



C.R.P.(MD)No.2990 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.10.2024

PRONOUNCED ON : 13.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2990 of 2023

and

C.M.P.(MD)No.15414 of 2023

Tiruchendur Taluk ,
Udangudi Vattara Congress Committtee,
Through its Secretary A.Senthil @ Thiyagaraj,
Udangudi.

... Petitioner

Vs.

Rajagopal @ Gopal (Died)

1. Ramakrishnan
2. Anand
3. Muruganantham
- 4.Kathiravan

... Respondents

PRAYER : Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control Act), against the Fair and Decreetal order, dated 08.02.2023 passed in R.C.A No. 11 of 2017 on the file of the Rent Control Appellate Authority, Subordinate Court, Tiruchendur, confirming the Fair and



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Decreetal order, dated 28.03.2014, passed in R.C.O.P.No.12 of 2009 on the file of the District Munsif Court, Tiruchendur.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.D.Srinivasa Ragavan

ORDER

The present revision petition is filed by the landlord against the Fair and Decreetal order, dated 08.02.2023 passed in R.C.A No. 11 of 2017 on the file of the Rent Control Appellate Authority, Subordinate Court, Tiruchendur, confirming the Fair and Decreetal order, dated 28.03.2014, passed in R.C.O.P.No. 12 of 2009 on the file of the District Munsif Court, Tiruchendur.

2. The landlord in the RCOP is the revision petitioner herein and the tenant in the RCOP is the respondent herein. For the sake of convenience, the parties are referred as landlord and tenant as per the ranking in the RCOP petition.

3. The RCOP was filed to evict the tenant on the ground of wilful default in payment rent. The brief facts as stated by the landlord are that the building in



question belongs to the landlord and the same was constructed in the year 1984.

After construction, based on the oral agreement between the parties the building was let out for monthly rent of Rs.200/- payable on English calendar month. One Pandian had claimed that the said building belongs to Kamarajar Ninaivu Mandram and created problem. Taking advantage of the rival claim, the tenant stopped to pay rent either to the present landlord or to the rival group belonging to Pandian. The said Pandian had filed O.S.No.165 of 1995 on the file of the District Munisf Court, Tiruchendur, for declaration that the said building belongs to Kamarajar Ninaivu Mandram. In the said suit, the tenant deposed on behalf of the landlord as second witness wherein he admitted the rental agreement between the present landlord and the tenant. Relying on the above litigation, the tenant failed to pay rent to the landlord. The said suit was dismissed on 24.01.1996 wherein the said claim of Pandian was declined. In other words, the suit was rendered in the favour of the landlord. After the disposal of the said suit, the present landlord demanded rent from the tenant. In spite of repeated demands the tenant failed to pay the rent. Hence, on 09.02.2009 the landlord issued legal notice indicating that there are arrears of rent from January 1996 onwards to the tune of Rs.28,800/- and directed to pay the same failing which it would be considered as wilful default and the tenant is liable to vacate premises. The said notice was received by tenant but



the tenant neither paid the arrears nor vacated the premises. Hence, the petition to evict the tenant was filed.

4. The tenant has filed a counter statement wherein it stated that the petition 'building' belonged to the petitioner and the 'land' of the petition property belongs to the landlord, namely, Udangudi Vattara Congress Committee. The tenant got the land for a monthly rent of Rs.15/- from December, 1994. Subsequently, the tenant had put a shed in the petition property and is running a Photoshop. Thereafter, the tenant has put up asbestos and running the business. The monthly rent of the petition land was increased to Rs.500/-. The present petitioner namely, A.Senthil @ Thiyagaraj is not the Secretary of the Udangudi Vattara Congress Committee. But the said Pandian was the Secretary. The tenant was paying rent regularly to the said Pandian. The evidence deposed by the tenant in O.S.No.165 of 1995 is no way connected to the present dispute. The present petitioner has issued notice, dated 09.02.2009. But the tenant has misplaced the notice. After tracing out, the tenant has issued reply on 27.04.2009. The Udangudi Vattara Congress Committee has not been duly represented in the present petition. Hence, the respondents prayed to dismiss the petition.



5. The respondents herein had filed additional counter wherein it is submitted that the present revision petitioner has already filed R.C.O.P.No.10 of 1990 on the file of the District Munsif Court, Srivaikuntam, against the present tenant for eviction and the same was dismissed. Against which an appeal was preferred in R.C.A.No.42 of 1991 on the file of the Sub Court, Tuticorin and the same was dismissed on 24.06.1993. Hence, the present petition is barred by res judicata.

6. Based on the rival pleadings, the Tribunal in R.C.O.P.No.12 of 2009 had formulated the following issues:

- i. Whether Udangudi Vattara Congress Committee is being represented by its proper representative?
- ii. Whether the respondent has committed wilful default in payment of rent?
- iii. Whether the present petition is barred by resjudicata?

The Tribunal has held that the present petitioner namely A.Senthil @ Thiagaraj is the Secretary of Udangudi Vattara Congress Committee and the said Committee is being properly represented by its Secretary who is the proper representative of Udangudi Vattara Congress Committee and had answered the first question in



favour of the revision petitioner. The Tribunal had also held that the tenant had committed wilful default and has answered the second question in favour of the revision petitioner. The respondent herein had not filed any appeal or revision against the said finding, hence the said findings had attained finality. However the Tribunal had held that the petition is barred by res judicata, hence the Committee has preferred an appeal in R.C.A. No. 11 of 2017.

7. The Appellate Court had formulated the following points for consideration:

- 1. Whether the Rent Controller was correct in having decided that RCOP No.12 of 2009 was barred by res judicata?*
- 2. Whether the appeal is to be allowed or not?*
- 3. To what other reliefs the parties are entitled to and what is the order regarding the cost of this appeal?*

The Appellate Court has also held that there is no tenancy between the Committee and the tenant, since building was not let out by the Committee but only the land was let out and the rent was fixed for the ground alone. For the same set of facts between the same parties in the R.C.O.P.No.10 of 1990, it was held that there is



no relation of landlord and tenant, which was confirmed in R.C.A.No.42 of 1991.

The present petition is also filed among the same parties for the same building.

There is no fresh rental agreement between the parties for the building. Till now the respondents herein / tenants are paying the rent only for the ground and not for the building. Hence, the same is barred by the res judicata. Aggrieved over the same the present Civil Revision Petition is filed.

8. Heard Mr.V.Panneer Selvam, the Learned Counsel appearing for the revision petitioner and Mr.D.Srinivasa Ragavan, the Learned Counsel appearing for the respondent and perused the records.

9. The only point for consideration is whether the litigation is hit by the principles of res judicata?

10. The contention of the revision petitioner is that the tenant had denied the rights of the landlord, since there was rival claim for secretaryship between one Pandian and A.Senthil@Thiyararaj, hence in the petition for eviction filed by the said A.Senthil@Thiyararaj, it was held there is no relationship as landlord and tenant since he is not the secretary of the committee. But the said plea is not



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available to the tenant since it has been declared that the said Pandian is not the Secretary of the Committee in O.S.No.165 of 1995. Therefore the said plea of res judicata ought to be rejected.

11. It is seen that the earlier eviction litigation in R.C.O.P.No.10/1990 and R.C.A.No.42/1991 was filed by the Committee against the same person i.e. Rajagopal @ Gopal for wilful default for the default for the period prior to 1990. The said Rajagopal had also denied the right of the committee headed by A.Senthil @ Thiagaraj as land owner and stated that the land belongs to the committee headed by Pandian. Further the said Rajagopal had stated right from the date of tenancy the tenant had paid the rent to the said Pandian. Hence the Tribunal and Appellate Court held that said Pandian is claiming to be the Secretary and the tenant is paying the rent to the said Pandian, hence there is no wilful default. Further the secretary is Pandian who had not filed the RCOP. Hence the petition in RCOP No.10 of 1990 filed by the secretary A.Senthil @ Thiagaraj is not maintainable, since there is no landlord-tenant relationship with the alleged secretary A.Senthil @ Thiagaraj and dismissed the said RCOP No.10 of 1990. Thereafter the Committee ought to face litigation for rival claim of secretaryship in O.S.No.165/1995, wherein it was declared that the said Pandian is



not the Secretary of the Udangudi Vattara Congress Committee. Consequently the secretaryship of A.Senthil@Thiyagaraj is uphold. The same plea, that there is no relationship of landlord and tenant, is raised in the present R.C.O.P.No.12 of 2009 also. But the said plea is not available for the respondent tenant since the secretaryship claim of Pandian was declined. Therefore the said plea of the tenant based on secretaryship is rejected. Consequently there is no res judicata for the said plea. The courts below had erred in not taking the said fact.

12. The next contention of the tenant is that in the earlier eviction litigation in R.C.O.P.No.10/1990 and R.C.A.No.42/1991 it was held that the Committee had given the land alone for lease and the superstructure was put up by the tenant, therefore only rent is payable for land alone and not the building. Hence the provision of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not applicable to the present case since the building was not let out to the tenant. It is seen the courts below has not framed any issue / point for consideration 'who had put up the superstructure in the disputed land'. It is the claim of the Committee that the superstructure was put up by the Committee in the year 1984, but it is the claim of the tenant that they had put up superstructure. But both have not filed any evidence to prove the same. And the Court below had not framed any issue



regarding who had put up the construction. Therefore the above contention of the tenant is rejected.

13. Interestingly it is seen that the second round eviction litigation was started in R.C.O.P.No.12 of 2009 against the same tenant namely Rajagopal @ Gopal, wherein in the said RCOP it was held there is wilful default, the petition is filed by the proper representative of the Committee, but dismissed the eviction petition under res judicata. Aggrieved over the Committee had filed the appeal. At the appellate stage the original tenant died and legal representatives were impleaded. It is seen that the persons who are impleaded, claim that they were in continuous association with the deceased tenant for the purpose of carrying on the business and they should be permitted to continue as tenant. Even if the earlier tenant is accepted for land and not for building, after the demise of the earlier tenant, then the tenant agreement ought to be for both the land and building. In such circumstances, the fresh tenancy agreement ought to be entered along with the building and then the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is applicable. The Appellate Court failed to take this fact into consideration. Therefore, in the changed circumstances, there is no question of res



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judicata at all. Hence the finding by both the courts are erroneous and liable to be set aside and accordingly set aside.

14. The tenants are directed to vacate the premises on or before 15.02.2025 and hand over the premises to the revision petitioner.

15. For the reasons stated supra, the Civil Revision Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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1. Rent Control Appellate Authority,
Subordinate Court,
Tiruchendur.
2. District Munsif Court,
Tiruchendur.
3. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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