



C.R.P(MD).No.877 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 07.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.877 of 2013

and

M.P(MD).No.1 of 2013

M/s.Ajantha Cycle Mart through
One of its Partners
R.Rajendran
S/o.Rathinam Nadar,
464 & 465, Main Bazaar,
Virudhunagar.

... Petitioner/Appellant/1st Respondent

(Name of the sole petitioner is substituted vide Court order dated 10.12.2021 made in CMP(MD).No.7254/2021 in C.R.P(MD).No. 877/2013)

Vs.

1. P.N.A.N.Beemaraja Nadar (Died)

2. Kathirvel

3. P.Nagendrael

4. P.Murugeswaran ... 2 to 4 Respondents/2 to 4 Respondents/
2 to 4 Respondents

5. P.M.A.N.B.Bhagadoor ... Respondent

(R5 is brought on record as LR of deceased 1st Respondent vide Court order dated 07.08.2020 made in C.M.P(MD).No.5245 and 5246/2018 om C.R.P(MD).No.877/2013)



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Prayer : Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent and Control) Act 1960 (Act 18 of 1960) as amended by Act 23 of 1973 and Act 1 of 1980, praying to set aside the Fair and Decretal order passed in R.C.A.No.1 of 2011 by learned Rent Control Appellate Authority cum Subordinate Judge, Virudhunagar dated 01.03.2013 confirming the fair and decretal order of the District Munsif cum Rent Controller, Virudhunagar in R.C.O.P.No.5 of 2010 dated 28.02.2011 by allowing the Civil Revision Petition.

For Petitioners : Mr.M.Ashokkumar

For Respondents : Mr.G.Mohankumar for R5

ORDER

The tenant in R.C.O.P.No.5 of 2010 has filed this revision petition challenging the eviction order passed against him in R.C.O.P.No.5 of 2010 dated 28.02.2011 by the District Munsif cum Rent Controller, Virudhunagar confirmed in R.C.A.No.1 of 2011 by learned Rent Control Appellate Authority cum Subordinate Judge, Virudhunagar dated 01.03.2013.



2. Brief facts of the case:

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Deceased 1st respondent is the landlord and petitioner is “tenant”. For better appreciation and discussion of this case, rank of parties mentioned in RCOP such as “Tenant” and “Landlord” is followed herein. The deceased/first respondent filed R.C.O.P.No.5 of 2010 stating that the petitioner committed wilful default in paying the arrears of rent of a sum of Rs.2,82,800/- and the building is 70 years old and hence, he wanted to demolish and reconstruct.

2.1.Earlier, landlord/deceased first respondent filed R.C.O.P.No.8 of 2004 to fix fair rent of Rs.5,224/- and the same was allowed and confirmed in R.C.ANO.4 of 2008. Aggrieved over the same, the petitioner has filed C.R.P.(MD).No.2381 of 2008 and there was no stay. Pending the same, he did not pay the fair rent and committed wilful default of arrears of rent of a sum of Rs.2,82,800/- Pending the same, he did not pay the rent as per the fixation of the fair rent. Hence the landlord filed the RCOP to evict the petitioner on the ground of “wilful default” and for bonafide requirement of “Demolition and reconstruction” which was confirmed and eviction order was passed on the ground of “act of waste”, demolition and reconstruction.

2.2.The tenant/revision petitioner filed counter stating that the



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petitioner as one of the co-owners has no right to file the present eviction petition. Partition suit is pending between the owners of the building. The tenant has not committed any wilful default. In view of the pendency of the proceedings of the fixation of the fair rent before the Hon'ble High Court, the tenant was not in a position to pay the rent as per the fair rent fixed by the authorities. But, he has regularly paid the rent as per the direction of the court. Hence, there was no wilful default. Further, the petitioner has not committed any act of waste. He is using the property without committing any damage, materially devaluing or diminishing the worth of the property. The building is strong and does not require immediate demolition and reconstruction and hence, there was no *bonafides* in the prayer seeking demolition and reconstruction.

2.3. To prove the case of the land lord, the first respondent examined himself as P.W.1 and marked Ex.P.1 to P.7. On the side of the respondent, two witnesses were examined as R.Ws.1 and 2. and exhibited three documents as Ex.R.1 to Ex.R.3.

3. The learned trial judge after considering the evidence adduced on the side of the petitioner and the respondent passed eviction order accepting the plea of the landlord. Aggrieved over the same, the petitioner filed appeal



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in R.C.A.No.1 of 2011 before the Rent Control Authority Cum Subordinate Judge, Virudhunagar. In R.C.A.No.1 of 2011 and the rent control appellate authority also independently assessed of the evidence and analysed the ground raised by the revision petitioner and finally dismissed the appeal. Challenging the concurrent finding, the tenant filed this revision.

4.The learned counsel appearing for the petitioner made a detailed written submission. In the written submission, it is stated that the rent control authority failed to consider, that Registration Act was enacted to protect the interest of the tenants and unlawful eviction of the tenants. In this case, the landlord has filed eviction petition without any bona fides and the only intention is to somehow evict the petitioner from the premises. Hence, the intention is clear from the pleadings and evidence. This court has to consider whether the eviction orders can be reversed.

5.The learned counsel for the petitioner further submitted that there was no wilful default. When the issue of determination of the fair rent is pending before the appropriate authority namely before this Court in C.R.P. (MD).No.877 of 2013, the finding of the Court below that the tenant



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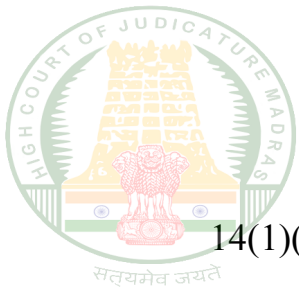
committed wilful default is not acceptable. For that purpose, he relied para

24 in the judgment of this Court in the case of ***P.Sivachandran Vs.***

M.P.Purushotham reported in ***2008 5 CTC 409***.

6.The learned counsel for the petitioner further argued that the landlord's case of act of wasteful usage is without proper pleadings and evidence. There is no pleading regarding the act of wasteful usage by the tenant depreciating the value of the building and there is no evidence to prove depreciation of value of building. Hence he seeks interference in the order of the eviction passed by both authorities below. In this aspect, he relied the judgment of the Court reported in ***1998 MLJ 155 (Mad) and 1995 (I) SCC 47***. Hence, on the basis of the law laid down by this Court and the Hon'ble Supreme Court, the learned counsel for the petitioner argued that without any pleadings and material to prove that the tenant committed act of waste, which depreciated the value of the building of the landlord, the finding of both the authorities below are liable to be set aside.

7.The learned counsel for the tenant also submitted that the authorities have not properly considered the basic requirement of section



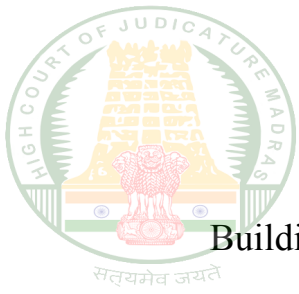
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14(1)(b) of Tamil Nadu Buildings (Lease and Rent Control) Act 1960. As

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per the Section, the landlord must establish the bonafide reason in seeking the eviction on the ground of demolition and reconstruction. In this case, the learned rent controller as well as the appellate authority did not record any finding on the bona fide issue, and hence there is perversity in the orders of both authorities. Hence, he seeks for interference in this case. For this purpose, he relied the judgment of the Constitution Bench of the Hon'ble Supreme Court reported in *AIR 1997 SC 47 (CB)* and *1982 (1) MLJ 75*. As per the judgment of the Constitution bench of the Hon'ble Supreme Court, submitting that the rent control authority ought to have recorded a finding that there is bonafide reason for seeking demolition and reconstruction. In this case, no such requirements were either pleaded or proved. According to the learned counsel for the petitioner, a partition suit is pending between the original landlord and his family members. Hence, the present RCOP by one co-owner is not maintainable.

8.The learned counsel for the tenant also submitted that in view of the perverse finding in all aspects and also total non-consideration of the material ingredients of Section 14(1)(b) and Section 10 (2) (i) of Tamilnadu



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Building Lease and Rent Control Act, 1960, this court has power to interfere in the concurrent finding of both authorities and to substantiate his plea, he relied the judgment of this Court and Hon'ble Supreme Court reported in *AIR 1999 SC 3190* and *2004 (4) MLJ 503*. Hence, on the basis of the judgment, he wants to interfere with the concurrent finding recorded by both the authorities below.

9. Submission of Counsel for Land lord: -

Per contra, the learned counsel for the landlord submitted that it is well settled principle that the eviction petition filed by one of the family members of landlord is maintainable and their internal dispute is not a ground to dismiss the eviction proceedings. In this case, the revision petitioner acted as Kartha of the family and he filed petition under section 10(2)(iii) of Tamilnadu Building (Lease and Rent) Control Act, 1960 seeking eviction. Hence, argument of the learned counsel that petition for eviction is not maintainable pending partition suit between them is liable to rejected.



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10. The tenant filed this revision challenging the fixation of the fair rent. This Court vacated the stay granted earlier. In the said circumstance, it is the duty of the tenant to deposit the amount fixed in fair rent proceedings. But, he has not deposited the amount even after the stay was vacated. Apart from that even original rent was not deposited regularly. As per the finding of the rent controller, he deposited the amount in lump sum without making the payment as directed by the authority. In the said circumstances, the Court below analyzed the conduct of the tenant and correctly gave the finding that the tenant committed wilful default.

11. Landlord has established ingredients of section 14(1)(b) Tamilnadu Building (Lease and Rent) Control Act, 1960, through circumstances and through the evidence of P.W.1., that the building is more than 70 years old and landlord also pleaded that he had sufficient means to demolish and reconstruct and also gave a specific undertaking that the petitioner after new construction, would be entitled to a portion of the building by entering new tenancy agreement. Hence, the argument of the learned counsel for the revision petitioner namely tenant that there was no bonafides is without substance.



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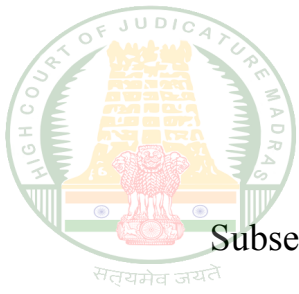
12. This Court considered the rival submission made on either side and also perused the records and the impugned order passed by the both the Courts below.

13. Discussion on merit:

Whether order of eviction passed against petitioner by Rent Control authority in RCOP No. 5 of 2010 confirmed in RCA No.1 of 2011 on the ground of “*wilful default in making payment of rent*”, “*demolition and reconstruction*” and “*Act of waste*” is correct or not?

14. Discussion on wilful default in making the payment of rent:

The property is situated in the central place of the Virudhunagar Town. The petitioner is running a cycle mart in the said premises. Initially monthly rent was fixed as Rs.1480/-. Thereafter landlord filed RCOP No. 8 of 2004 to fix the fair rent. The fair rent was fixed as Rs.5,224/- The said RCOP was also confirmed in RCA No. 4 of 2008. Challenging the same CRP (MD) NO. 2381 of 2008 was filed before this court. Interim stay was granted and thereafter the landlord filed a petition to vacate the interim stay.



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Subsequently the tenant had withdrawn the stay petition and there was no stay for payment of fair rent. Thereafter, RCOP No. 5 of 2010 was filed stating that the petitioner/tenant committed wilful default of making payment for rent of 56 months at the rate of Rs.1480/-. Further they failed to make payment of 14 months rent at the rate of fair rent of Rs.5224/- fixed in RCOP No.8 of 2004. The tenant took a plea that CRP was pending and hence the claim of arrears of rent on the basis of the fair rent fixed in RCOP No.8 of 2004 is not legally maintainable. This court is unable to accept the said submission on two grounds. Firstly, there was no stay granted in the CRP restraining the landlord from making the claim of fair rent fixed in RCOP No. 8 of 2004. Once fair rent was fixed, it is the duty of the tenant to make the payment at the rate of Rs.5224/-. Without making the payment at the rate of Rs.5224/-, taking the plea of pendency of the CRP is not acceptable. The Hon'ble Supreme Court in 2009 (9) SCC 359 has held that, if the tenant is not depositing the fair rent, he must face the consequences. Secondly, even the agreed rent was paid only intermittently. The petitioner made the payment in lump sum and there was a no regular payment. It is duty of the tenant to make the rent without any delay. The Hon'ble Supreme Court in 2024 (2) SCC 169 para 18 it is stated as follows:



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"The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is dispute about the rent. The tenant is, thus required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute."

15. The petitioner has been irregular in making payment of the original rental amount. This court in the case of S.Subramaniam Vs. G.R.Palanisamy Gounder reported in 1995 (1) LW 689 has held that

"49. It has been held by this Court consistently that if the tenant pays the rental arrears in a lump-sum, that will not discharge his liability, nor can that be a valid explanation, and the tenant will still be regarded as a willful defaulter."

16. Apart from that he admitted that he has not paid the fair rent fixed by the Rent Control Authority. The conduct of the petitioner supinely indifferent in the matter of payment of rent which amounts to wilful default and both the authorities correctly appreciated the same and found that the petitioner committed wilful default in making the payment of monthly rent.



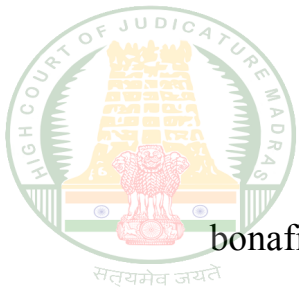
This court finds no perversity in the said concurrent finding. Therefore the eviction order passed on the ground of wilful default in making the payment of monthly rent as pleaded by the landlord deserves to be accepted.

17. Discussion on the demolition and reconstruction:

17.1. Building is situated in the commercial locality and at the centre of the Virudhunagar. Building is 75 years old. Petitioner admitted that he has been a tenant in the said premises for more than 30 years and he also admitted that the property is situated in the locality suitable to construct a multi-storeyed shopping complex. The said evidence of the petitioner is as follows:

தபசில் சொத்தில் பல மாடிகள் கட்டி அதிககடைகள் உள்ள ஷாப்பிங் காம்ப்ளக்ஸ் கட்ட முடியும் என்றால் சரிதான். குறைந்த பட்சம் 3 மாடிகள் கட்டி ஒவ்வொரு தளத்திலும் 5 கடைகள் வீதம் 20 கடைகள் கட்டலாம் என்றால் பணமிருந்தால் 10 மாடி கூட கட்டலாம். காம்ப்ளக்ஸ் கட்டுவதற்கு உரிமையாளருக்கு வங்கிகளும் கடன் கொடுக்கும் என்றால் சரிதான்.

17.2. As per the counter affidavit this court finds that the petitioner has not disputed the financial capacity of the landlord. The petitioner has also not pleaded and proved any circumstances to presume the lack of



bonafide on the part of the landlord to seek eviction on the ground of demolition and reconstruction. From the above discussion, the landlord satisfied the requirement to seek the relief of eviction on the ground of demolition and reconstruction as held by the Hon'ble Constitutional Bench in para 8 in the case of ***Vijay Singh V. Vijayalakshmi Ammal*** reported in ***AIR 1997 SC 47***:

"For recording a finding that requirement for demolition was bona fide, the Rent controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants: (2) the age and condition of the building (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act"

17.3.75 years old building in the heart of the city located among the modernised buildings and earning least amount because of the old structure, the Landlord is deprived of fair rent as held by the Hon'ble Thiru. Justice Krishna Iyer in earliest decision in the case of *Kalliani & others V. Madhavi & others* reported in 1970 K.L.T. 257 in Para 3 which is as follows:



Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern construction is a social necessity provided.	Where the building is very old and incongruous with the social setting and surroundings of the place, the Court has get to take a more liberal view in applying the provision of law
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17.4.The Hon'ble Supreme Court in the case of ***Ram v. Jiwan Lal*** reported in ***AIR 1963 SC 499*** has held that the court has to see the possibility of generating more income in the case of the requirement of demolition and reconstruction in Paragraph No.8:

8....The Controller has to be satisfied about the genuineness of the claim. To reach this conclusion, obviously the Controller must be satisfied about the reality of the claim made by the landlord, and this can only be established by looking at all the surrounding circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on.

17.5. To reach this conclusion, obviously the Controller must be satisfied about the reality of the claim made by the landlord, and this can only be established by taking into consideration all the surrounding



circumstances, such as **the condition of the building, its location, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on.**

17.6. The petitioner also admitted that the landlord would get more income through the new construction as stated below:

சொத்தின் உரிமையாளருக்கு தன் சொத்தை அபிவிருத்தி செய்து அதன் மூலம் பயன் பெற உரிமையுள்ளது என்றால் சரிதான்”

In view of the above discussion, the landlord has established the case for the bonafide demolition and reconstruction and the authorities below correctly have held that the landlord is entitled to evict the petitioner on the ground of demolition and reconstruction under section 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. This court finds no ground to upset the said concurrent finding. Accordingly the petitioner is liable to be evicted from the premises under section 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960.



18. Discussion on the Section 10(2)(iii) of Tamilnadu Buildings

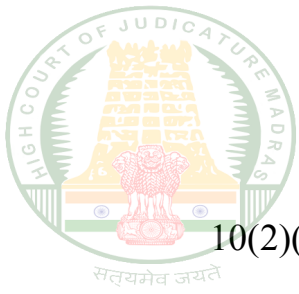
(Lease and Rent Control) Act, 1960:

10(2)(iii) of Tamilnadu Buildings (Lease and Rent Control) Act, 1960

is as follows:

“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,”

In this case, this court finds neither in the pleadings nor in the evidence on the side of the landlord to prove the above ingredients of the section 10(2)(iii) of Tamilnadu Building (Lease and Rent) Control Act, 1960. The landlord failed to discharge his burden of proof that the tenant's unauthorised act has caused damages to the building and such damages has materially depreciated its value or utility. Both the authorities have ordered eviction under the said ground when there is total lack of pleadings and evidence that the acts of tenant have materially affected the value and utility of the building. It is well settled when the decision of the authorities below is based on no evidence, this court will be justified in interfering under section 25 of the Tamilnadu Building (Lease and Rent) Control Act, 1960. Accordingly eviction on the ground of “act of waste” meant by section

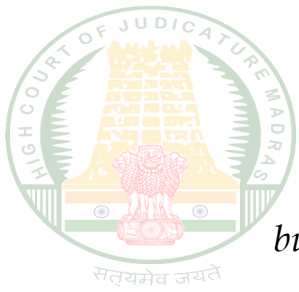


10(2)(iii) of the Tamilnadu Building (Lease and Rent) Control Act, 1960 is liable to be set aside.

19. Discussion on the locustandi of the Respondent:

19.1.The respondent is the Kartha of the family and he filed the eviction petition on behalf of the family. The petitioner raised the objection regarding maintainability of the eviction proceedings stating that a suit was pending between the respondent and other legal heirs. This court is unable to accept the said contention on the principle that one of the co-owners can maintain the eviction proceedings against the tenant in the absence of any objection from the other co-owner. The presence of all co-owners is unnecessary. The same was reiterated by the Hon'ble Supreme Court in AIR 1976 SC 2335, AIR 1977 SC 1599. The definition for “*landlord*” under sub section 2(6) of Tamilnadu Building (Lease and Rent) Control Act, 1960 is couched in the following comprehensive definition:

"landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the



building were let to a tenant.

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19.2. The person entitled to receive the rent of a building on his own account or on behalf of another and entitled to receive the rent is treated as a landlord and he can maintain the eviction proceeding. The Hon'ble Supreme Court in the case of ***S.M.Gopalakrishna Chetty v. Ganeshan***, reported in ***(1975) 2 SCC 408*** has held that the life estate holder is entitled to file the eviction proceeding against the tenant and relevant paragraph is as follows:

This inclusive definition of landlord would clearly take in its sweep the present landlord who holds a life interest in the premises and who admittedly has been on his own right under the deed of settlement as a trustee receiving rents of the premises from the tenants. We are not even concerned with the question as has been sought to be established in the case by proving that there is no possibility of any objection from the daughters of the settler or from any other remainder-men. It is sufficient to observe that the rights between S.M. Gopalakrishna and the remainder-men with regard to the terms of the deed of settlement will have to be worked out in appropriate proceedings, if necessary, and the general law will govern the matter if any occasion arises.

8. *On the other hand, the Act with which we are concerned is a self-contained and complete code for regulation of the rights*



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between landlord and tenants as defined in the Act (see Raval and Co. v. K.G. Ramachandran [(1974) 1 SCC 424]). Thus a controversy that may arise between a landlord and others, who are not his tenants under the Act, is outside the ken of this Act. Even a possible dispute, imaginary or real, between the landlord and the remainder-men cannot affect adjudication of the claim of the landlord against his tenants under the provisions of the Act. It will also not affect the efficacy of the nature of the plea of bona fide on the part of the landlord, if otherwise so. Such questions as are raised in this appeal by the tenants are, therefore, irrelevant in a litigation between the landlord and tenants when a suit for eviction is instituted by the former on any of the grounds available to him under the Act. It is clear that when the objection on the score of the landlord being a holder of life interest and hence incapable of invoking Section 14(1)(b) fails the suit must be decreed.

19.3. The Hon'ble Supreme Court in the case of ***Padam Nabh & Sons v. Yash Pal***, (2021) 17 SCC 234 has held as follows:

While the owner of a premises may also be the landlord of the premises, a landlord, within the meaning of the expression under the rent control legislations, need not necessarily be the owner of the said premises.



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This court also in 1985 (1) MLJ 329 has held that landlord includes Kartha of a joint Hindu family.

19.4. In view of the above discussion, the contention of the petitioner that the eviction proceeding is not maintainable at the instance of the respondent cannot be accepted.

20. In result, the eviction order passed against the petitioner on the ground of “wilful default”, bonafide requirement for “Demolition and reconstruction” is upheld by confirming the impugned orders of the authorities below and eviction order passed on the ground of “act of waste” is liable to be set aside.

21. Accordingly, this Civil Revision petition is dismissed confirming order of eviction in RCOP No. 5 of 2010 on the file of the District Munsif cum Rent Controller, Virudhunagar dated 28.02.2011 and confirmed in RCA No.1 of 2011 on the file of the Rent Control Appellate Authority cum Subordinate Judge, Virudhunagar dated 01.03.2013 on the ground of “wilful default”, bonafide requirement for “Demolition and reconstruction” and



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eviction order passed on the ground of “act of waste” is set aside. The

Petitioner/tenant is hereby directed to vacate the premises within 2 months

from date of receipt of copy of this order. There shall be no order as to

costs.

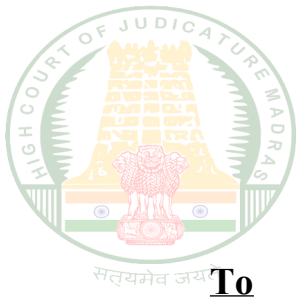
07.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To
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1. The Learned Rent Control Appellate Authority
cum Subordinate Judge,
Virudhunagar.
2. The Learned District Munsif cum Rent Controller,
Virudhunagar
3. The Section Officer,
VR Section(Records)
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Dated: 07.03.2024