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C.R.P.[NPD].No.5055 of 2024
and C.M.P.Nos.28356 & 28359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.5055 of 2024
and C.M.P.Nos.28356 & 28359 of 2024

S.Srinivasan

.. Petitioner

Vs.

G.Sridhar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.09.2024 in R.L.T.A.No.46 of 2024, on the file of the XX Additional City Civil Court, Chennai, in confirming the fair and decretal order dated 11.12.2023 in R.L.T.O.P.No.346 of 2022 on the file of the X Small Causes Court, Chennai.

For Petitioner : Mr.A.Ilayaperumal

For Respondent : Mr.S.Namasivayam



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 30.09.2024 in R.L.T.A.No.46 of 2024, on the file of the XX Additional City Civil Court, Chennai.

2.The brief facts of the case are as follows:

The respondent's father was the original owner of the superstructure of the property. After his death, the respondent become the owner. The petitioner was inducted as a tenant in the subject property from the year 2007. After the respondent became owner of the property, the agreement was entered on 01.11.2017. As per the said agreement, monthly rent payable was Rs.7,260/- and the monthly maintenance charge was Rs.250/-. The revision petitioner was irregular in payment of rent. However, after new Act came into force, the agreement was not registered. Therefore, eviction petition has been filed. The main contention raised is that the premises rented out belongs to Arulmigu Agatheswarar Dhevasthanam, Villivakkam, Chennai.



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3.It is the contention of the petitioner that the settlement deed said to have been executed in favour the respondent's father is subsequently cancelled. According to them, the respondent is not the landlord, but the temple is the landlord. However, the contention is negatived and the eviction order has been passed by the Rent Controller. The same has also been upheld by the Appellate Authority.

4.Before this Court, the same contention has been raised by the learned counsel for the petitioner that since the premises on which the superstructure is situated, belongs to the temple as such, Section 3(c) of the TNRRRLT Act clearly bars the rent Controller to entertain the petition in respect of the property owned by religious or charitable institutions. However, the Rent Controller as well as the Rent Control Appellate Authority have erroneously passed the orders and hence, he seeks to allow the present Revision Petition.

5.It is pertinent to note that the petitioner has entered into the rental



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agreement with the respondent on 01.11.2017, recognizing the respondent as landlord and it is not in dispute that the respondent is the owner of the superstructure and the land belongs to the temple. It is settled law that once a person was inducted as tenant is estopped from denying the title of the landlord as per Section 116 of the Indian Evidence Act, 1872 and Section 122 of Bharatiya Sakshya Adhiniyam, 2023. Therefore, the contention that the application is not maintainable cannot be countenanced.

6.Now, the contention of the learned counsel that the very applicability of the Act itself is barred under Section 3(c) of the TNRRRLT Act since the land belongs to religious institution. This contention also in the opinion of this Court, has no legs to stand. It is relevant to note that under Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred to as "Act"), when the patta has been issued in respect of superstructure under Section 13 of the Act, ***concept of the dual patta will get attracted***. For easy reference, Section 13 of the Act reads as follows:

"13(1) : Every building situated within the limits of an



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inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls to levy the appropriate assessment thereon.

(2) In this section, 'Building' includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto."

7. The above provision makes it clear that unless the owner of the building is also the owner of the site, the building inclusive of the site will not vest in the owner of the building. Further, there is no statutory transfer effected in respect of the site on which the building stand. It is relevant to note that this Court in the case of “**Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S.Sundararajulu Chettiar**” made in S.A.No.1484 of 1971, judgment dated 16.08.1974, wherein, it is held as follows:

"On the other ground rested on Section 13, we are of opinion that the effect of a combined reading of the two Subsections of that Section 13 of Madras Act XXX of 1963 is that, unless the owner of the building is also the owner of the



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site, the building inclusive of the site will not vest in the owner of the building. In other words, the effect of Subsection (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him.”

8. In the case of ***Shri Thiagarajaswami Devasthanam, Thiruvavarur, Thanjavur District rep by its Executive Officer vs. The Commissioner of Land Administration, Chepauk, Madras and others*** reported in 2000-2-L.W.103, this Court, in paragraph 9 held as follows:

" 9. I am of the view that the issue raised in the writ petition is concluded by the decision of the Supreme Court in R.Manicka Naicker's case (AIR 1995 SC.1613=1995-1-LWL.731). The Supreme Court has considered the scope, object and purpose of the Tamil Nadu Act 30 of 1963, particularly, the scope of Section 13 of the said Act and held as under: "Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date."

(Emphasis



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supplied).

In the case of Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge. (Emphasis supplied)."

9. Further, in the case of ***R.Manicka Naicker vs. E.Elumalai Naicker reported in (1995) 4 SCC 156***, wherein, the Hon'ble Apex Court in paragraphs 12, 13 and 14 has held as follows:

“12. The contention of. the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2)



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merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date.

13. In the case of Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge.

14. Moreover, in the present case, the patta granted expressly provides that the appellant has been granted a ground rent patta only in respect of the building, while the patta for the site has been granted to the respondent. A joint patta seems to have been granted in the names of both the appellant and the respondent because of the claim of the appellant to the building and the claim of the respondent to the site on which the building stands. Therefore, looking to the nature of the grant of the patta also it cannot be said that by virtue of the patta, the site on which



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the building stands has been, in any manner, transferred to the appellant or vests in him. The appellant cannot, therefore, claim that the decree for possession cannot be executed against him because he has become the owner of the site."

10. Moreover, the concept of dual ownership under Section 13 of the Act was also categorically laid down by the Hon'ble Supreme Court of India in the case of "***K.S.Thirugnasambandam Chettiar (dead) by Lrs etc., Vs. The Settlement Thesildar, Coimbatore & others***" reported in CDJ 1995 SC 1335 and relevant findings read thus :-

"It is, therefore, not necessary that both the site and the building should belong to one and the same person so as to derive the benefit of Section 13 with effect from the appointed day. A dual estate is not repugnant to the provision, which evidently is of a very special nature, when ryotwari patta may not be admissible for a building per se, but may be admissible for the site standing thereon."

11. The Division Bench of this Court in the case of ***L.Varalakshmi vs. Commissioner and others*** reported in 2023 SCC OnLine Mad 7715 has held that building is vested in the person as per Section 13 of the Act,



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however, the land on which the building is situated will not vest in them because they were not the owners of the land immediately before the appointed day and it is only the temple which was. As such, the joint ground rent patta is given. The meaning of the joint ground rent patta would be that the temple is the owner of the land and the appellant's father will be owner of the superstructure. Such dual ownership is recognised law of our country and is very much part of the scheme of things under the Act. While holding so, in paragraph 21, has held as follows:

"21. Thus, it can be seen that the appellant is only the owner of the superstructure. The second respondent temple is the owner of the land in question. It is entitled to revise the rent. Therefore, no exception can be taken to the findings of the learned Single Judge entitling the respondents to revise the rent."

12. Similarly, a Division Bench of this Court in the case of ***Kandasamy @ Muthu Mudaliar vs. Sri Ranganathaswamy (Idol) rep. through his Executive Officer, Srirangam, Trichy*** reported in 2023 (2) CWC 610 has held that temple is entitled for patta absolutely for land enumerated under Second Schedule and patta for the site for the land



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enumerated under First schedule whereupon that building has been constructed.

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13. As far as the R.Manicka Naicker's case, the Hon'ble Apex Court has held that even in such cases, as the site vests with the temple, suit for recover of possession of the land from the tenant is maintainable by the HR & CE.

14. The settled position as stated above makes it very clear that as long as the HR & CE is not exercising the right to recover possession from the tenant in respect of the superstructure vested with the tenant as per the Section 13 of the Act when the revision petitioner was inducted into the building as a tenant, now, he cannot take advantage of Section 3 of TNRRRLT Act to contend that since the premises owned by religious endowments eviction petition is not maintainable.

15. The very Section 3 of TNRRRLT Act makes it clear that act will not apply to any premises owned by the religious or charitable institutions



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as may be specified by the Government, by notification. Admittedly, in the present case, building or superstructure is under dual patta concept, it has been recognised and the premises is also held by the respondent, in which, the petitioner was inducted as tenant. Therefore, the contention that Section 3 of the TNRRRLT Act will apply cannot be countenanced.

16. As far as the contention of the petitioner that the rental agreement has not been registered after the TNRRRLT Act came into force is concerned, once the agreement has not been registered, it will also give rise to Section 21(2)(a) of the TNRRRLT Act. It is relevant to note that this Court in the case of *M/s.Vacher Mills Stores vs. K. Gunasekaran* made in C.R.P.(PD).No.3726 of 2024 dated 18.09.2024 has held as follows:

"7. The position of law was settled by the judgment of this Court in S.Muruganandam Vs. J.Joseph, 2022 SCC OnLine Mad 375, by the Hon-ble Mr.Justice R.Subramanian, wherein, it is held that even if the mistake lies on the part of the landlord in not entering into an agreement, all that the Rent Controller would have to see, while disposing of the application under Section 21(2)(a) of the Act, is the existence of the agreement. Though the argument of Mr.G.Murugendran is very inviting, if I



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were to accept that plea, I would be literally rewriting Section 21(2)(a) of the Act from the words “failed to enter into an agreement” to “failed to enter into an agreement on account of the mistake of the tenant”. The power to amend the statute is not available with this Court. The section has to be read as it is, unless and until, it is going to result in absurdity.

8. The purpose of bringing the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 was to provide a summary procedure for eviction of tenant. If the interpretation of Mr.G.Murugendran is to be accepted by me, I would be defeating the purpose of the new Rent Control Act and I would be pushing the parties to the same protracted trial that used to take place under Section 10(2)(1) of the repealed Rent Control Act. The learned Rent Controller has given cogent reasons in the paragraph No.7 of the impugned order. She has correctly appreciated the law that when a petition under Section 21(2)(a) of the Act is filed, the Court cannot look into the reason for failure to enter into a tenancy agreement under Section 4(2) of the Act.

9. In the light of the above discussion, I do not find any merits in this revision. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

17.In the light of the above discussion, I do not find any merits in this



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revision and accordingly, this revision stands dismissed. Consequently,
connected miscellaneous petitions stands closed. No costs.

18.However, the learned counsel for the petitioner seeks time to enable the petitioner to evict the premises and the petitioner also files an affidavit of undertaking to that effect and also to deposit the entire arrears of rent. Considering the submission now made by the learned counsel for the petitioner, three months time is granted to the petitioner from today and the petitioner shall evict the premises and also to pay the arrears of the rent without fail. The petitioner shall file an affidavit of undertaking to this effect immediately.

10.12.2024

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order



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To:

- 1.The XX Additional City Civil Court,
Chennai.
- 2.The X Small Causes Court, Chennai.



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N.SATHISH KUMAR, J.

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