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C.R.P.(MD)No.655 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2026

PRONOUNCED ON : 29.01.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.655 of 2022

and

C.M.P.(MD)No.2652 of 2022 and 1567 of 2024

1.Janab N.P.Mohamed Ali Jinnah

2.Janab N.P.M.Abubacker Siddik

... Petitioners

-VS.-

Thirumankalam Pandiya Kula Chatriya Nadargal

Uravin Murai,

through its Dindiugl Melapettai Nadargal Uravinmurai

through its President, Dindigul.

...Respondent

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamilnadu Building (Lease and Rent Control) Act, 1960, to allow the Civil Revision Petition and to set aside the fair and decreetal order, dated 03.09.2021 made in R.C.A.No.2 of 2019 on the file of the Rent Control Appellate Authority (Principal Subordinate Court), Dindigul, confirming the fair and decreetal order, dated 04.12.2018 made in R.C.O.P.No.7 of 2010 on the file of the Rent Controller (Principal District Munsif Court), Dindigul.



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For Petitioners :Mr.M.Mohamed Ibrahim Saibu
for M/s.Ajmal Associates
For Respondent :Mr.V.S.Karthi

ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned Rent Control Appellate Authority (Principal Subordinate Court), Dindigul, in R.C.A.No.2 of 2019, dated 03.09.2021, which confirmed the order passed by the learned Rent Controller (Principal District Munsif Court), Dindigul, in R.C.O.P.No.7 of 2010, dated 04.12.2018.

2.Heard Mr.M.Mohamed Ibrahim Saibu, learned Counsel for the Revision Petitioners and Mr.V.S.Karthi, learned Counsel for the respondent.

Brief facts of the case are as follows:

3.The respondent is the landlord and the first petitioner society is the tenant. The subject property is a commercial building and the first petitioner had approached the respondent society on 01.04.2003 and that a rental agreement was executed and a sum of Rs.50,000/- was fixed as advance.



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A sum of Rs.2,200/- was fixed as monthly rent. In the agreement, it is also agreed by both parties that if the lease continues after three years, the rent will be increased to Rs.2,800/- per month. After the completion of the lease period, as the respondent wants the subject property for their own use and occupation and as the first petitioner failed to make the rent properly, the respondent society had initiated rent control proceeding against the petitioners on the ground of willful default, own use and occupation and on the ground of subletting.

4.The learned Rent Controller (Principal District Munsif Court), Dindigul, vide order, dated 04.12.2018, in R.C.O.P.No.7 of 2010, had partly allowed the said petition on the ground of wilful default as well as own occupation and dismissed the said petition, as far as the claim of subletting. Aggrieved against the order in allowing the petition on the ground of wilful default as well as own occupation, dated 04.12.2018, the petitioners have preferred an appeal in R.C.A.No.2 of 2019 before the Rent Control Appellate Authority (Principal Subordinate Court), Dindigul. The said appeal was dismissed by the Rent Control Appellate Authority (Principal Subordinate



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Court), Dindigul, vide impugned order, dated 03.09.2021. Challenging the same, the present Civil Revision Petition has been filed.

5.Mr.M.Mohamed Ibrahim Saibu, learned Counsel for the petitioners submitted that both the assumptions and presumptions drawn and the conclusions arrived at by the Courts below are completely contrary to law and it suffers jurisdictional error. He further submitted that the authorities ought to have come to the conclusion that there is no default, much less wilful default in payment of rent. He also contended that there was no arrears of rent and that the application itself is not maintainable.

6.He also lamented that both the Courts below ought to have seen that an unregistered society cannot file a RCOP either by itself or through another unregistered society and that such society has to necessarily file a suit for recovery of possession by invoking the provision of Order 1 Rule 8 of CPC and further, the society is stated to be formed for charitable purpose and that the jurisdiction of Rent Controller is excluded and only a suit will lie. He also submitted that as per G.O.Ms.No.2000, Home, dated 16.08.1976, the society



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was exempted from all the provisions of the the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960, and that initiation of rent control proceedings under the Act itself is not maintainable. He also contended that both the Courts below failed to consider that there is no *bona fide* requirement on the part of the landlord for requiring the premises for own occupation. He also contended that both Courts below ought to have seen the past conduct of the landlord in receiving the lump-sum amount at irregular interval, which would show that the parties never intended that each month of rent has to be paid as and when it fell due. In this regard, he relied upon Ex-A4, Ex-A7 and Ex-A10, to show that the petitioners have paid the rent without any arrears and if the respondent contended that the petitioners are in default of rent, the same may be adjusted from the advance amount paid by the petitioners. Hence, he seeks interference of this Court.

7.In support of his contention, the learned Counsel for the petitioners relied upon the following judgments:

1)The judgment of Hon'ble Supreme Court in the case of ***Susil Kumar Mehta vs Gobind Ram Bohra (Dead) through his legal representatives***



reported in **(1990) 1 SCC 193**, wherein, it has been held as follows:

26. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of res judicata is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would



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operate as res judicata. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction. Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.

27. In the light of this position in law the question for determination is whether the impugned decree of the civil court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the civil court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the court was gone into in issue Nos. 4 and 5 at the ex parte trial, the decree thereunder is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."

2) The judgment of Hon'ble Supreme Court in the case of **K.Narasimha Rao vs T.M.Nasimuddin Ahmed**, reported in **(1996) 3 SCC 45**, wherein, it has been held as follows:



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"8.The provision clearly enacts the course to be adopted in the case of any excess amount being paid by the tenant to the landlord, taking into account the factor that the tenant in certain circumstances may be compelled to make payment as advance or an amount in excess of that required to be paid to the landlord according to law. For that situation the provision imposes the legal obligation on the landlord to immediately refund the excess amount to the tenant unless the tenant exercises the option of requiring the landlord to adjust that amount towards any dues of the tenant or in any other manner indicated by the tenant. This provision has the effect of creating a corresponding enforceable right in the tenant to recover the excess amount from the landlord or to have it adjusted for his benefit in case the landlord fails to discharge his obligation of refunding that amount. The provision of adjustment of the excess amount at the option of the tenant clearly visualises its adjustment towards the rent due from the tenant since the jural relationship envisages payment only of rent by the tenant to the landlord towards which it can be adjusted.

9.There is no illegality attaching to the payment of the excess amount by the tenant to the landlord and a legally enforceable right clearly flows from the provision to the tenant. The pari delicto principle is, therefore, clearly excluded for the purpose of envisaging the consequences of an excess amount being taken by the landlord from the tenant because the provision requires the landlord to refund that excess amount. The corresponding provisions in the Bihar Act are different which import the pari delicto principle. This difference in the language of the provisions of the two enactments distinguishes the cases under the Bihar Act.

.....

13.In the present case, excluding from consideration the tenant's claim for adjustment of the amount of Rs 1000 spent on repairs and the amount of Rs 750 sent by demand draft on receipt of the notice, the amount of Rs 2850 with the landlord as the excess amount of advance paid by the tenant to the landlord, was alone sufficient to negative the landlord's claim of ejectment. The arrears of rent from July to November 1990 were only Rs 750, while the excess amount of advance was Rs 2850, far in excess of the arrears. The



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landlord was bound to immediately refund that excess amount even before the arrears accrued, and he not having made the refund was bound to adjust it towards the rent due from the tenant. On these facts, the tenant could certainly not be held to be a wilful defaulter in the payment of rent. The High Court is, therefore, right in deciding against the landlord."

3)The judgment of this Court in the case of ***Sukhraj Bhawarlal and others vs J.Parasmal and another***, reported in ***(2006) 4 MLJ 1610***; wherein, it has been held as follows:

"9.As far as this case is concerned, a perusal of the Trust Deed itself would show that the trust was created for charitable purposes, may be for particular two communities. In the instant case, the Trust itself filed RCOP.No:1638 of 2005 in the Rent Control Court. But later withdrawn the said RCOP and the same was dismissed as not pressed on 10.11.2005. The chief tenant-first respondent himself filed I.A. No. 12385 of 1996 in O.S. No. 11282 of 1996, which is a suit filed by him, wherein he himself described the Trust as a Public Trust. After submitting that the second respondent is a Public Trust, now the first respondent-chief tenant contends that it is a private Trust and therefore it is within the purview of the Act.

10.But as already stated a perusal of the Trust Deed would show that it is a Public Trust created for doing certain religious and charitable activities by the trustees. Since the second respondent is a Public Trust, the rent control proceedings cannot be initiated because the building owned by the said Public Trust is exempted under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960."

4)The judgment of this Court in the case of ***Arumugam and others vs***



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Kuruvidurai Pallivasal and others, in C.R.P.(NPD)(MD)No.612 of 2012,

dated 22.02.2023, wherein, it has been held as follows:

"21.As rightly pointed out by the learned counsel appearing for the revision petitioners, the objection raised by the defendants is not relating to lack of territorial jurisdiction and it relates to subject matter jurisdiction in view of Sections 83 and 85 of Waqf Act 1995. When a Court lacks subject matter jurisdiction and passes a decree, it can only be considered to be a void decree and non est in the eye of law. When a decree is void and non est in the eye of law, the validity of the said decree can be questioned even in the execution proceedings or in the collateral proceedings, in view of the judgement of the Hon'ble Supreme Court reported in (1990) 1 SCC 193 (Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) through his legal heirs). Therefore, the contention of the plaintiff/ decree holder that the issue relating to lack of jurisdiction cannot be raised in the execution proceedings is not legally sustainable.

22.The learned counsel for the plaintiff had further contended that the defendant had not raised any such objection during the trial or during the hearing of the first execution proceedings and hence, they are estopped from raising the said ground in the second execution proceedings. It is settled position of law by consensus, jurisdiction cannot be conferred by the parties to a Court which lacks jurisdiction in view of statutory provisions. Therefore, the said contention is also not legally sustainable. 23. In view of the above said reasons, I find that the Executing Court has not properly appreciated Sections 83 and 85 of the Waqf Act and has proceeded to order re-delivery, in favour of the plaintiff Pallivasal based upon a decree which is passed by a civil Court which lacked subject matter jurisdiction. However, the plaintiff Pallivasal is always at liberty to either initiate proceedings before the Waqf Tribunal or initiate proceedings under Section 54 of the Waqf Act 1995."

8.Per contra, Mr.V.S.Karthi, learned Counsel for the respondent



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contended that only after the legal notice issued to the revision petitioners, the arrears of rent was paid and even if it is taken on its face value that the arrears have been paid and adjusted towards the advance amount, still they have a right to repossess the property on the ground of its own occupation. He also submitted that the first petitioner has not paid the rent properly and the first petitioner has never produced any proof to show that he paid the rent regularly. He also submitted that the respondent society is in the need of subject property for the school run by the society and that the first petitioner has no right to continue as a tenant for a long time. He also submitted that without any iota of any bona fideness on his part, the tenant has preferred the appeal as well as the present revision with *mala fide* intention to delay in getting the subject property. It is his vehement contention that the petitioners have now raised a new ground before this Court with regard to the maintainability of the rent control proceeding by the society, which cannot be taken into consideration by the revisional Court. He also submitted that the Courts below after considering the entire materials available on record, has rightly passed the impugned orders, which need no interference of this Court and sought dismissal of this petition.



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9.This Court considered the submissions made on either side and perused the materials available on record.

10.The only point for consideration is whether the charitable society can maintain a proceedings under the Tamil Nadu Building (Lease and Rent Control) Act, 1960?

11.Admittedly, the respondent is the landlord and the first petitioner is the tenant. The subject property is a commercial building and as per the rental agreement, an advance of Rs.50,000/- was paid and a sum of Rs.2,200/- was fixed as monthly rent. In the agreement, it is also agreed by both parties that if the lease continues after three years, the rent will be increased to Rs.2,800/- per month. Since the respondent was in need of the subject property for its own use and occupation and according to the respondent, as the first petitioner has defaulted in payment of the rent and also subletting the subject property to the second petitioner, the respondent society has initiated the rent control proceedings. The petition filed by the respondent society was partly allowed



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by the learned Rent Controller as far as the claim of own use and occupation and willful default in payment of rent and as far as the claim of subletting, the same was negated by the learned Rent Controller. Challenging the same, the petitioners have preferred an appeal and the same was dismissed by the Rent Control Appellate Authority.

12.The primary contention raised by the learned Counsel for the petitioners is that the respondent society cannot maintain a rent control proceedings under the Tamil Nadu Building (Lease and Rent Control) Act, 1960, as per G.O.Ms.No.2000, dated 16.08.1976, which is extracted hereunder:

"In exercise of the powers conferred by Section 29 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960) and in supersession of the Home Department Notification No.II(2)/HO/3811/74, dated the 12th August, 1974, published at page 444 of Part II - section 2 of the Tamil Nadu Government Gazette, dated the 21st August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act."

13.The learned Counsel for the petitioners relied upon a judgment of this Court in the case of **Sukhraj Bhawarlal and others** (cited supra), wherein, this



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Court has held that "since the second respondent is a Public Trust, the rent control proceedings cannot be initiated because the building owned by the said Public Trust is exempted under Section 29 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. In such view of the matter, since the respondent is a society and as the building owned by the respondent society comes under the exemption under Section 29 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, the respondent society cannot maintain the rent control proceedings under the provisions of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, and that only a suit will lie. The Court below have not considered legality and therefore, there is an error apparent on the face of the judgement. The Hon'ble Supreme Court in the case reported in **(1990) 1 SCC 193**, held that "*a decree passed by a Court without jurisdiction over the subject matter is non-est in the eye of law.*"

14.In the counter filed by the respondent, dated 26.08.2022, they have stated that the Society is being duly registered vide S.No.47 of 1996. Though in the counter, it is stated that the respondent is a registered Society in S.No.47 of 1996, the petition filed by the respondent before the Rent Controller does



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not reflect the same. Further, it is relevant to take note of the decision of the Hon'ble Supreme Court in ***Civil Appeal No.3132-3133 of 2016 in P.Nazeer Etc., vs Salafi Trust and another etc.*** In the said case, a question was raised with regard to the conferment of revisional jurisdiction under Sub Section 9 of Section 83 of the Waqf Act, 1995. While answering the said question, the Hon'ble Supreme Court had observed as follows:

"15. The aforesaid finding is completely contrary to law. A society registered under the Societies Registration Act is entitled to sue and be sued, only in terms of its byelaws. The byelaws may authorise the President or Secretary or any other office bearer to institute or defend a suit for and on behalf of the society. Under section 6 of the Societies Registration Act, 1860, "every society registered under the Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion". Even the TravancoreCochin Literary, Scientific and Charitable Societies Registration Act, 1955, which is applicable to parts of Kerala carries a similar provision in section 9. Therefore, unless the plaintiff in a suit which claims to be a society, demonstrates that it is a registered entity and that the person who signed and verified the pleadings was authorised by the byelaws to do so, the suit cannot be entertained. The fact that the plaintiff in a suit happens to be a local unit or a Sakha unit of a registered society is of no consequence, unless the byelaws support the institution of such a suit.

15.The Hon'ble Supreme Court had made it clear that when the



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petitioner claims that he is a registered society, then, the society should establish its registration number and bye-laws. The bye-laws governs the society and when any legal proceedings is initiated based on the bye-laws only then, the statutory rights, which is amenable to sue to be sued. The counter affidavit filed by the respondent only stated that the society is being registered in S.No.47 of 1996, but the counter does not speak anything about its bye-laws and the registration certification. When there is no material to show that the respondent is a registered society, which has initiated the proceedings under the bye-laws, it cannot be construed that the proceedings, which was initiated under the Tamil Nadu Building (Lease and Rent Control) Act, 1960, can be legally maintainable.

16.Further, when originally the proceedings was initiated by the respondent herein, there is no reference to the society, which was duly registered. Nowhere in the pleading, the respondent has contended that they are the registered society and it is amenable its bye-laws. It is further relevant to take note that in absence of any bye-laws, which empowers the respondent to initiate the proceedings, the society cannot maintain the rent control



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proceedings. It is to be further noted that the exemption given to the society as per G.O.Ms.No.2000, dated 16.08.1976, was not taken into consideration by the Court below. Though a contention was raised by the respondent that the said contention was pleaded only before the revisional Court and that the Court should not taken into consideration, the said argument cannot be accepted, as it is settled law that ignorance of law cannot be exercised and if a proceeding is initiated without following the procedure and the proceedings initiated by the respondent without pleading that the respondent has filed the rent control proceedings based on its bye-laws, which will alone empowers to initiate the proceedings, the said proceedings is not maintainable. In the absence of such mandate, the proceedings initiated by the respondent have no legal footings.

17.Insofar as the contention of the learned Counsel for the petitioner by relying Ex-A4, Ex-A7 and Ex-A10, that the first petitioner had paid the rent to the respondent without any arrears and if there is any arrears, the same may be adjusted from the advance amount paid by the first petitioner and in view of the judgment reported in *(1996) 3 SCC 45* (cited supra), the landlord can very well adjust the arrears amount, if any, from the advance amount paid the



18.In view of the foregoing discussions, the orders passed by both the Courts below suffer from irregularity and in the result, the Civil Revision Petition is allowed and the order passed by the learned learned Rent Control Appellate Authority (Principal Subordinate Court), Dindigul, in R.C.A.No.2 of 2019, dated 03.09.2021 and the order passed by the learned Rent Controller (Principal District Munsif Court), Dindigul, in R.C.O.P.No.7 of 2010, dated 04.12.2018 are set aside. It is open to the respondent to approach the competent civil Court for appropriate relief and if the respondent approaches the competent Court of law, the litigation period can be excluded, while calculating the delay, if any arises. No costs. Consequently, connected miscellaneous petitions are closed.

29.01.2026

NCC	:Yes/No
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To

The Rent Controller Appellate Authority

(Principal Subordinate Court), Dindigul.

2.The Rent Controller (Principal District Munsif Court), Dindigul.



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N.SENTHILKUMAR, J.

cmr

Pre-delivery order made in
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