



CRP.Nos.1134 & 1135 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 29.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition Nos.1134 and 1135 of 2021
and

C.M.P. No. 8775 of 2021

1. Ananda Rubi
2. P.C. Sivakumar
3. Arulselvi
4. P. Chandrika
5. K. Premalatha
6. M. Udayalaksmi

.. Petitioners in both the
Civil Revision Petitions

Versus

1. K. Kotti
2. K. Kottiammal
3. K. Kottirajan
4. K. Ravi
5. K. Sekar
6. K. Vivekanandan

.. Respondents in both the
Civil Revision Petitions

Civil Revisions filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 26.02.2021 passed in I.A.Nos.4 of 2019 & 5 of 2020 in O.S.No.135 of 2019 on the file of the learned District Munsif, Thiruvottiyur, Thiruvallur District.

For Petitioner
in both CRPs

: Mr. R. Krishnasamy

For Respondents
in both CRPs

: Mr. K. Prabhakaran for R-1 to R-3,
R-5 & R-6
R-4-Died (Steps Due)



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COMMON ORDER

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These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 26.02.2021 passed by the learned District Munsif, Thiruvottiyur, Thiruvallur District in I.A. No. 4 of 2019 & I.A. No. 5 of 2020 in O.S. No. 135 of 2019

2. The brief facts, which are necessary for disposal of these Civil Revision Petitions, are as follows:-

2.1. C.R.P.No.1134 of 2021 is filed by the Defendants in O.S.No.135 of 2019 who are the Petitioners in I.A.No.2 of 2019 in O.S.No.135 of 2019. I.A.No.2 of 2019 in O.S.No.135 of 2019 is filed under Section 9 of Tamil Nadu City Tenant Protection Act seeking permission of the Court to purchase the property in question.

2.2. The Plaintiffs in O.S. No. 135 of 2019 are the owners of the property. They are the legal heirs of Kannappan, the original owner of the property. The Defendants are legal heirs of tenant Chelladurai @ Chellappan. The property in question is a house site and house having total extent of 2776 sq. ft. in S.No.169/1 now S.No.169/1A1A, Sannadhi Street, Kaladipet, Sathankadu Village, Thiruvottiyur Firka and Taluk, Tiruvallur District. The Suit was filed by the legal heirs of the landlord, as Plaintiff, seeking eviction of



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the legal heirs of the tenant, who were arrayed as Defendants in the suit. The suit was also filed for recovery of possession and for arrears of rent.

2.3. The father of the Plaintiff/Kannappan is the only son of Thiripurasundari, who had inherited the property. The said Thiripurasundari is the daughter of Raji Gramani. Raji Gramani purchased the property as per the sale deed dated 30.04.1894 registered as Document No.875/1894. During the life time of the Plaintiffs father Kannappan he converted the land into house sites. One such house site was situated at Door No.66-A, Sannadhi Street, Sathankadu Village having an extent of 2856 sq.ft measuring 68 feet North to South and 42 feet East to West wherein a shop bearing Door No.66-A was constructed by the father of the Plaintiffs/Kannappan. The shop bearing No.66-A with the appurtenant land was let out by the father of the Plaintiffs to Chelladurai, the father of the Defendants, for a monthly rent of Rs.110/-.

2.4. It is stated that late Chelladurai committed willful default in paying the rent from August, 1982. The Plaintiffs' father late Kannappan therefore filed R.C.O.P.No.36 of 1985 on the file of the learned District Munsif, Ponneri. R.C.O.P.No.36 of 1985 was dismissed. However, on appeal in R.C.A.No.1 of 1995, an order of eviction was passed, on 28.08.1996. Against which, C.R.P. No. 3321 of 1987 was filed by late Chelladurai and it was dismissed on 02.07.2004. Subsequently, E.P. No. 17 of 2006 was filed by the



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landlord/Kannappan on the file of the learned District Munsif, Tiruvottiyur.

While R.C.O.P.No.36 of 1985 was pending, the tenant/Chelladurai started to put up unauthorized construction in the land appurtenant to the building let out to him for which eviction proceedings are pending. Therefore, the Plaintiff's father/Kannappan filed the Suit seeking permanent injunction restraining the tenant Chelladurai from proceeding with the unauthorized construction in the appurtenant land in O.S.No.631 of 1985 on the file of the learned District Munsif, Ponneri. The Suit was dismissed on 17.10.1994 with the observation that the landlord/Plaintiffs' father Kannappan did not approach the Court on time and there was a delay in approaching the Court. The Appeal preferred by the landlord/father of the Plaintiffs as A.S.No.6 of 1995 was also dismissed on 28.08.1996. The Second Appeal preferred by the Plaintiffs' father was also dismissed.

2.5. In E.P. No. 17 of 2006 filed by the landlord before the learned District Munsif, Thiruvottiyur, the legal heirs of Chelladurai/tenant filed a Petition in E.A. No. 206 of 2015 under Section 47 of Civil Procedure Code alleging that the eviction was ordered only for the building at Door No.66-A which measures only 10 x 8 and not for the appurtenant land and building. Therefore, the legal heirs of landlord/Kannappan who had inherited the property have no other option than to file the Suit for recovery of possession of the



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appurtenant building. Accordingly, the Suit in O.S.No.135 of 2019 was filed. In the Suit, the legal heirs of the tenant/Chelladurai filed I.A. No. 2 of 2019 under Section 9 of Tamil Nadu City Tenant Protection Act. The Plaintiff had preferred I.A. No. 4 of 2019 in O.S. No. 135 of 2019 seeking appointment of an Advocate Commissioner to find out the actual area possessed by the Defendants and also the portions let out to other sub-tenants in the form of shops. It was also prayed that the Advocate Commissioner shall be directed to measure the property, to note down the physical features, number of shops and actual area under the occupation of the Defendants. It was stated that the appointment of Advocate Commissioner is necessary even under Sections 3 and 9 of Tamil Nadu City Tenant Protection Act

2.6. The application seeking appointment of advocate commissioner was resisted by the Defendants/Respondents by stating that already there was an Advocate Commissioner's report in E.A. No. 44 of 2005 in E.P. No. 17 of 2006.

2.7. Notwithstanding the above objections, I.A. No. 4 of 2019 was allowed by the learned District Munsif, Tiruvottiyur as per Order dated 26.02.2021. Aggrieved by the same, the Defendants in O.S. No. 135 of 2019 and Respondents in I.A. No.4 of 2019 had preferred CRP.No.1134 of 2021.

2.8. That apart, the Defendants have filed I.A. No. 5 of 2020 in O.S.No.135 of 2019 under Section 151 of Civil Procedure Code seeking

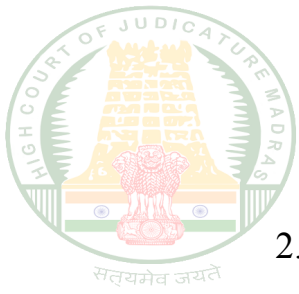


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permission of the Court to deposit a sum of Rs.4,000/- as rent for the site on the ground that the father of the Defendants/Chelladurai/tenant was paying monthly rent of Rs.60/- from 26.03.1967. It was also stated that the Plaintiffs filed the Suit in O.S. No. 135 of 2019 with false claim that the monthly rent is Rs.110/-. It was also stated that the Plaintiff had already taken delivery of the property bearing Door No.66-A which is a building measuring 80 sq. ft. out of 2380 sq. ft. site. The Plaintiff had filed the Suit for recovery of possession with false claim that there is arrears of rent. Therefore, the Defendants sought permission of the Court to deposit the rent. It was also stated that after the death of landlord Kannappan/ father of the Plaintiffs in O.S.No.135 of 2019, the legal heirs were not receiving the rent sent through money order. Therefore, the Defendants sought permission of the Court to deposit Rs.4,000/- towards rent for the site.

2.9. This Petition was also resisted by the Plaintiffs *inter alia* denied the quantum of rent as stated by the Defendants.

2.10. The learned District Munsif, Thiruvottiur by order dated 26.02.2021 dismissed I.A. No. 5 of 2020 thereby refused permission to deposit Rs.4000/- as arrears of rent as it does not contain the specified date from which default occurred besides the Plaintiffs disputed the quantum of rent as stated by the Defendants at Rs.60/- per month.



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2.11. Aggrieved by the Order of dismissal dated 26.02.2021 of the learned District Munsif, Thiruvottiyur in I.A. No. 5 of 2020 in O.S.No.135 of 2019, C.R.P.No.1135 of 2021 had been preferred by the Defendants.

3. The learned Counsel for the Revision Petitioners submitted that the Revision Petitioners are tenants in the shop owned by the land lord, while the vacant land appurtenant to the shop was in possession of the Revision Petitioners-Defendants independently. However, even in respect of the adjacent land, a claim was made by the landlord as if the Revision Petitioners were tenants even in respect of the vacant land. Therefore, in order to show the physical features of the land and the shop, which are lying adjacent to each other, appointment of an advocate commissioner is essential. However, the trial Court, without taking note of the nature of the pleadings and the claim made by the landlord erroneously dismissed I.A. No.4 of 2019 for appointment of advocate commissioner.

4. The learned Counsel for the Revision Petitioners-Defendants further submitted that the Revision Petitioners have filed I.A. No. 5 of 2019 with a *bona fide* plea to deposit the rent into the Court at the rate of Rs.4,000/- per month. The Trial Court, without taking note of the *bona fide* request of the



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Revision Petitioners-Defendants, dismissed the application for depositing the rent on specious reasons and therefore, he prayed for allowing the Civil Revision Petitions.

5. The learned Counsel for the Revision Petitioners also relied on the following reported rulings in support of his contention regarding appointment of Advocate Commissioner:

5.1. In the case of *M.Arasan Chettiar Vs. S.P.Narasimhulu Naidu's Estate Trust* reported in **93 L.W 393** regarding appointment of an Advocate Commissioner which reads as under:

“13. From the above conclusion of ours on the interpretation and scope of Section 9, the following consequences will follow:

1. If a controversy arises whether a particular tenant is entitled to the benefits of the Act or not in the sense that he is a tenant complying with the definition of the term "tenant" in Section 2(4), that question has necessarily to be considered by the Court, because, an affirmative decision in favour of the tenant alone will enable the Court to proceed further with the application made under Section 9(1)(a) of the Act and a negative decision against the tenant will render any application filed by the tenant, under Section 9(1)(a) as not maintainable and such an order is not an order, under Section 9, and the date of that order has no relevancy to the fixation of the price of the land to be sold by the landlord to the tenant;

2. When once the Court has decided that the tenant is entitled to the benefits of the Act or there is no controversy that the tenant is entitled to the benefits of the Act, the- Court will have to dispose of the application filed by the tenant under Section 9(1)(a);

3. For the purpose of disposing of this application, the Court, must first decide upon the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant Any such decision of the Court, from the very nature of the case, can only be by means of



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an order and the date of that order will be the relevant date for the purpose of fixing the price mentioned in the third sentence in Section 9 (1) (b). If the decision of the Court on the minimum extent is, taken up further by way of appeal or revision and that decision is either affirmed or modified and if there had been a stay of further proceedings during the pendency of such appeal or revision, naturally, the date of the order contemplated in the third sentence in Section 9 (1) (b) will be the date of the order of the appellate or revisional Court;

4. After having determined the minimum extent of the land or if such determination had been the subject matter of further proceedings and those proceedings have concluded the Court will then proceed to fix the price of the land;

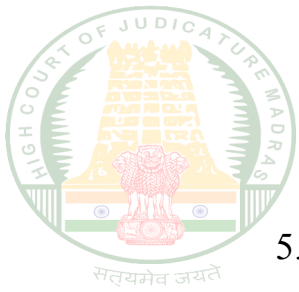
5. For the purpose of deciding upon the minimum extent of the land or for the purpose of fixing the price of the land certainly it is open to the Court to appoint a Commissioner to record evidence and submit a report to the Court;

6. After the price to be paid by the tenant to the landlord for the purchase the land has been determined, the Court will have to pass an order directing the tenant, within a period to be determined by the Court, not being less than three months and not more than three years from the date of such order, to Pay into Court or otherwise as directed by it, the price so fixed in one or more instalments with or without interest,

7. If the tenant complies with such a direction, then the Court will pass a final order under Section R (3) (a) of the Act directing the landlord to convey the extent of the land decided to the tenant for the price so fixed and in the same order directing the tenant to put the landlord into possession of the remaining extent of the land, if any;

8. If on the other hand the tenant commits default in the payment of the amount as directed and the Court itself had not excused the delay by giving further opportunity, the application filed by the tenant under Section 9 (1) (a) shall stand dismissed; and

9. If the tenant has fulfilled the directions given by the Court and the Court has passed the order under Sec. 9(3)(a), then the suit or proceeding shall stand dismissed and any decree or order in ejectment that might have been passed therein but which has not been executed shall be vacated. If, on the other hand, the tenant has committed default and the application filed by him under Section 9(1)(a) stands dismissed under Section 9(2), then the suit or proceedings will proceed or any decree or order in ejectment that may have been passed therein shall stand.”



5.2. In the case of ***Chinnathambi and others Vs. Anjalai*** reported in

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“9. It is a well accepted principle of law that an Advocate Commissioner should not be appointed to find out the possession of the property, which has to be adjudicated only by oral and documentary evidence. Under such circumstances, the order of the Lower Court suffers from material irregularity and it is not in accordance with the principles laid down in the above decisions.”

5.3. In the case of ***Rangasamy Vs. The Superintending Engineer, Tamil Nadu Electricity Board, Mettur Electricity System, Mettur Dam, Salem District and others*** reported in **2006 (5) CTC 501** it is held as under:-

“7. The object of the local investigation under Order 26 Rule 9 is not to collect evidence. Such materials enable the Court to properly and correctly understand and assess the evidence on record, which clarifies or explains any point, which is doubtful on the evidence on record. The Court shall not appoint an Advocate Commissioner for taking measurement of the suit properties in a mechanical manner without considering the need for appointment of an Advocate Commissioner. If the Court deems fit that local investigation is requisite or proper, for the purpose of elucidating the matter in dispute, then the appointment of an Advocate Commissioner is justified. If there is any doubt about the area of the land, identification or location of an object, then local investigation is necessary. In the instant case, there is absolutely no doubt about the location of the well in R.S.No.209/10 and that therefore, there is no necessity for measurement.”

5.4. In the case of ***Devadoss Vs. A.Duraisingh*** reported in **2002 (3) CTC 748** it is held as follows:-

“8. The learned Counsel for the revision petitioner also relied on the case in Gopal Chettiar (deceased) and 3 Ors. v. P.A.A. Sahuila Hameed and Anr., 1998 (3) LW 773 that the appointment of a Commissioner cannot be sought for collecting evidence or for any other materials. It has also been held in the case of ***Malaya Gounder and Ors. v. Palanisamy and***



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Ors., 1 MLJ 626 that the Court cannot appoint any Advocate Commissioner to find out the physical possession of the parties. The principles in these decision are applicable to the case on hand. Now in the present case also, the plaintiffs sought the appointment of an Advocate Commissioner. Only for the purpose of making a roving enquiry with respect to the person in the house and also whether they have got cable connection and from whom they have got the connection. The Advocate Commissioner cannot be used for such fact finding purposes and as such, the order passed by the Court below is not sustainable under law. It is always open to the decree holder to examine the concerned persons as witnesses and prove as to how, and in what manner they got the cable connection. Hence the point is answered accordingly.”

5.5. In the case of *Vemba Gounder Vs. Pooncholai Gounder* reported in *AIR 1996 Mad 347* it has been observed as under:

“17. In *AIR 1978 Kant 65 (K. Rama Lingam v. M.V. Ramanathan)*, it was held thus (at page 66):—

“Where a particular matter has already been the subject of investigation and a report has been submitted by a Commissioner in that behalf, another commission for the same purpose should not ordinarily be issued unless upon valid grounds made out by the parties concerned and the previous report is unreliable and therefore should be set aside.”

31. ... Only after taking such steps and after arguments, when the Court enters a finding on the Report already filed, if he is aggrieved by the finding, the petitioner can insist upon issuing a second Commission or remit the warrant to the same Commissioner, for curing the defects made mention of in the Objections. Merely accusing the trial Court of not following the procedure is not proper.

32. It may also be noted that if the Court is satisfied that the Report is not satisfactory, it need not insist on the petitioner to file an application for the issue of a second Commission. It is the duty of the Court to appoint a second Commissioner or remit the matter to the same Commissioner, for the Application is already there. Only a direction is to be given to the Commissioner how to implement the warrant of appointment, and how the work has to be done.”

5.6. In the case of *Padam Sen and another Vs. State of Uttar Pradesh*



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reported in **AIR 1961 SC 218** it has been observed as follows:-

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“2. ... The Defendants apprehending that the Plaintiff would fabricate his books of account with respect to payments made by them, applied for the seizure of the account books of the Plaintiff. The Additional Munsif, by his order dated March 27, 1954, appointed Sri Raghubir Pershad, Vakil, Commissioner to seize those books of account. The Commissioner accordingly seized those books and brought them to Ghaziabad.

....

9. The question for determination is whether the impugned order of the Additional Munsif appointing Sri Raghubir Pershad Commissioner for seizing the Plaintiff's books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by s. 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure. A party has full rights over its books of account. The Court has no inherent power forcibly to seize its property. If it does so, it invades the private rights of the party. ...

...

11. We are therefore of opinion that the Additional Munsif had DO inherent power to pass the order appointing a Commissioner to seize the Plaintiff's account books. The order appointing Sri Raghubir Pershad as Commissioner for this purpose was therefore an order passed without jurisdiction and was therefore a null and void order.”

6. In the light of the above rulings, it is submitted that both the Civil Revision Petitions are to be allowed and the order passed by the learned District Munsif, Thiruvottiyur in I.A.No.4 of 2019 in O.S.135 of 2019 dated 26.02.2021 and the order passed by the learned District Munsif, Thiruvottiyur in I.A.No.5



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of 2020 in O.S.No.135 of 2019 dated 26.02.2021 are to be set aside.

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7. The learned Counsel for the Respondents submitted that the Advocate Commissioner appointed in E.A.No.44 of 2005 in E.P.No.17 of 2006 cannot be relied in this case as the Advocate Commissioner was sought to be appointed to find out the constructed area. Even in case the Courts come to the conclusion that the permission is to be granted to the tenant for the purchase of the property, the value of the property is to be decided based on the construction. In support of such contention, the learned Counsel for the Respondents relied on the reported ruling in **1995 (1) CTC 47** in the case of **C.Kailaschand Jain and two others Vs. Mohamed Kasim wherein this Court has on served as under:**

“C.P.C. Order 26 Rule 10 (2): The report of the Commissioner in one Suit cannot form part of record in another Suit without examination of commissioner and marking report through him. However since commissioner's report was marked by consent the same is admissible in evidence.”

8. The learned Counsel for the Respondents also relied on the ruling reported in **1995 2 L.W 363** in the case of **Sri Kothandaramaswamy Devasthanam by its fit person and E.O., Chingleput Vs. Gopal Naidu and another** it has been observed as follows:

“Tamil Nadu City Tenants Protection Act (1922, as amended by Act



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19 of 1955) and G.O.No.49, d. 8.1.1973 extending the Act to Chingleput town, Sections 3, 9 and 11 of Tamil Nadu City Tenants Protection Act and Section 106 of Transfer of Property Act- Applicability of Act to tenancies in Chingleput – Scope – Claim permissible only to a case where the tenancy is prior to the Act i.e., prior to 1955, and not merely to a case where the tenancy is prior to the date of extension of the Act to the town, i.e., 31.01.1973.

In the instant case, the lease was admittedly of the year 1960 and on the date when the suit was filed in 1978, the Act as amended by Act 19 of 1955 was not applicable as the tenancy was not prior to the date of the amendment of the Act, namely, 12.09.1955 and hence no right could be claimed under the Act as amended by Act 19 of 1955 and that the G.O extending the Act, as it is, will not give any right to the tenant nor could it be said that since the extension of the Provisions of the Act was on 31.01.1973, the tenant of the land prior to 1973 will be entitled to right.”

9. The learned Counsel for the Respondents further relied on yet another ruling reported in **2015 (2) MWN (Civil) 144** in the case of **Bharat Petroleum Corporation Ltd., vs. Muthumani** it has been observed as follows:

“20. To further exhibit the bad conduct of the Corporation, it would be apt to discuss more on certain aspects with the heading -

WHETHER SEC.9 OF THE TENANTS' ACT IS ABSOLUTE EVEN IN RESPECT OF A DEFAULTER WITH UNCLEAN HANDS BEFORE COURTS:-

It could be plainly seen that, in order to cover the face of default, the Corporation did not restrain themselves from playing fraud even with Court, for, without any order or leave by Court, they surreptitiously deposited the rent before court to give an impression that they are promptly paying the quarterly rent. Having regard to such bad conduct on the part of the Corporation, both the courts below consistently found that the Corporation is not entitled to renewal of lease and this Court also, as discussed above while deciding the Second Appeal, does not see any good reason to interfere with the concurrent findings. On the one hand, while ruling that, in a writ petition, some benefits available to the tenant under the Tenants' Act could not have been diluted, very cautiously, the Apex Court, perhaps keeping in mind the simile of a case like the instant one involving aggravating factors, strongly spelt out on the other hand



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the proposition that the right under Section-9 of the Tenants' Act is not an 'absolute right' as the Court has discretion to grant or refuse the relief for the purchase of the land. In the light of the aforementioned abundant aggravating factors which strongly militate against the Corporation, this Court, being the Court of Equity, is of the view that it would be absolutely unfair to apply BPCL vs. Vairamani in favour of the Corporation to hold that the benefits under the Tenants Act should be made available to the Corporation and hence, has no hesitation to hold that the Corporation is not entitled to purchase the land. In fact, by squatting on the valuable land in question for about a decade after the 40 year lease period, with the initiation of court proceedings by using public money, the Corporation has, so far, successfully prevented the real owner from using and enjoying their own property. It is well settled that procedural law is the handmaid of justice and requirements of procedure should not be so technically construed as to defeat the substantive rights of the litigant. The courts, while applying law, should act with all caution to see that 'law breakers' are not profited with their fancy pleas, however invincible such pleas are, in usurping the valuable rights of the other side. In the light of the peculiar facts and special circumstances as repeatedly pointed out above, this is a fit case for granting the prayer sought for by the petitioner and, in spite of the same, if this Court relegates the party to file a suit for eviction now long-time after the initiation of legal battle, definitely, it would give an impression that this Court supports the case of the wrong-doer in getting an undeserved concession. In this view of the matter, I find no impediment whatsoever to order the writ petition by granting the relief sought for.”

10. He invited the attention of this Court to the Madras City Tenants' Protection Act -Extension to certain Municipal Towns Published in the Fort St. George Gazette, Part – I, Page 1840 dated 14th December, 1955 vide G.O.Ms.No.3774, Revenue, 7th December, 1955 wherein it is mentioned as extension to certain places in Chingleput District – By G.O.Ms.No.1135, Revenue, dated 7th March, 1956, published in Fort St. George Gazette, Part I, Page 324, the Act has been extended to the following villages in Saidapet



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Taluk, Chingleput District viz., (1) Adambakkam (2) Alandur (3) Kodambakkam (4) Minambakkam (5) St. Thomas Mount (Cantonment), (6) Saligram (7) Thiruvanmiyur (8) Thiruvottiyur (9) Velacheri (10) Villivakkam.

11. Further, he invited the attention of this Court to the Madras City Tenants Protection (Amendment) Act (XIII of 1960). The relevant portion is extracted hereunder:

“9. Certain Pending proceedings to abate -

On the date of publication of this Act in the Fort St. George Gazette, and instituted under the Provisions of the Principal Act shall in so far as such proceeding relates to non-residential buildings, abate, and all rights and privileges which may have accrued immediately before such date to any person in respect of any property situated in any area other than the areas referred to above by virtue of the principal Act, shall in so far as they relate to non-residential buildings, cease and determine and shall not be enforceable.”

12. He further submitted that the father of the tenant in O.S. No. 135 of 2019 had committed willful default for which RCOP. No. 36 of 1985 was filed by the Plaintiff's father. In Execution Petition, the legal heirs of the tenants filed a Petition under Section 47 of Civil Procedure Code alleging that eviction was ordered only for the building at Door No.66-A which measures only 10x8 and not for the appurtenant land and building. They further claimed that the original tenant Chelladurai had put up construction which is evident from the Advocate



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Commissioner's report in E.A.No.44 of 2005 in E.P.No.17 of 2006. The tenant

had put up construction and let out the premises to four shops and they had subleased the property and not paying the rent to the landlord which forced the legal heirs of the landlord/Plaintiff in O.S.No.135 of 2019 to file the Suit for recovery of property and rent for the past three years and damages from the date of filing of the Suit till the recovery of the Suit property. Under those circumstances, the City Tenants Protection (amended) Act cannot be invoked to the case of the Defendants as they had committed willful default in the course of Rent Control Appeal. The learned Rent Control Appellate Authority had held that the tenant had forged the lease deed to invoke the Rent Control Appeal. Under those circumstances, there was a clear finding that as the original tenant had forged the sale deed by committing fraud and also put up construction against the interest of landlord, the City Tenant Protection Act cannot be invoked against the landlord as per the ruling reported in **2015 (2) MWN (Civil) 144 in the case of Bharat Petroleum Corporation Ltd., Vs. Muthumani and others**. The learned Counsel for the Respondents prayed this Court that both the Civil Revision Petitions had to be dismissed.

Point for consideration:



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Whether the fair and decretal order dated 26.02.2021 passed in I.A.Nos.4 of 2019 & 5 of 2020 in O.S.No.135 of 2019 by the learned District Munsif, Thiruvottiyur, Thiruvallur District, is to be set aside as perverse?

13. Heard the learned Counsel for the Petitioners and the learned Counsel for the Respondents. Perused the Order passed by the learned District Munsif, Thiruvottiyur, Thiruvallur District and the rulings cited by the learned Counsel for the Revision Petitioners and the learned Counsel for the Respondents.

14. On consideration of the rival submissions, it is found that the prayer in I.A. No. 5 of 2020 is for depositing the rental amount into Court. The suit was filed for recovery of possession on the ground that there was wilful default committed by the original tenant. While so, the present Petition has been filed by the legal heirs seeking permission to deposit the rent of Rs.60/- per month. The quantum of rent sought to be deposited has been disputed by the Plaintiff/legal heirs of the landlord. Also, the Petitioners/Defendants in O.S.No.135 of 2015 had not stated the date from which they had committed default. In other words, having admitted the arrears of rent or non-payment of rent, it was not stated as to from which date, the rent is lawfully payable by them. In such circumstances, if such a blanket prayer of the tenants for



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depositing the rent is accepted, then the landlord could not recover the arrears of rent payable by the Tenants. Further, if such a prayer for depositing the rent is entertained, then the tenants may claim, at a later point of time, that there was no arrears of rent payable by them beyond the period from which they were permitted to pay the arrears. Therefore, the finding of the learned District Munsif is found proper and it does not warrant interference of this Court. Accordingly, CRP.No.1135 of 2021 has to be dismissed.

15. As per the submission of the learned Counsel for the Respondents/Landlords in CRP.No.1135 of 2021, the Defendants in O.S.No.135 of 2015 ought not to have let out the property/sub-leased the property to make unlawful gain. Further, the sub-lease was for a commercial purpose. The Tenants, having committed wilful default, are not entitled to the benefits of City Tenants Protection Act as per the ruling cited by the learned Counsel for the Respondents. Also, Petition in I.A. No. 2 of 2019 is pending enquiry before the learned District Munsif, Thiruvottiyur. Until and otherwise I.A. No. 2 of 2019 is ordered, there is no necessity for appointment of Advocate Commissioner.

16. The learned Counsel for the Revision Petitioner in CRP. No. 1134



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of 2021 submitted that appointment of Advocate Commissioner is not necessary

in this case. According to the learned Counsel for the Revision Petitioners, it is nothing an attempt to fish evidence. An Advocate Commissioner cannot be appointed to ascertain as to who is in possession of the property. In this regard, reliance has been placed in the ruling reported in **(i) Chinnathambi and others Vs. Anjalai** reported in **2006 (5) CTC 494** and **(ii) Rangasamy Vs. The Superintending Engineer, Tamil Nadu Electricity Board, Mettur Electricity System, Mettur Dam, Salem District and others** reported in **2006 (5) CTC 501**.

17. On the contrary, according to the Plaintiffs, appointment of Advocate Commissioner is essential to measure the property, to note down the physical feature of the property, number of shops constructed and actual area occupied by the Defendants. Further, appointment of Advocate Commissioner is necessary even for determining the question under Sections 3 and 9 of City Tenant Protection Act.

18. As contended by the learned Counsel for the Respondents in CRP.No.1314 of 2021, only after an order is passed in I.A. No. 2 of 2019 under the City Tenants Protection Act as to whether the tenant can be permitted to purchase the property or not, the Advocate Commissioner needs to be appointed



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and till such time it is not warranted as per the reported ruling in **93-L.W-392** in

the case of ***M.Arasan Chettiar and others Vs. Sri S.P.Narasimhalu Naidu's***

Estate Trust, Coimbatore by the Manager and Executor C.M.Abbai Naidu

Represented by the Secretary, B.Ramamoorthi, Advocate, Coimbatore and

others. As per the submission of the learned Counsel for the

Respondents/Plaintiffs, the Defendants committed default in payment of rent.

As per the Appellate Judge's Order granting eviction, there is an observation

that the original owner Chelladurai had committed forgery and let out the

premises to sub-lease. Therefore, as per the ruling cited by the learned Counsel

for the Respondents, the City Tenant Protection Act is not applicable to the

facts of this case where the tenants are in occupation of the premises after the

amendments brought in to the City Tenant Protection Amendment Act.

Furthermore, the learned Counsel for the Respondents submitted that the

Revision Petitioners/Tenant had not paid rent for the past 455 months. Such a

person is not entitled to the benefits of City Tenant Protection Act for which he

relied on the ruling reported in ***1955 2 L.W 363 and 2015 2 MWN 144.***

19. As per the claim of the Defendants their father was in occupation of the property from the year 1967. Therefore, as per the submission of the learned Counsel for the Respondents, the City Tenant Protection Amendment



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Act cannot be invoked to the facts of this case as it is not for residential purpose. Here, as per the submission of the learned Counsel for the Respondents/ Plaintiffs, the property was let out for non-residential purpose. As per the ruling, reported in **1995-2-L.W-363 in the case of Sri Kothandaramaswamy Devasthanam, by its fit person and E.O., Chingleput Vs. Gopal Naidu and another**, City Tenant Protection Act cannot be extended to the tenant who are inducted as tenants subsequent to the amendment Act. It is applicable only to those who are tenant prior to 1955. Here, the facts are not so. The Defendants father was inducted as tenant in 1967 subsequent to City Tenant Protection Act, 1955. Therefore, the appointment of Advocate Commissioner to collect evidence does not arise. Also, the Plaintiffs as Respondents in I.A.No.2 of 2019 had resisted the Petition seeking permission to purchase the property under the City Tenant Protection Act by the Defendants. Under those circumstances, the necessity for appointment of Advocate Commissioner for deciding Section 9 of The Tamil Nadu City Tenant Protection Act also does not arise. As per the submission of the learned Counsel for the Revision Petitioners, it is nothing but an exercise to collect evidence.

20. The prayer in I.A. No. 4 of 2019 indicate that it is an exercise to collect evidence. Therefore, the ruling cited by the learned Counsel for the



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Revision Petitioners in CRP.No.1134 of 2021 is found applicable to the facts of this case namely in *(i) Chinnathambi and others Vs. Anjalai* reported in **2006 (5) CTC 494**; *(ii) Rangasamy Vs. The Superintending Engineer, Tamil Nadu Electricity Board, Mettur Electricity System, Mettur Dam, Salem District and others* reported in **2006 (5) CTC 501**. Appointment of Advocate Commissioner in this case is found to be to collect evidence as per the prayer in the petition in I.A.No.4 of 2019 in O.S.No.135 of 2019.

21. In the light of the above discussion and in the light of the rulings cited by the learned Counsel for the Petitioners, the point for consideration is answered partly in favour of the Revision Petitioners and partly in favour of the Respondents. The order dated 26.02.2021 passed by the learned District Munsif, Thiruvottiyur, in I.A. No. 4 of 2019 in O.S. No. 135 of 2019 is found perverse and the same is to be set aside. The order dated 26.02.2021 passed by the learned District Munsif, Thiruvottiyur in I.A. No. 5 of 2020 in O.S. No. 135 of 2019 is found proper and the same is to be confirmed.

In the result,

(i) C.R.P. No. 1134 of 2021 is allowed. The Order dated 26.02.2021



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passed by the learned District Munsif, Thiruvottiyur in I.A. No. 4 of 2019 in

WEB COPY O.S. No. 135 of 2019 is set aside.

(ii) **CRP. No. 1135 of 2021 is dismissed** confirming the order dated 26.02.2021 passed by the learned District Munsif, Thiruvottiyur in I.A. No. 5 of 2020 in O.S. No. 135 of 2019.

(iii) No costs. Consequently connected miscellaneous petition is closed.

29.11.2024

dh

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

To

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1.The District Munsif,
Thiruvottiyur.

2.The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Common Order in
CRP.Nos.1134 to 1135 of 2021

29.11.2024