iv) that the tenant has been convicted under any law for the time being in force of an offence of using the building or allowing the building to be used for immoral or illegal purposes, or
- (v) that the tenant has been guilty of such acts and conduct which are nuisance to the occupiers of other portions in the same building or of buildings in the neighbourhood, or
- (vi) that where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, or
- (vii) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not



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bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not willful, he may, notwithstanding anything contained in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

[*Explanation.* - For the purpose of this sub-section, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continuous after the issue of two months' notice by the landlord claiming the rent.]

26. Thus, there are a bundle of contradictions in the proceedings that initiated by the petitioner before the Rent Controller Court and before the Rent Control Appellate Court. That apart, the expression word “Santhathiyar” indicates Legal Heirs or descendants. Implying Legal Heirs or descendants of a particular family. Therefore, although the respondents are unable to establish that their fore-fathers and/or predecessors were the owners of the property there is a serious dispute as to whether RCOP filed by Krishnankoil Viswabrahmma Santhathiyar Kamatchi Ammankoil Trust owns the property or not. The Court of Rent



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Controller should have directed the petitioner to approach the Civil Court in terms of Second Proviso to Section 10 of the above Act.

27. Although, the impugned order have rejected the case of the petitioner, I am unable to interfere with the impugned order of the Rent Control Appellate Court confirming the decision of the Rent Controller dismissing the respective RCOPs filed by the petitioner herein.

28. At the same time, liberty is given to the petitioner to approach a Civil Court to establish the right in accordance with the 2nd Proviso to Section 10 of the said Act. Liberty is also given to the petitioner as also the Trust to approach the official under the provisions of the Hindu Religious and Charitable Endowments Act, 1959 to take possession of the property as no rents are being paid for the houses.

29. These Civil Revision Petitions stand dismissed with the above liberty. No costs.

Index : Yes/No

31.07.2023

Internet : Yes/No

Neutral Citation :Yes/No

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To

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1. The Rent Control Appellate Authority
(Principal Sub Judge) Nagercoil.

2. The Rent Control Tribunal
(Principal District Munsif Court) Nagercoil .



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C.SARAVANAN, J.

jen/kkd

Pre-delivery Common Order in
C.R.P(MD)Nos.62 to 67 of 2021

31.07.2023