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O.S.A.Nos.221 and 223 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.Nos.221 & 223 of 2019

and

C.M.P.Nos.20183 & 20209 of 2019

T.V.Abdul Kareem

... Appellant
in O.S.A.No.221 of 2019

1.N.Farooq

2.T.V.Abdul Kareem

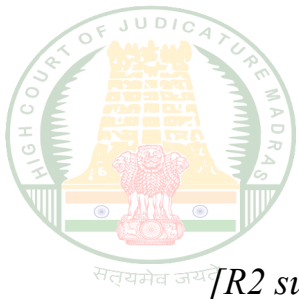
... Appellant
in O.S.A.No.223 of 2019

Vs.

1.The Official Trustee of Tamil Nadu,
Office of the Administrator General and
Official Trustee,
Chennai – 600 104.

2.The Tamil Nadu Wakf Board,
Represented by its Chief Executive Officer,
No.1, Jaffer Sarang Street,
Chennai – 600 001.

... Respondents
in both appeals



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WEB COPY [R2 suo motu impleaded as party respondent vide
Court order dated 27.01.2023 made in
O.S.A.Nos.221 to 224, 226 to 229 of 2019]

Prayer in O.S.A.No.221 of 2019 : Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 05.02.2018 in Appl.No.2616 of 2017 in C.S.No.314 of 1930 on the file of this Court.

Prayer in O.S.A.No.223 of 2019 : Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 05.02.2018 in Appl.No.3244 of 2017 in C.S.No.314 of 1930 on the file of this Court.

For Appellant	:	M/s.Pushpa Menon in both appeals
For R1	:	Mr.M.Dhamodaran for AG & OT in both appeals
For R2	:	Mr.Haja Mohideen Gisti Senior Standing Counsel for Tamil Nadu Wakf Board in both appeals



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COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

The above Original Side Appeals are preferred as against the common order dated 05.02.2018, passed by the learned Single Judge, dismissing the batch of applications filed by the tenants in respect of Trust Estate of M.K.Periyathambi Maracayar. O.S.A.No.221 of 2019 is filed against the order in A.No.2616 of 2017 in C.S.No.314 of 1930 and O.S.A.No.223 of 2019 is filed against the order in A.No.3244 of 2017 in C.S.No.314 of 1930.

2.It is relevant to point out that this Court, by order dated 03.12.2024, has disposed of few connected Original Side Appeals in O.S.A.Nos.222, 224, 226, 227, 228 and 229 of 2019 filed by the same tenants as against the same common order passed in applications in A.Nos.1105 to 1110 of 2011 in C.S.No.314 of 1930.

3.Brief facts that are necessary for the disposal of these Appeals are as follows:



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3.1.The properties in Door Nos.79 and 80, measuring an extent of 2890 sq.ft., and 3300 sq.ft. respectively, in Broadway, Chennai – 1, belongs to the Trust Estate of M.K.Periyathambi Maracayar. The Administrator General and Official Trustee of Tamil Nadu (hereinafter referred to as “AG & OT” for brevity) became the sole Trustee of the Trust Estate of M.K.Periyathambi Maracayar.

3.2.The two properties were earlier leased out to one Saiva Sindhantha and possession was taken from the previous tenant through execution of decree on 11.08.2010. Thereafter, fresh advertisement was made by the AG & OT in Tamil Daily “Dinamalar” for public auction to be held on 30.08.2010 on 22.08.2010. In the auction that was conducted, several bidders participated in respect of both the properties, i.e., Door Nos.79 and 80. In the public auction, the 1st appellant in O.S.A.No.223 of 2019, by name N.Farook, was the successful bidder in respect of the property bearing Door No.79 and agreed to take the property on lease for a sum of Rs.50,000/- per month, and the 2nd appellant in O.S.A.No.223 of 2019, by name T.V.Abdul Kareem, was the successful bidder in respect of



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the property in Door No.80, by offering a sum of Rs.1,46,000/- as rent.

After adjustment of Earnest Money Deposit, the appellants 1 and 2 in O.S.A.Nos.223 of 2019 paid a sum of Rs.3,00,000/- and Rs.7,76,000/- respectively towards rental advance. On 16.09.2010, possession of the premises was handed over to the respective tenants.

3.3.It is admitted that the tenants are not paying rent regularly and therefore, demand notice was issued to the tenants on 09.12.2010. However, the 1st appellant filed applications in A.Nos.1105, 1106 and 1107 of 2011 with prayers for renewal of tenancy for a period of 25 years with increase of rent @ 5% with 2.5% reverse share; demolition and reconstruction of premises; and for grant of lease for 25 years. Similar applications were also filed by the 2nd appellant in A.Nos.1108, 1109 and 1110 of 2011.

3.4.The AG & OT filed applications in A.Nos.3575 and 3576 of 2014 against the tenants to direct them to pay rental arrears. In these applications, though a common counter affidavit was filed by the tenants stating several



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difficulties for not paying the rent, this Court, taking note of the fact that huge arrears had accumulated, directed the tenants to pay 25% of the arrears due and payable by the tenants, within a period of two weeks from the date of receipt of copy of the order.

3.5.In the application in A.No.1108 of 2011 filed by the tenants, an interim order was passed on 12.04.2017 directing the tenants to pay 25% of the amount of arrears due and payable by them, within a period of two weeks from the date of receipt of a copy of the order and the balance, as per the calculation of AG & OT, in three equal installments from the date of receipt of such calculation.

3.6.Thereafter, the 1st appellant in O.S.A.No.223 of 2019 filed an application in A.No.2616 of 2017 to modify the order dated 12.04.2017 made in A.No.1108 of 2011 by directing the applicant to pay 15% of the rental arrears for the remaining period between 01.02.2015 and 30.04.2017 instead of 25% as directed by this Court earlier. Later, another application was filed in the same year in A.No.3244 of 2017 by the appellants in



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O.S.A.No.223 of 2019 to grant exemption to the tenants to pay rent including arrears and future rent for the two buildings in question until the building is reconstructed and rent is fixed.

3.7.All the applications were heard together by the learned Single Judge of this Court and a common order was passed on 05.02.2018. All the applications except A.Nos.2616 and 3244 of 2017 were disposed of with a direction to the appellants to pay the rental arrears as on that date within a period of one month from the date of receipt of a copy of the order. This Court further observed that, on payment of rental arrears, their claim for permission to demolish and reconstruct the buildings in question and the other requests of the tenants in all other applications viz., demolition and reconstruction, renewal of lease, fixation of lease period and for further renewal, would be considered. Consequently, the applications in A.Nos.2616 and 3244 of 2017 to modify the order earlier directing the tenants to pay 25% of the rental arrears and the application in A.No.3244 of 2017 to grant them exemption from paying rental arrears as well as current rent, were also dismissed.

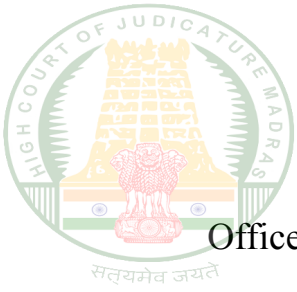


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WEB COPY 4. Aggrieved by the same, the tenants have preferred the batch of Appeals in O.S.A.Nos.221 to 224, 226 to 229 of 2019.

5. Meanwhile, during the pendency of the applications, since the tenants have not paid any amount towards rent or rental arrears pursuant to the directions of this Court in the order dated 05.02.2018, the learned AG & OT took possession of the demise premises on 19.04.2018.

6. During the pendency of the Appeals, a Division Bench of this Court in a batch of cases in W.A.No.1339 of 2022, etc., by order dated 13.04.2023, directed the learned AG & OT to hand over the management of properties of M.K.P.Maracayar to Masid Moqdoomi Waqf in as is where is condition to be further administered by the Tamil Nadu Waqf Board in accordance with the existing Scheme or such varied terms that may be framed in future in accordance with the provisions of the Waqf Act. Thereafter, a memo was filed by the learned AG & OT on 26.06.2024 reporting that Trust Estate of M.K.Periathambi Maracayar was handed over to the Chief Executive



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Officer, Tamil Nadu Waqf Board, on 27.06.2023, pursuant to the directions of this Court in the order dated 13.04.2023.

7. When the batch of Appeals filed by the tenants in O.S.A.Nos.221 to 224, 226 to 229 of 2019 was taken up by this Court for hearing, after recording the statements of the learned counsels appearing on either side, this Court dismissed the Original Side Appeals in O.S.A.Nos.222, 224, 226, 227, 228 and 229 of 2019 by order dated 03.12.2024, as the prayers in the impugned applications before the learned Single Judge filed by the tenants cannot be considered, since the properties had already been taken possession by the Waqf Board. Even though the present Appeals in O.S.A.Nos.221 and 223 of 2019 also ought to have been dismissed on the same grounds, the learned counsel appearing for the appellants contended that the Appeals still survive and no liability can be fastened on the tenants who were unable to enjoy the property on account of the condition of the building.

8. After the property was handed over to the tenants in 2010, there was



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no issue on the basis of the condition of the building. Admittedly, both the lessees had not paid any rent from 2015. Even though the learned AG & OT filed a report before this Court stating that the building is in a damaged condition, it was pointed out by the learned AG & OT that the appellants, who are successful bidders in the public auction, are liable to pay rent every month till the lease is terminated and possession is handed over to the AG & OT. The appellants had participated in the auction after making field inspection as to the condition of the building. It is seen that the appellants took the property on lease knowing the condition of the building. Since the appellants participated in the auction knowing that the properties are leased out in as is where is condition, the appellants/tenants are estopped from contending that their liability will arise only after the building is put to use by the tenants.

9.The appellants did not choose to pay rent for a long time. Even though this Court was inclined to consider the other applications filed by the tenants upon payment of rental arrears, the appellants have not paid the arrears. As per the calculations submitted by the learned AG & OT, huge



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amount of arrears have accumulated as the tenants have not paid rent properly from 2014. Now, the properties are available with the Waqf Board pursuant to the directions of this Court. Therefore, this Court cannot entertain these Appeals for obvious reasons. From the memo, it is seen that the 1st appellant is liable to pay a balance of Rs.28,08,250/- when arrears is calculated upto 19.04.2018. Similarly, the a sum of Rs.93,66,470/- is recoverable from the 2nd appellant when the rent is calculated upto 19.04.2018. The rental agreement was in force till possession was taken from the respective tenants. A tenant is liable to pay the rent till the property is surrendered. Despite committing default continuously from 2014, the property is not handed over to the learned AG & OT by the appellants. Till possession is taken from the appellants, the appellants cannot wriggle out of their contractual obligations. In this case, the attitude of the appellants has to be blamed and the appellants are responsible for the whole thing. The land owner is entitled to collect rent till the contract is terminated. This Court, therefore, finds no merit to entertain these Appeals.

10. Therefore, these Original Side Appeals are dismissed, however,



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with cost of Rs.10,000/- payable by the appellants in equal proportion.

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Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (P.D.B., J.)
28.01.2025

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

S.S. SUNDAR, J.
and
P. DHANABAL, J.



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