
(2018) 02 MAD CK 0174
In the Madras High Court
Case No : 440 of 2005

A/m.Karaneeswarar Devasthanam

APPELLANT

Vs

K.L.Durairaj

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

[Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951](#),
Section 78

Citation : (2018) 02 MAD CK 0174

Hon'ble Judges : M.V.Muralidaran

Bench : Single Bench

Advocate : A.K.Sriram, V.Gopalakrishnan

Final Decision : Dismissed

Judgement

1. This Revision Petition arises out of the Fair and Decretal Order dated 30.04.2004 passed in Ejectment Suit No.92 of 1991 on the file of the

learned III Small Causes Court, Chennai. The above Ejectment suit came to be filed by A/m. Karaneeswarar Devasthanam, represented by its

Executive Officer, Saidapet, Chennai 600 015, the Revision Petitioner herein against the sole respondent.

2. Earlier, the learned counsel, Mr.P.S.Eathirraj, appeared for the respondent. But as he died when this case was in part heard stage, the learned

counsel Mr.V.Gopalakrishnan filed his Vakalat and entered appearance for the respondent. On account of this reason this case was de-linked with

another similar case Civil Revision Petition No.439 of 2005 of this Court, wherein the petitioner in the same temple.

3. The suit in Ejectment Suit No.92 of 1991 was filed by the petitioner herein for the relief of the ejectment of the respondent herein from the Plot

bearing Door No.13, 2nd Street, Karani Garden, Saidapet, Chennai-600 015 more fully described in the Schedule given in the Complaint on the

ground of default in payment of rent and consequent termination of tenancy. This suit was resisted by the respondent/defendant and after trial the

learned trial Judge dismissed the suit by her impugned Fair and Decretal Order dated 20.10.2004. This Order is challenged in the present Civil

Revision Petition before this Court by the petitioner.

4. The facts leading to the filing of this suit is that the said Plot was given by the petitioner to the respondent on a monthly rent of Rs.15/- from the

year 1983 and the tenancy is according to English Calendar month. In addition to the rent the respondent / defendant has to pay a sum of Rs.2/-

per annum being Utsavavari (Festival Tax) at the time of annual Brahmotchavam of the temple. As the respondent committed default in payment of

rent, the petitioner issued a notice dated 17.10.1991 to him, thereby terminating the tenancy ending with 30th November, 1991 and called upon

the respondent to quit and deliver vacant possession on or before 01.12.1991. The petitioner offered a sum of Rs.1,000/- as compensation for the

superstructure erected by the respondent. As the respondent failed to comply with the said notice, the petitioner has filed this Ejectment Suit.

5. The respondent has filed Written Pleas, whereby, he denied all default in payment of the rent as alleged in the complaint. He added that he was

always ready and willing to pay the rents, but, for the reasons best known to them, the petitioner's authorities were not willing to receive the rents

whenever the same was tendered. He also expressed that he is ready and willing to pay any arrears of rent on proof of the non-payment. In the

earlier part of his written pleas, the respondent has stated that originally his father by name K.Lakshmanan became the tenant of the said Plot and

after his death, the respondent succeeded to his rights and became the statutory tenant under the petitioner temple.

6. I heard Mr.A.K.Sriram for M/s.A.S.Kailasam Associates, learned counsel for the petitioner and Mr.V.Gopalakrishnan, learned counsel for the

respondent. The certified copy of the impugned Order and copies of the other documents produced in the form of typed set of papers are also

perused.

7. The petitioner adduced oral evidence by examining its Executive Officer as

PW1. The petitioner also marked two documents, one being the notice dated 17.10.1991 issued by the petitioner to the respondent and the other being the Tenancy Register for the year 1991-1992. The respondent has not adduced any evidence either oral or documentary. Before the Ejectment Suit could be disposed off, the City Tenants Protection Act was amended by Act 2 of 1996, which was upheld by the Hon''ble Full Bench of this Court in N. Sreedharan Nair And Ors. Vs. Mottaipatti Chinna Pallivasal, reported in (2003) 2 MLJ 164. The Hon''ble Full Bench of this Court held that by virtue of this amendment the provisions of the City Tenants Protection Act is no longer applicable to the Tenants of the Religious institutions and hence such tenants can no longer claim any benefits under this Act.

8. As stated above, the petitioner has issued a notice dated 17.10.1991 to the respondent thereby terminating the tenancy and calling upon him to quit and deliver vacant possession on or before 01.12.1991. But contrary to the provisions contained in Section 11 of the Chennai City Tenants' Protection Act, 1921 the petitioner has filed this Ejectment Suit on 09.12.1991, i.e. before the expiry of the Statutory Period of three months from the date of issuing the notice. Section 11 of the said Act is as follows:

Section 11- Notice before institution of suits or applications against tenants:

No suit in ejectment or applications under section 41 of the Presidency Small Cause Court Act, 1882 (Central Act XV of 1882) shall be instituted or presented against a tenant until the expiration of three months next after notice in writing has been given to him requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any, and stating the amount thereof.

[A copy of such notice shall, at the same time, be sent, in the case of property situated in the City of [Chennai], to the Commissioner of the Corporation of [Chennai], or, in the case of property situated in any [municipal town, township or village] to which this Act is extended, to the executive authority of the [municipality or township] or the executive officer of the Panchayat, as the case may be, or any other authority as may be notified by the Government]

As this suit has been filed before the expiry of the mandatory waiting period of 3 months, the trial court dismissed this suit on this ground. The trial

court dismissed this suit also on the ground of non-production of proof of service of notice on the Commissioner, Chennai City Municipal

Corporation which is also mandated under Section 11 of the said Act. As against this Fair Order and Decretal Order, the petitioner has preferred

this Revision Petition. In view of the Amendment Act, 2 of 1996 the learned counsel for the Revision Petitioner submitted his arguments urging this

Court to allow this Civil Revision Petition, set aside the trial court's impugned Fair and Decretal Order and decree the suit as prayed for.

9. Per contra, the learned counsel Mr.V.Gopalakrishnan appearing for the respondent / defendant contended that the said Act 2 of 1996 has not

exempted any Religious Institutions or Temple from the mandatory provisions contained in Section 11 of The Chennai City Tenants' Protection

Act. He further submitted that as the petitioner has filed this suit before the expiry of the three month's waiting period, this suit is premature, void

ab initio and not maintainable and the trial court has rightly dismissed this suit. I am able to see the sustainable force in the arguments of the learned

counsel for the respondent. The amendment Act 2 of 1996 as upheld by the Hon'ble Full Bench of this Court has not exempted any Religious

Institutions or Temple from the mandatory provisions of Section 11 of the said Act. As the petitioner has not complied with these mandatory

provisions of Section 11, I have no hesitation in upholding the Fair Order and Decretal Order of the trial Court.

10. Taking into consideration of the above facts and circumstances and also the fact that the respondent is aged about 85 years, when this Revision

Petition along with another similar CRP No. 439/2005 was listed before my brother Hon'ble Mr. Justice M.Duraiswamy, on 07.09.2016 has

passed the following Order:

2. In view of the submissions made by the learned counsels appearing for the respondents, it is open to the respondents to give representations to

the petitioner / Temple for continuing their tenancy in their favour within ten days from the date of receipt of a copy of this Order and on receipt of

the representations from the respondents, the Petitioner / The Executive Officer consider the respondents' representation sympathetically taking

into consideration of their advanced age.

3. It is also brought to the notice of this Court that the respondents have paid

the fair rents, as demanded by the petitioner, subsequent to the filing of the ejectment suits. Post the matter on 30.9.2016.

Pursuant to this Order dated 07.09.2016 the respondent has submitted his representation on 12.09.2016. But even after the lapse of four months, the Petitioner / Executive Officer has not considered their representation.

11. Though this Court directed to post the matter on 30.09.2016 it was posted only after three months. But even then the Petitioner / Executive Officer had not complied with the Order. When the matter was posted on 12.01.2017, taking into consideration of the advanced age of the respondent and also to give one more opportunity to the petitioner the following Order was passed by me:

Accordingly the Petitioner / Executive Officer in both the Civil Revision Petitions is hereby directed to consider the representations of the

respondents dated 12.09.2016 and pass orders within a period of one week from the date of receipt of a copy of this order, failing which, suo

moto contempt will be initiated against the Petitioner / Executive Officer for disobedience of the Order passed by this Court. Post on 23.01.2017.

12. On 27.01.2017 when the matter was listed, the learned counsel for the petitioner submitted that the Executive Officer of the Petitioner Temple

has no jurisdiction to consider the representation of the respondent and only the Commissioner of the Hindu Religious and Charitable Endowments

(HR & CE) Chennai has jurisdiction and requested this Court to issue suitable directions to the Commissioner of HR & CE, Chennai. Thereupon

the following order was passed by me on 27.01.2017:

(a) The respondent / tenant in both Civil Revision Petitions are hereby directed to file their representation as per the order passed by this Court

dated 07.09.2016 within a period of one week from today to the Commissioner of Hindu Religious and Charitable Endowment, Chennai.

(b) On receipt of such representations, the Commissioner of Hindu Religious and Charitable Endowment, Chennai is hereby directed to consider

and pass orders on the same by giving personal opportunity to them within a period of four weeks from the date of receipt of a copy of the representations.

(c) The Registry is directed to post these Civil Revision Petitions on 03.03.2017.

13. The learned counsel for the respondent / defendant submitted that instead of passing an order on the representation of the respondent within

four weeks as ordered by this Court, the Commissioner of HR & CE, Chennai in total defiance took his own time and passed his order on

25.05.2017, i.e. four months later. A copy of this Order is produced by the respondent. The learned counsel for the respondent further submitted

that the Commissioner of HR & CE, Chennai has not only failed to declare the respondent as a tenant but also failed to quantify and fix the rent.

Instead, he has relegated this work to the Executive Officer of the Petitioner Temple, who is said to be not having jurisdiction to do this job. The

Commissioner of HR & CE, Chennai has also ordered directing the respondent to accept the undisclosed or unfixed rent and further directed the

respondent to pay whatever rent fixed by the Executive Officer retrospectively from 01.07.2016 and also deposit ten months rent as advance.

14. Citing the above infirmities the respondent did not accept this order of the Commissioner of HR & CE, Chennai and filed a Memo dated

15.11.2017 in this regard. The learned counsel for the petitioner submitted that if the respondent is aggrieved by this order of the Commissioner of

HR & CE, Chennai he can challenge it in some other proceedings and urged this Court to allow this Revision Petition and decree the suit as prayed

for.

15. I am unable to agree with the learned counsel for the petitioner. The Commissioner of HR & CE, Chennai has passed the above said order

only at the directions of this Court and not either independently on his own accord or pursuant to the public notice published earlier by the

Executive Officer of the Petitioner / Temple. As the order passed by the Commissioner of HR & CE, Chennai is not in compliance with the

directions given by this Court, it is ultra vires of the Order of this Court and hence I am striking it down as non-est in law.

16. It has to be borne in mind that this is 27 years old litigation and the respondent is now aged about 85 years. It will be inhuman to direct him to

work out his remedy in some other proceedings at his advanced age. The learned counsel for the petitioner further argued that it is always open for

the Commissioner of HR & CE, Chennai to initiate proceedings against the respondent under Section 78 of the Tamil Nadu Hindu Religious and

Charitable Endowments Act as the respondent is in illegal occupation. But the petitioner has not initiated any such proceedings so far and no proof has been produced in this regard.

17. The learned counsel for the respondent submitted that the petitioner is not very particular and sincere in evicting the respondent from the suit

premises. Whereas on more than one occasion, even after filing this Ejectment Suit, the petitioner has conducted himself in such a manner affirming

the tenancy of the respondent. Hence he prayed that complete justice would be rendered to both parties herein if this 27 year old litigation is

determined in such a manner, which would be beneficial to both parties. The learned counsel for the respondent placed reliance on the decision of

the Apex Court rendered in B.C. Chaturvedi Vs. Union of India and Others ((1995) 6 Supreme Court Cases 749) followed by this Court in

N.K.T. National Girls Higher ... Vs The Government of Tamil Nadu And .. (1999) 1 MLJ 11.

18. Following the above said decision of the Apex Court as well as this Court I intend to do complete justice to both parties as follows:

(a) I direct the Petitioner Temple to record the name of the respondent as a tenant in their Registry with immediate effect.

(b) The fair rent was fixed on 14.09.2010 as per the Form-I notification issued by the Petitioner/Temple and produced by the respondent, who

further claims that such fair rent is being paid by him up to date. As the rental income is the major source of income for the Petitioner Temple to

meet its maintenance costs, the Petitioner Temple would be at liberty to revise and fix the Fair Rent afresh. But the proceedings for the fixation of

the revised Fair Rent should be conducted and made applicable simultaneously to all other tenants of the Petitioner Temple also and the

respondent herein should not be singled out in a discriminatory manner. Such proceedings should commence immediately without any delay.

(c) It is made clear that such revised Fair Rent should not be collected retrospectively and it will become enforceable only from the date of its

notification. With regard to deposit of advance amount, the demand for deposit of 10 months rent appears to be unjust and on the higher side. It

would be just and reasonable if 5 months' rent is fixed and collected as advance deposit.

(d) It is also made clear that if the respondent commits default in payment of rent for two consecutive months he shall forfeit all his rights in the suit

premises and the petitioner and / or the competent authorities will be at liberty to initiate proceedings afresh under Section 78(2) of the HR & CE

Act for evicting the respondent from the suit premises.

19. With the above directions this Civil Revision Petition is dismissed by confirming the Fair Order and Decreetal Order dated 30.04.2004 passed

in Ejectment Suit No. 92 of 1991 on the file of the learned III Small Causes Court, Chennai. No costs. Consequently, connected miscellaneous

petition is closed.