

(1982) 08 MAD CK 0003
In the Madras High Court
Case No : C.R.P. 88 and 89 of 1981

M. Ramaswamy Padayachi	Vs	APPELLANT
K. Vijendran by power agent K. Venkataraman		RESPONDENT

Date of Decision : 13-08-1982

Acts Referred:

Citation : (1982) 08 MAD CK 0003

Hon'ble Judges : Sengottuvelan, J

Bench : Single Bench

Advocate : M. Kalyanasundaram, for the Appellant; N. Vanchinathan, for the Respondent

Judgement

Sengottuvelan, J.—Both these civil revision petitions are filed by two tenants of the same landlord against the orders passed by the Special

Deputy Collector, passing an order of eviction straightway without giving time to deposit arrears claimed in the petition. These civil revision

petitions have to be entertained by this Court in view of the decision of this Court to the effect that the Revenue Court in passing an order of

eviction on the basis of arrears of rent must first pass an order determining the arrears and then grant time to the tenant to deposit the arrears and

only in case of default an order of eviction should be passed. But, the Supreme Court has in Chinnamarkathian v. Ayyavoo 1982-1-M.L.J. 17

(S.C.)=95 L.W. 124 (S.N.) held as follows: ½

Now, as I read sub-S. (4) of S. 3 of Tamil Nadu Act 25 of 1955 , it gives the R.D.O. power either to allow the application of the landlord or to

dismiss it after he has held a summary enquiry into the matter. If the application is allowed an order of eviction has to be passed. If it is dismissed

the proceedings again come to an end. However, if the ground of eviction is non-payment of rent, the R.D.O. is clothed with power to allow the

cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and, while exercising the same it is not incumbent on the

R.D.O. to grant time. If the Legislature intended to make it obligatory on the part of the R.D.O. to fix a time for deposit of the arrears in all cases

covered by clause (a) or clause (aa) of sub-S. (2) there is no reason why it should have used the word "may" in relation to the grant of time.

Support for this view is available in clause (b) of sub-S. (3) wherein the Legislature has directed

If the Court finds that any sum is due it shall allow the cultivating tenant such time as it may consider just and reasonable.....

In this situation it must be held that while the opportunity of depositing the arrears of rent cannot be denied to a cultivating tenant during the course

of proceedings under sub-S. (3), the same is not available as of right under clause (b) of sub-S. (4). The difference in the language used by the

Legislature is significant and not without purpose. The intention of the Legislature appears to be that normally a defaulting tenant must seek the help

of the court all by himself and if he does so he must be protected; but that a defaulting tenant who waits for payment of rent till he is sought to be

evicted by the landlord is not necessarily entitled to the same protection. Circumstances may exist which may place him at par with a tenant

covered by sub-S. (3) but then it may not necessarily be so. That is why it is left to the discretion of the R.D.O. to grant time to the cultivating

tenant or to deny him that opportunity.

In view of the above decision of the Supreme Court the orders passed by the Special Deputy Collector in both the cases cannot be assailed.

No doubt, both orders are passed ex parte. The remedy by way of setting aside the ex parte order under law is available to the tenants and they

can pursue the same if so advised. I am not expressing any opinion on the question of limitation with reference to such an application.

2. In the result, these two civil revision petitions are dismissed. However, there will be no order as to costs.