

**(2006) 06 MAD CK 0014**

**In the Madras High Court**

**Case No : C.R.P. (NPD) No's. 1554, 1586, 1646 and 1647 of 2005**

Mr. Chandmull Verma alias Anantha Verma and Mrs.  
Anilkumar Verma

APPELLANT

Vs

Daga Commercial Corporation (P) Ltd. <BR>Raghunandan  
Prasad and Company and Radha Mohan Gupta Vs Daga  
Commercial Corporation (P) Ltd. and Raman Prasad Gupta

RESPONDENT

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**Date of Decision : 14-06-2006**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Madras Buildings (Lease and Rent Control) Act, 1949 — Section 10  
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(3), 11,  
12A, 14

**Citation : (2006) 3 LW 720 : (2006) 3 MLJ 368**

**Hon'ble Judges : S. Rajeswaran, J**

**Bench : Single Bench**

**Advocate : V. Bakthavatshalu, for the Appellant; Surana and Surana, for the  
Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S. Rajeswaran, J.

(I) (A) CRP NPD No. 1554/05:

1. The above revision petition has been filed by the tenants against the common judgment dated 27.6.2005 rendered by the learned VII Judge,

Court of Small Causes, Chennai, in RCA No. 1663/2004, dismissing the appeal filed against the order dated 15.12.2004 passed by the learned

XII Judge, Court of Small Causes, Chennai in M.P. No. 564/2003 in RCOP No. 878/2002.

2. The respondent herein filed RCOP No. 878/2002 against the revision petitioners u/s 4 of the Tamil Nadu Buildings (Lease & Rent Control)

Act, 18/1960 (hereinafter called "the Act) for fixing the fair rent for the petition schedule building, namely, the rear portion of II floor bearing Door

No. 166, Mint Street, Chennai.600 079.

3. The revision petitioners filed counter statement and they have specifically pleaded that RCOP No. 878/2002 is barred u/s 19 of the Act as a

petition for fixation of fair rent was already filed by the respondent herein in RCOP No. 1221/1998 and the same was dismissed on 22.3.2002.

The revision petitioners have also filed a petition in M.P. No. 564/2003 in RCOP No. 878/2002 praying for dismissal of RCOP No. 878/2002 as

the same is barred by res judicata. In M.P. No. 564/2003 also the revision petitioners submitted that the order dated 22.3.2002 in RCOP No.

1221/1998 would act as res judicata and therefore RCOP No. 878/2002 is barred u/s 19 of the Act. The respondent herein filed a counter in

M.P. No. 564/2003 wherein he has stated that the earlier RCOP No. 1221/1998 filed u/s 4 of the Act was withdrawn as not pressed and

therefore there was no adjudication on merits. In such circumstances, the respondent herein submitted that Section 19 of the Act is not attracted

and RCOP No. 878/2002 is very much maintainable. The Rent Controller by order dated 15.12.2004 dismissed M.P. No. 564/2003 and held

that the previous RCOP No. 1221/98 was not finally decided the issue in question and it would not attract Section 19 of the Act. In the appeal,

challenging the order dated 15.12.04 filed in RCA No. 1663/2004, the Appellate Authority also confirmed the order of the Rent Controller,

dismissing the appeal by a common order dated 27.6.2005. Hence the tenant has filed the above revision petition.

B. CRP NPD No. 1586/2005:

4. The above Revision Petition has been filed by the tenants against the common Judgment dated 27.6.2005 rendered in RCA No. 1662/2004

etc., dismissing the appeal filed against the order dated 15.12.2004 passed in M.P. No. 563/2003 in RCOP No. 877/2002.

5. The respondent herein filed RCOP No. 877/2002 against the revision petitioners u/s 10(3)(c) of the Act for additional accommodation for the

petition schedule building, namely, the rear portion of II floor bearing Door No. 166, Mint Street, Chennai.79. The revision petitioners filed their

counter resisting the petition for eviction on the ground of additional

accommodation. In their counter statement they have raised a specific plea that the RCOP No. 877/2002 is barred u/s 19 of the Act as the petition for eviction on the ground of additional accommodation was already filed by the respondent in RCOP No. 202/1999 and the same was dismissed on 22.3.2002. The revision petitioners have also filed a petition in M.P. No. 563/2003 in RCOP No. 877/2002 praying for dismissal of RCOP No. 877/2002 as the same was barred by res judicata. In M.P. No. 563/2003 also, the revision petitioners submitted that the order already passed on 22.3.2002 in RCOP No. 202/1999 would act as res judicata and therefore RCOP No. 877/2002 is barred u/s 19 of the Act. The Respondent herein filed a counter affidavit in M.P. No. 563/2003 wherein they have stated that the earlier RCOP No. 202/1999 filed u/s 10(3)(c) of the Act was withdrawn as not pressed and therefore there was no adjudication on merits. In such circumstances, the respondent herein submitted that Section 19 of the Act is not attracted and RCOP No. 877/2002 is very much maintainable. The Rent Controller by order dated 15.12.2004 dismissed M.P. No. 563/2003 and held that the previous RCOP No. 202/1999 was not finally decided the issue in question and it would not attract Section 19 of the Act. Challenging the order dated 15.12.2004, the revision petitioners have filed an appeal in RCA No. 1662/2004 and the Appellate Authority also confirmed the order of the Rent Controller and dismissed the appeal by a common judgment dated 27.6.2005. Hence the petitioners have filed the above revision petition.

6. Heard the learned Counsel for the petitioners as well as the respondent. I have also perused the documents filed in support of their submissions.

7. Learned counsel for the petitioners contended that the earlier orders passed were on merits and both the authorities have overlooked the fact that what was agitated by the petitioners is that the issue of res judicata should have been taken as a preliminary issue and the same should have been decided after letting in evidence. Instead, they have decided the issue itself without evidence and therefore the orders are bad in law and both the RCOPs., were barred u/s 19 of the Act.

8. Per contra, learned Counsel for the respondent submitted that both the Miscellaneous Petitions filed by the revision petitioners praying for dismissal of the main petitions themselves as barred by res judicata. Therefore,

in view of such a prayer sought for, there is no illegality in the order of the authorities below in deciding that the RCOPs., are not barred by res judicata. He further submitted that the previous RCOPs. were withdrawn as not pressed and there was no adjudication on merits and the intention of the revision petitioners is only to drag on the proceedings without any merits. He relied on the following judgments in support of his submissions:

(1) 1995 2 M.L.J.457 (Sivasubramania Chettiar v. Ramaswami Iyer); (2) 2002 4 CTC 542 (Mohamed Ali, P.S. v. S. Govindan) and (3) AIR

2003 SCW 5725 (Pondicherry K. & V.I. Board v. P. Kulothangan).

9. The only issue involved in the above two revision petitions is whether previous rent control proceedings filed for the same relief would act as a bar to the present Rent Control Petition as per Section 19 of the Act.

10. It is useful to refer Section 19 of the Act which is as follows:

19. Decisions which have become final not to be reopened:- Any application u/s 3-A or Section 12, and any application under Sub-section (2) or

Sub-section (3) or Sub-section (3-A) of Section 10 or under Sections 14, 15 or 16, shall be summarily rejected by the Authorised Officer or the

Controller, as the case may be, if such application raises between the same parties or between parties under whom they or any of them claim,

substantially the same issues as have been finally decided or as purport to have been finally decided, in a former proceeding -

(i) under this Act, or

(ii) under any other law from time to time in force before the date of the commencement of this Act and relating to matters dealt with in this Act.

11. Section 19 intends to bar frivolous application which may be made on the same grounds by landlord against tenant. It is well settled that one of

the essential conditions of res judicata is that there must be a formal adjudication between the parties after full hearing and the matter must be finally

decided between the parties. Section 19 incorporates the principle of res judicata more or less on the same lines as in C.P.C. Two important

requirements must be present for complying this Section. One is that there must not be identity of issues in the two proceedings and the other is that

former proceedings must have been decided on the very issues which arise in the latter proceedings. When a defence is taken raising the plea of

res judicata, the burden of proof is heavily on the person who is raising the plea.

12. In 1995 2 M.L.J. 457 cited supra, this Court held as follows:

It is not suggested in this case that either of the grounds on which the previous petition was filed was gone into and that there was an adjudication

on the merits. And it is common ground that the petition was withdrawn as not pressed. It is, therefore, obvious that there could not have been a

decision on merits of either of the issues that arose in that petition. The decision of Subba Rao, J., relied on by the learned District Judge, proceeds

on a different set of facts. In that case, the petitioner applied for eviction on four grounds, and he obtained an order for eviction on a decision on

merits of all the four grounds. But in appeal by the respondent, he gave up two of the grounds and in respect of the other two grounds, the

Subordinate Judge found against him. Subsequently, he filed another petition on the two grounds which were not pressed in the appellate Court.

The objection of a bar u/s 10 was taken and the view of the learned Judge was that when an application with specific grounds was filed and if

some of the grounds are not pressed, an order of the Court dismissing the application on that basis is a final adjudication on the questions raised

but not pressed. With great respect to the learned Judge, while it could be said that there was a final adjudication of the petition, it is, however,

difficult to say that there was a final adjudication on the questions raised but not pressed. The language of Section 10 is clear and what is required

to be established is not that the previous petition was finally disposed of but that the issues that were raised between the same parties in the

previous petition had been finally decided. In my view, even if one of the issues has not been finally decided in the previous petition, it will be open

for the petitioner to file a subsequent eviction petition on the ground on which there had been no final adjudication on merits. That question,

however, does not arise in the present case, as it could not be pretended that there has been any decision on any of the issues on merits in R.C.P.

No. 136 of 1949. The fact that the petitioner did not press the previous petition could not be held, within the meaning of the language of Section

10, as a bar for a subsequent eviction petition, as the issues raised in the previous petition had not been finally decided, as only a decision on merits

would amount to a final decision. In whatever manner the previous petition was

disposed of, whether it was dismissed for default of appearance, or it was withdrawn with liberty or without liberty to file a fresh application, or was not pressed and dismissed, or in any other manner disposed of, short of adjudication on merits, the requirements of Section 10 could not be held to have been complied with, as it is only a decision on merits that would justify the view that a subsequent application is barred by virtue of Section 10 of the Act. The learned District Judge has failed to appreciate the scope of the present petition and erred in relying on the decision quoted in *Gudivada Jagannadham Vs. A.S. Krishna and Co., Ltd.* and *Another, ,* the facts of which are entirely different from the facts of the present case.

13. In the above judgment, this Court dealt with Section 10 of the Madras Buildings (Lease and Rent Control) Act, 1949 which is similar to Section 19 of Act 18/1960. This court has categorically held that in whatever manner the previous petition was disposed of, whether it was dismissed for default of appearance or it was withdrawn with liberty or without liberty or was not pressed and dismissed or in any other manner disposed of, short of adjudication on merits, the requirement of Section 10 of the Act could not be held to have been complied with, as it is only a decision on merits that would justify the view that a subsequent application is barred by virtue of Section 10 of the Act.

14. In 2002 4 CTC 542 cited supra, this Court held as follows:

6. A plain reading of Section 19 of the Act makes it clear that the same is enacted on the basis of the principles of *res judicata*, a well known doctrine, which requires compliance of two important requisites, namely, (i) there must be an identity of issues in the two proceedings; and (ii) that the former proceeding must have been decided on the very issues which arise in the latter proceedings. In other words, in the doctrine of *res judicata* no magic is involved but it is essentially a pragmatic principle which has to be applied on the facts and circumstances of each case, as held by this Court in *R.J. Mehta and Co. Vs. Prootam Singh, .*

7. The words, viz., the same issues as have been finally decided, employed by the legislature u/s 19 of the Act would clearly indicate not merely the cause of action viz., as relied upon by the learned Counsel for the petitioners, the lease deed dated 9.12.1968, but ""the issues"" raised in the two

proceedings, and such issues should have been formerly adjudicated and finally decided between the parties and these basis principles, on which

the doctrine of res judicata rests, cannot be lightly disregarded while exercising the powers conferred u/s 19 of the Act, even though Section 19 of

the Act was incorporated and enacted to prevent frivolous litigations.

15. In the above judgment, this Court observed that Section 19 of the Act can be invoked only by establishing two aspects, namely, (1) there must

be an identity of issues in the two proceedings; and (2) the former proceedings must have been decided on the very issues which arise in the latter

proceedings.

16. In AIR 2003 SCW 5725 cited supra, the Hon''ble Supreme Court held as follows:

10. In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subject-matter dealt with in the earlier

writ proceedings and was barred by the principles of res judicata. It is well established that although the entire CPC is not applicable to industrial

adjudication, the principles of res judicata laid down u/s 11 of the Code, are applicable Workmen of The Straw Board Manufacturing Co. Ltd.

Vs. Straw Board Manufacturing Co. Ltd., including the principles of constructive res judicata. Thus in State of U.P. Vs. Nawab Hussain, , it was

held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded

reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal

was challenged on the ground that it was incompetently passed. This Court also held:

... it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon

one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have,

therefore, treated such a course of action as an abuse of its process.

11. The principle of res judicata operates on the Court. It is the Courts which are prohibited from trying the issue which was directly and

substantially in issue in the earlier proceedings between the same parties, provided the Court trying the subsequent proceeding is satisfied that the

earlier Court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such Court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on the merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, . *Pujari Bai Vs. Madan Gopal*, The ""lesser relief"" of reinstatement which was the subject-matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and re-decide the matter in the face of the earlier decision of the High Court in the writ proceedings.

17. In this case, the Hon"ble Supreme Court has observed that the principle of *res judicata* operates on the court and it is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the court trying the subsequent proceeding is satisfied that the earlier Court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such Court.

18. In the light of the above legal principles, let me consider whether the earlier Rent Control proceedings would act as *res judicata* and whether the subsequent Rent Control proceedings are barred by Section 19 of the Act 18/1960.

19. In M.P. No. 564/2003, which was filed in RCOP No. 878/2002, against which CRP NPD No. 1554/2005 is preferred, the Rent Controller has gone into the order passed in RCOP No. 1221/1998 and held that the same was not pressed and consequently dismissed. The Rent

Controller further observed that the question of fair rent was not finally decided and therefore it would not act as res judicata u/s 19 of the Act.

20. It is not in dispute that RCOP No. 1221/1998 which was filed by the landlord was dismissed as the landlord did not press M.P. No.

298/2001 which was filed by the landlord for amendment. As the amendment petition itself was not pressed by the landlord, RCOP No.

1221/1998 was dismissed by the Rent Controller without deciding the issue and fixing the fair rent. In such circumstances, I do not find any

illegality or irregularity in the order of the Rent Controller in holding that Section 19 of the Act is not attracted.

21. Moreover, u/s 5(1) of the Act when the fair rent of the building has been fixed under this Act, no further increase in such fair rent shall be

permissible except in cases of addition, improvement, alteration, etc. The underlying concept is that once fair rent is fixed by the Rent Controller,

there cannot be any second application by the landlord for fixation of fair rent in the absence of any addition, improvement or alteration is made to

the building.

22. In the earlier RCOP No. 1221/1998, no fair rent was fixed and the RCOP was dismissed as not pressed and by applying the law laid down

by this Court as early as on 20.1.1995 reported in 1995 2 M.L.J. 457, I hold that the earlier proceedings for fixation of fair rent will not act as res

judicata in the subsequent fair rent proceedings filed in RCOP No. 878/2002. The Appellate Authority has also considered the issue in detail in the

proper perspective and rightly dismissed the appeal. Therefore, there is no need to interfere with by this Court u/s 25 of the Act, and consequently

CRP NPD No. 1554/2005 is liable to be dismissed.

23. Similarly, in M.P. Nos. 563/2003 in RCOP No. 877/2002 against which CRP NPD No. 1586/2005 is preferred, the Rent Controller after

going into the order passed in RCOP No. 202/1999 has held that RCOP No. 202/1999 was not pressed by the landlord and consequently it was

dismissed. The Rent Controller has further held that as the question of additional accommodation has not been finally decided, it would not attract

the bar under Section` 19 of the Act. The Appellate Authority has also correctly adverted to this point and held that the order dismissing the

RCOP No. 202/99 was not on merits and therefore the subsequent RCOP No.

877/2002 cannot be said to be barred by res judicata. I have already upheld the order of the authorities below in CRP NPD No. 1554/2005. In fact a common order has been passed in RCA Nos. 1662 and 1663 of 2004. All the reasons given by me for dismissing CRP NPD No. 1554/2005 would also apply to CRP NPD No. 1586/2005 insofar as the question of res judicata and applicability of Section 19 of the Act is concerned. 24. Hence, the above CRP NPD No. 1586/2005 is also liable to be dismissed.

II. (A) CRP NPD No. 1646/2005:

25. The above Civil Revision Petition has been filed by the tenants against the common judgment dated 27.6.2005 rendered in RCA No.

802/2004, dismissing the appeal filed against the order dated 23.6.2004 passed in M.P. Nos. 216/2004 in RCOP No. 650/2002.

26. The 1st respondent herein filed RCOP No. 650/2002 against the petitioners herein u/s 10(3)(c) of the Act 1960 for evicting the tenants on the

ground of additional accommodation from the petition schedule building, namely, front portion in the I floor of premises No. 166 Mint Street,

Chennai.600 079. The revision petitioners filed a counter resisting the petition filed u/s 10(3)(c) of the Act. In their counter statement they have

raised a specific plea that RCOP No. 650/2002 is barred u/s 19 of the Act as a petition for additional accommodation was already filed by the

respondents herein in RCOP No. 2341/1998 and the same was dismissed on 22.3.2002. The revision petitioners have also filed a petition in M.P.

Nos. 216/2004 in RCOP No. 650/2002 praying to dismiss the RCOP No. 650/2002 filed u/s 10(3)(c) of the Act for additional accommodation

is barred by res judicata. In M.P. Nos. 216/2004 also the revision petitioners submitted that the order already passed on 22.3.2002 in RCOP No.

2341/1998 would act as res judicata and therefore RCOP No. 650/2002 is barred by Section 19 of the Act.

27. The respondents filed a counter in M.P. Nos. 216/2004 wherein they have stated that the earlier RCOP No. 2341/1998 filed u/s 10(3)(c) of

the Act was withdrawn as not pressed and therefore there was no adjudication on merits. In such circumstances, the respondents herein submitted

that Section 19 of the Act is not attracted and RCOP No. 650/2002 is very much maintainable.

28. The Rent Controller by order dated 23.6.2004 dismissed M.P. Nos. 216/2004

and held that the previous RCOP No. 2341/1998 was not finally decided the issue in question and it would not attract Section 19 of the Act. Challenging the order dated 23.6.2004, the petitioners filed an appeal in R.C.A. No. 802/2004 and the Appellate Authority also confirmed the order of the Rent Controller and dismissed the appeal by a common judgment dated 27.6.2005. Hence the tenants filed the above Revision Petition.

(B) CRP NPD No. 1647/2005:

29. The above Revision Petition has been filed by the tenants against the common judgment dated 27.6.2005 rendered in RCA No.

801/2004 dismissing the appeal filed against the order dated 23.6.2004 passed in M.P. Nos. 215/2004 in RCOP No. 649/2002.

30. The respondents herein filed RCOP No. 649/2002 against the revision petitioners u/s 4 of the Act 18/1960 for fixing the fair rent for the front

portion of the first floor in the petition schedule building, namely, the front portion of the I floor bearing Door No. 166, Mint Street, Chennai.600

079.

31. The Revision Petitioners filed their counter statement resisting the petition for fixation of fair rent. In their counter statement, they have raised a

specific plea that RCOP No. 649/2002 is barred u/s 19 of the Act as a petition for fixation of fair rent was already filed by the respondents herein

in RCOP No. 1220/1998 and the same was dismissed on 22.3.2002. The revision petitioners also filed a petition in M.P. Nos. 215/2004 in

RCOP No. 649/2002 praying for dismissal of RCOP No. 649/2002 as the same is barred by res judicata. In M.P. Nos. 215/2004 also, the

revision petitioners submitted that order passed on 22.3.2002 in RCOP No. 1220/98 would act as res judicata and therefore RCOP No.

649/2002 is barred u/s 19 of the Act.

32. The respondent filed a counter in M.P. Nos. 215/2004 wherein they have stated that the earlier RCOP No. 1220/1998 filed u/s 4 of the Act

was withdrawn as not pressed and therefore there was no adjudication on merits. In such circumstances, the respondent herein submitted that

Section 19 of the Act is not attracted and RCOP No. 649/2002 is very much maintainable.

33. The Rent Controller by an order dated 23.6.2004 dismissed M.P. Nos.

215/2004 and held that the previous RCOP No. 1220/98 was not finally decided the issues in question and it would not attract Section 19 of the Act. Challenging the order dated 23.6.2004, the revision petitioners filed appeal in RCA No. 801/2004 and the Appellate Authority also confirmed the order passed by the Rent Controller by a common judgment dated 27.6.2005. Hence the tenants have filed the above Revision Petition.

34. The question arises for consideration in the above CRP NPD No. 1647/2005 is whether the subsequent proceedings are barred u/s 19 of the

Act because of the previously initiated Rent Control proceedings. The very same issue raised in CRP NPD Nos. 1554 and 1586 of 2005 was

elaborately discussed by me and I have taken a decision that the previous Rent Control proceedings have not conclusively and substantially

decided the issue of fair rent as well as the need for additional accommodation and as they were dismissed as not pressed only, following the

judgment of this Court reported in 1995 2 M.L.J. 457 cited supra, they would not bar the subsequent Rent Control proceedings u/s 19 of the Act.

In these Revision Petitions also, the parties, disputes and issues are the same. Therefore, I have to necessarily uphold the orders of the authorities

below for the very same reasons I have given in the other two Revision Petitions. Hence, these two Revision Petitions are also to be dismissed as

devoid of merits.

35. In the result, all these four Revision Petitions are dismissed. No costs. Consequently, C.M.P. Nos. 13128, 13405, 14083 and 14084 of 2005

are also dismissed.