

(1998) 02 MAD CK 0015

In the Madras High Court

Case No : C.R.P. No's. 3592 and 3593/97 and C.M.P. No's. 18689 of 1997

A. Swaminathan

APPELLANT

Vs

G. Ragavachary

RESPONDENT

Date of Decision : 25-02-1998

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(i), 23(2)

Citation : (1998) 02 MAD CK 0015

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : C.A. Shanmugham, for the Appellant;

Judgement

K. Gnanaprakasam, J.—The Civil Revision Petition No. 3592 of 1997 filed by the landlord arises out of the Order of dismissal dated

15.7.1997 in M.P. No. 186 of 1997 in R.C.A. No. 1297 of 1996 on the file of the Small Causes Court, Madras. The Civil Revision Petition No.

3593 of 1997 filed by the landlord arises out of the order dated 15.7.1997 passed in M.P. No. 1192 of 1996 in R.C.A. No. 1297 of 1996 on the

file of the Small Causes Court, Madras. As a common question of facts and law are involved in both the Civil Revision Petitions, both the

advocates for the petitioner and the respondent requested that both the CRPS may be taken together and a common order may be passed.

2.The landlord, who is the Revision Petitioner before this Honourable Court filed a petition in R.C.O.P. No. 3147 of 1994 before the 13th Judge,

Court of Small Causes Court, Madras for fixation of fair rent and the Rent Controller fixed the rent at Rs. 1,631/- in respect of the Petitioner's

premises. Aggrieved by the same, the tenant who is the respondent in C.R.P. filed R.C.A. No. 1297 of 1996 which is pending before the Rent

Control Appellate Authority. That in the said R.C.A., the landlord filed a petition in M.P. No. 186 of 1997 to vacate the interim stay granted in

favour of the tenant in M.P. No. 1192 of 1996 in R.C.A. No. 1297 of 1996 alleging that the fair rent fixed by the Rent Controller itself is low and

that the respondent/tenant is a man of no means to pay the rent and that therefore, the stay granted in M.P. No. 1197 of 1996 has got to be

dismissed. The respondent herein filed his counter and after considering the submissions of the petitioner and the respondent, the Rent Control

Appellate Authority dismissed the petition in M.P. No. 186 of 1997 in R.C.A. No. 1297 of 1996 by its order dated 15.7.1997, which is being

questioned under this Civil Revision Petition.

3. Even though, this matter was under the stage of Notice of Motion, it was taken up for enquiry. I heard the respective submissions of the learned

advocates for the petitioner and the respondent.

4. Learned Advocate for the petitioner has submitted that he has claimed Rs. 2,459/- per month as fair rent. But, however, the Rent Controller has

fixed the fair rent at Rs. 1,631/- per month. Aggrieved by the same, the respondent/tenant filed an Appeal in R.C.A. No. 1297 of 1996 and the

same is pending. The respondent/tenant pending disposal of the R.C.A. No. 1297 of 1996 filed a petition in M.P. No. 1192 of 1996 and also

obtained an order of stay of operation of the order in R.C.O.P. No. 3147 of 1994. The petitioner herein filed a petition in M.P. No. 186 of 1997

to vacate the order of stay granted in M.P. No. 1192 of 1996 and the same was dismissed by the lower Appellate Authority on 15.7.1997 and as

against the same, the landlord preferred the present Civil Revision Petition

5. The first and foremost submission of the petitioner is that the tenant who has preferred R.C.A. No. 1297 of 1996 had admitted about the fair

rent in ground No. 12 of the Memorandum of the grounds which runs as follows:

The Appellant therefore prays that this Hon"ble Court may be pleased to set aside the order passed by the learned XIII Judge. Court of Small

Causes, Madras in the above R.C.O.P. No. 3147 of 1994 fixing fair rent at Rs. 1,630/50 and fix fair-rent at Rs. 860/- per month and render

justice"".

Pointing out the same, the learned advocate for the petitioner submitted that the respondent himself admitted that the fair rent may be fixed at Rs.

860/- which he should be directed to pay even without prejudice to his contention in the Appeal. The lower Appellate Authority failed to

appreciate the said fact and dismissed the petition filed by the petitioner to vacate the order of stay granted in favour of the respondent. In this

connection, the petitioner has also pointed out that the power given u/s 23(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960

was not properly and judiciously used by the lower Appellate Authority. Granting of stay is not an automatic act and Section 23 (2) of the Act

states that ""of such Appeal being preferred, the Appellate Authority may order stay of further proceedings in the matter pending decision on the

Appeal"". Which means that the discretion vested in the Appellate Authority should be used properly and in this case, the Appellate Authority has

failed to do so which caused unnecessary hardship to the petitioner. It is therefore submitted that the order passed by the lower Appellate

Authority is not just and reasonable and the same is liable to be set aside.

6. Per contra, the learned advocate for the respondent sharply replied that the fair rent fixed by the Rent Controller has not reached its finality and

as such, the petitioner is not entitled to claim the fair rent that has been ordered by the Trial Court. To support his contention, he placed reliance

upon the judgment reported in J. Visalakshmi Ammal v. T.B. Sathyanarayana [1996-2-L.W. 849] where in a Division Bench of this Honourable

Court held that

We are firmly of the view that the differed in the amount between the fair rent fixed and the agreed rent is the arrears of rent for the building and it

becomes payable when the order fixing the fair rent becomes final, and the same shall have to be paid within 15 days from the last day of the

tenancy month, failing which, it would be open to the landlord to issue notice calling upon the tenant to pay the arrears of rent. In the event of the

tenant falling to pay the arrears of rent pursuant to the notice, it would be open to the landlord to institute a proceeding for eviction on the ground

failing u/s 10(2)(i) of the Act. It is not necessary for the landlord to go to a Civil Court to recover such arrears of rent"".

7. The learned advocate for the respondent further contended that the order fixing the fan-rent has not become final, in view of the fact. that he has

preferred R.C.A. and therefore, the lower Appellate Court was correct in

dismissing the petition filed by the landlord to vacate the order of stay granted by the lower Appellate Authority. No doubt, it is true that the order fixing the fair rent has not reached the finality. But, in this case, the respondent himself has admitted that Rs. 860/- may be fixed as fair rent and that therefore, the said amount is accepted by him, without prejudice to his right of appeal. The petitioner therefore sharply pointed out that the respondent having agreed to the fixation of fair rent at Rs. 860/- per month, the lower Appellate Court erred in not having directed him to pay the said amount and therefore, the order passed by the lower Appellate Court is not proper.

8. The learned advocate for the petitioner also drew my attention to an order of a similar case passed in C.M.P. No. 14070 of 1993 in C.R.P.

No. 293 of 1993 on the file of this Honourable Court and the copy of the order has been filed at page 31 in the typed set when in the learned

single Judge passed a conditional order which runs as follows:-

That on condition of the petitioner - the tenancy should pay a sum of Rs. 1,18,000/- (Rupees one lakh and eighteen thousand only) to the

responded landlord within twelve weeks from the date of this order and also the tenant is directed to pay the rent at the rate of Rs. 2,100/- p.m.

from the month of the October, 1993 until the disposal of the Revision Petition and operation of the order in R.C.O.P No. 1447 of 1987 dated

28.2.1990. Small Causes Court (XV Judge) Madras modified in R.C.A. No. 317 of 1990 dated 20.3.1992 shall be stayed pending further order

on this petition.

9. Though the facts and circumstances of the above said case are not available to us the learned Single Judge passed a conditional order thereby

directing the respondent/tenant to pay the rent to grant stay of eviction order passed against him. The learned advocate for the petitioner persuaded

to pass an order and thereby directing the respondent/tenant to pay the admitted rent of Rs. 860/-. This submission is vehemently opposed by the

respondent on the ground that the petitioner is not entitled to claim the fair rent till it reaches the finality.

10. It is true that the fair rent fixed by the Rent Controller is being questioned by the respondent/tenant in R.C.A. No. 1297 of 1996. But,

however, the respondent/tenant in the grounds of appeal has admitted himself to

fix the fair rent at the rate of Rs. 860/- per month, which shows that he has admitted to pay the said amount, without prejudice to the various grounds raised by him in the grounds of appeal. Though the fixation of fair rent has not reached the finality, and it will also not reach the finality in a short time, as the R.C.A. itself is pending and as against the order of the R.C.A., it is open to the parties to prefer a Civil Revision Petition and also possible to take the matter upto the Supreme Court. Naturally, it will take some time, which the tenant is trying to take undue advantage of the same. The tenant without even paying the admitted rent, trying to continue to be the tenant in the property and the said situation should not be afforded to the tenant. In my view, it is not fair on the part of the respondent" tenant in opposing to pay even the admitted fair rent in a fair manner and his opposition is not at all fair and that therefore, I feel that the payment of admitted fair rent is fair in this case. When the tenant himself has admitted that the fair rent may be fixed at Rs. 860/-, it is not open to the tenant to continue as a tenant without paying even the said admitted fair rent, that therefore, the objection raised by the respondent/tenant is shown into reality and bristles to nothing and that therefore I come to the conclusion that the tenant should be directed to pay the admitted fair rent. The lower Appellate Authority could have passed a conditional order to that effect.

11. In the said view of the matter, the C.R.P. is allowed and the respondent/tenant is directed to pay the admitted fair rent i.e. at Rs. 860."- per month, without prejudice, to his contention raised in this appeal, from 20.9.1996 to 28.2.1998 within 12 weeks from the date of receipt of copy of this order and the tenant is further directed to pay the above said rent continuously till the disposal of the R.C.A. also.

12. In view of the observations made in C.R.P. No. 3592 of 1997, the connected C.R.P. No. 3593 of 1997, also has got to be allowed and the stay granted in M.P. No. 1192 of 1996 in R.C.A. 1297 of 1997 is hereby set aside. In the result, both the C.R.P.s are allowed. However, there will be no order as to costs. In view of the order passed in the C.R.P.s no order is necessary in the CM.P. and the same is closed.