

(1999) 11 MAD CK 0034
In the Madras High Court
Case No : C.R.P. No. 1426 of 1993

S. Gurusamy Nadar (died) and 3 others	APPELLANT
Vs	
Andal Ammal (died) and another	RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 11(1)(4), 25, 7(2)

Citation : (2000) 1 CTC 492

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Ms. Bhuvaneswari for Mrs. Pushpa Sathyanarayanan, for the Appellant; Mrs. P. Bagyalakshmi, for the Respondent

Judgement

1. The C.R.P. has been filed by the tenants against the concurrent decision of the Rent Controller and the Appellate Authority ordering their

eviction. The grounds on which the eviction was sought were wilful default in the payment of rent and un-authorised subletting. Both the authorities

below held that the revision petitioners had committed wilful default. However, as regards subletting they rejected the case of the owner.

2. One Andalammal who was the owner of the property filed the eviction petition on the following allegations:

The first revision petitioner became a tenant under her agreeing to pay a monthly rent of Rs.120, that he paid an advance of Rs.7,750, that the

arrangement was that he should pay Rs.60 and the balance Rs.60 was to be adjusted in the advance paid. However he committed default in the

payment of Rs.60 from 1.5.1977 till 31.10.1980 for a period of 42 months, that there were arrears in a sum of Rs.2,520, that the default was

wilful and that he was liable to be evicted. As regards subletting, her case was that the first revision petitioner (R3 and R4 are the L.Rs. of R1) had without her consent sublet the property to the second revision petitioner, that this was contrary to the arrangement between her and the first revision petitioner, that she caused a notice to be issued on 23.2.1980. that they sent a reply containing false particulars and that the petitioners were liable to be evicted. Both the revision petitioners were tenants, that the advance of Rs.7,750 was paid by both of them, that it was not true to say that they committed default much less from 1.5.1977, that this was not true particularly having regard to the length of time in respect of which default had been alleged, that the revision, petitioners had paid the rent upto July, 1980, that the rent for August, 1980 was sent to her, that she refused to receive it, that thereafter, the revision petitioners called upon her to notify the bank where the rent could be deposited, that for the period August 1980 to November 1980 Rs.240 as rent had been paid that in December 1980 also rent had been paid, that there were no arrears, that there was no subletting, that only she had custody of the agreement, that the agreement specifically recited to who the tenants were and that the eviction petition had been filed with ulterior motive to get enhanced rent.

3. The learned Rent Controller framed the following points for consideration.

(i) Whether the first revision petitioner had withheld payment of rent wilfully for the period from 1.5.1977 to 31.10.1980; and

(ii) Whether the first revision petitioner had sublet the property to the second revision petitioner.

4. The learned Rent Controller proceeded to hold that the revision petitioners had not substantiated their case that they had paid rent without

default as claimed by them by producing acceptable ""evidence in the shape of documents and held against them and on the question of subletting

the case of the owner was rejected. In coming to the conclusion that the revision petitioners had committed default, the learned Rent Controller

relied on the decision of this Court in Marudhachala Udayar v. Dhandapani 1993 LW 549 wherein it has been held that the tenant must have

insisted on receipts from the owner evidencing payment of rent, that it is the mistake of the tenant and in case the owner does not issue receipt the

tenant should send the rent by money order and in case of refusal to receive the

money order, they should call upon the owner to notify a bank

where the rent can be deposited and in as much as this has not been done in the instant case the tenants have to suffer.

5. The Appellate Authority also confirmed the order of eviction passed by the Rent Controller on the ground of wilful default. It was argued before

the Appellate Authority relying on the decision in *Modern Hotel Karur v. Radhakrishnayya*, 1990 (1) LW 560 wherein it has been held that where

there is considerable amount of advance available with the landlord and the same could be adjusted in the rent payable by the tenant, it cannot be

said that the tenant has committed default. The Appellate Authority held that the ratio of that decision would not apply to the facts" of the case as

according" to the Appellate Authority the adjustment claimed on the side of the tenants was contrary to the terms of the agreement between the

parties, that only a sum of Rs.60 could be adjusted from the advance amount and in as much as it had been established that the revision petitioners

had committed default in the payment of rent from 1.5.1977 to 31.7.1980 at the rate of Rs.60 per month, they could not claim adjustment in the

advance amount. In that view the order of the Rent Controller was confirmed by the Appellate Authority.

6. Ms. Bhuvaneswari, learned counsel appearing for the revision petitioners submitted that the view taken by the Appellate Authority is clearly

erroneous and contrary to Section 7 of the Rent Control Act, as also the decision of the Supreme Court in *K. Narasimha Rao v. T.M. Nasimuddin*

Ahmed, 1996 (1) CTC 78 : 1996 (2) LW 159.

7. Per contra, Mrs.P.Bagyalakshmi learned counsel for the second respondent who has been impleaded as the legal representative of the deceased

Andalammal submitted that the contention put forward on behalf of the revision petitioners was not put forward by them before the Authorities

below, that the revision petitioners had committed default even after the filing of the revision petition, that they had deliberately impleaded persons

who had no right in the property as L.Rs. or successors in interest of the deceased Andalammal to contest the C.R.P., that no indulgence

whatsoever should be shown to the revision petitioners. She further submitted that the authorities below have concurrently, as a question of fact,

found that the tenants have committed wilful default in the payment of rent and

there cannot be interference u/s 25 of the Rent Control Act. In support of her contentions she relied on the following decisions

(i) Sankaran Pillai(dead) by Lrs. Vs. V.P. Venuguduswami and Others, ; (ii) N.S.M. Ahmad Jamalia Beevi Vs. D.N. Shah, (iii) Mudigonda

Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and Others, ; (iv) Mohd. Basheer Ahmad Vs. Hakeem Noorulla Sheriff, ; (v) Mayila Vs.

Muthupalaniappan,

8. Before proceeding further let us advert to the decisions relied on by the learned counsel for the second respondent. The first of the decisions is

N.S.M. Ahmad Jamalia Beevi Vs. D.N. Shah, . That decision deals with the High Court's power to interfere with the eviction order passed by the

authorities under the Act on the ground default in payment of rent. The Supreme Court dealt with the question as to what would be sufficient cause

calling for interference by the High Court on the facts of a particular case. In the case before the Supreme Court the landlord called upon the tenant

by notice dated 23.9.1991 to pay the arrears of rent for one year namely., from 1.9.1990 to 31.8.1991 After service of notice an application for

eviction u/s 10(2)(i) of the Tamil Nadu Rent Control Act was filed by the landlady. In spite of pendency of the proceedings no rent was deposited

by the tenant in breach of Section 11 of the Act. Thereafter the landlady filed an application u/s 11(4) for deposit of rent. This was not complied

with and the land-lady filed an application for possession u/s 11(4) which was dismissed by the Rent Controller, but allowed by the Appellate

Authority directing the respondent to deposit the entire arrears granting a period of one month failing which an order of eviction would be passed.

Against this order a revision was entertained by the High Court and the High Court by order dated 27.9.1995 granted six months time to the

tenant to deposit the entire arrears of 23 months from 1.9.90 to 31.7.1992. The tenant failed to deposit. The landlady obtained an order of

eviction as the High Court's order worked itself out due to non-compliance. The appeal against the order of the Rent Controller was dismissed by

the Appellate Authority, In the revision, against the order of the Appellate Authority the High Court found that there was absolutely no merit in the

case of the tenant; however, granted further time for deposit by modifying its earlier order eventhough between the dates of the earlier order and

the subsequent order, 10 months had passed. In those circumstances, the Supreme Court held that the High Court erred in granting time to the tenant when there was no sufficient cause for the persistent default and that sympathetic consideration for the default would not be accepted and equity was out of place when matter was governed by statute. For reasons to be stated in the course of this order this decision will not be of any assistance to the second respondent's case.

9. The next decision is Mohd. Basheer Ahmad Vs. Hakeem Noorulla Sheriff, . That case arose under the Karnataka Rent Control Act. In that

case the tenant's claim for adjustment of arrears of rent against the advance was rejected by the High Court and that order was not challenged by

the tenant. It was in those circumstances and in view of the further finding of the courts below that the tenant had failed to deposit the arrears during

continuance, of eviction proceedings without any just cause the Supreme Court held that no interference with the order of eviction was called for.

In my view, this decision also has no application to the facts of the present case.

10. The next case is Sankaran Pillai (Dead) by Lrs. v. V.P. Venguduswami and others, 1999 (5) SCC 396. In that case the Supreme Court was

deciding that the question as to the meaning of expression "sufficient cause" in sub-section (4) of Section-11 of the Act. While holding that the

expression "sufficient cause" has to be liberally construed to do substantial justice between the parties, the Supreme Court observed that the said

expression necessarily implies an element of sincerity, bona fide and reasonableness. It requires the tenant who has not deposited the rent within

time as directed by the Rent Controller that non-deposit of the rent was beyond his control and there was no element of negligence or inaction or

lack of bona fides on his part in not depositing the rent within time. In the case before the Supreme Court when the order of eviction was passed

no application was moved by the tenant before the Rent Controller for invoking the order striking out defence as he could not deposit the arrears

of rent on account of reasons beyond his control. On the contrary the tenant denied the relationship of landlord and tenant before the Rent

Controller and the tenant's subsequent deposit of the arrears of rent before the Appellate Authority being a requirement of law for hearing the

appeal on merits, the Supreme Court held that the same cannot be treated as

bona fide deposit. It further held that the tenant not having deposited the month to month rent as required under Section-11(1) of the Act and having reiterated his stand that he was a landlord and not a tenant of the premises in dispute the Supreme Court rejected the case of the tenant and held that the decision by the High Court in favour of the landlord was in order. I am afraid, this case also has no application to the facts of the present case.

11. The last of the cases in *Mayila Vs. Muthupalaniappan*, . That decision arose under the following circumstances:

The tenant did not pay rent for 7 months. Petition for eviction was filed and notice was issued. The tenant sent the arrears by money order. The landlord refused to receive the rent. The tenant did not take steps u/s 8. In those circumstances, the High Court confirmed the decision of the authorities that there was wilful default in the payment of rent. This decision also has no relevance to the facts of the present case.

12. The next case in *K. Narasimha Rao Vs. T.M. Nasimuddin Ahmed*, . In the case before the Supreme Court the facts were as follows:

The landlord filed a petition for eviction of the tenant on the ground of wilful default in the payment of rent for the period July, 1990 to November, 1990 in spite of notice dated 16.11.1990. The monthly rent was Rs.150. The tenant denied that there was any default. He contended that certain repairs had been made in the premises by him with the consent of the landlord for which Rs.1000 was spent by him; that amount had to be adjusted towards the rent due for the said period; on receipt of the notice from the landlord, he sent a demand draft for Rs.750 as the rent for five months, which was received by the landlord; and the amount of Rs.2,850 paid as excess advance was also available with the landlord for adjustment towards the rent due. The Rent Controller rejected the tenant's contention and held that there was wilful default committed by the tenant in the payment of rent for that period. An order of eviction was passed and this was confirmed by the Appellate Authority. The revision by the tenant was allowed by the High Court taking the view that on the facts there was no wilful default in the payment of the rent by the tenant. In that case it was admitted that a sum of Rs.3,000 was paid by the tenant to the landlord as advance even though according to section 7(2) of the

Rent Control Act the landlord could receive only a month's rent as advance. Accordingly, the excess amount of Rs.2850 paid as advance by the tenant to the landlord had to be refunded by the landlord. The question therefore was whether the excess amount paid by the tenant to the landlord being available with the landlord, the tenant could have committed wilful default "eventhough he had not expressly asked the landlord to adjust the excess amount paid". The High Court on a construction of section 7(2) of the Tamil Nadu Act held that the tenant could not be held to have committed wilful default in payment of rent on the facts of that case. The High Court also took the view that section 7 of the Act was in pari materia with the section 7 of the Andhra Pradesh Act and that for that reason the decision on that point of the supreme Court in *Modern Hotel, Guntur rep by Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others*, was applicable to hold that the tenant had not committed any wilful default in the payment of rent. The High Court distinguished the other decisions under provisions of corresponded act in Bihar on the different language of that Act. The matter went to the Supreme Court and the Supreme Court on facts held as follows:

The ground of wilful default in payment of rent by the tenant for the period July 1990 to November, 1990 at Rs.150 per month amounting to Rs.750 was non-existent if the excess amount of Rs.2,850 available with the landlord in the form of excess advance required adjustments towards the arrears of rent without an express request by the tenant to this effect would determine the decision on this point.

After extracting the relevant provision in the Tamil Nadu Statute namely, Section 7 the Supreme Court observed as follows:

The provisions in sub-sections (1) and (2) are similar, and provide for cases where fair rent has been fixed or not fixed as the case may be. Sub-section (3) declares any stipulation in contravention of sub-section (1) or sub-section (2) to be null and void.... The proviso to clause (a) permits the landlord to receive by way of advance an amount not exceeding one month's rent only... Clause (b) provides for the situation where any sum is paid by the tenant to the landlord in excess of the agreed rent save as provided in clause(a) i.e., any sum paid excess of the agreed rent and an

amount not exceeding one month's rent by way of advance. Clause (b) enacts that the amount in excess of the sum which the landlord is permitted to take under clause (a) shall be refunded by the landlord to the person by whom it was paid, i.e., the tenant or at the option of the tenant, shall be otherwise adjusted by the landlord. In other words, clause (b) requires that the excess amount paid to the landlord has to be refunded by the landlord to the tenant unless the tenant exercises the option of requiring the landlord to otherwise adjust the excess amount. It is clear that this excess amount available with the landlord is only for the benefit of the tenant, the liability to refund the amount to the tenant being immediate unless the tenant exercises the option to get it adjusted otherwise. The character of the excess amount undoubtedly is that it is the tenant's money in the hands of the landlord for return to the tenant or for adjustment towards the dues of the tenant, at the tenant's option. Any other stipulation in contravention to it has no legal effect being null and void".

13. It can be immediately pointed out that the finding by the Appellate Authority in the present case that the parties are governed only by the arrangement between them, i.e., only a sum of Rs.60 had to be adjusted in the advance amount cannot therefore be sustained.

14. The Supreme Court has proceeded further in that case and observed as follows:

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 of 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 the 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 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.

The Supreme Court thereafter extracted the following portion of the judgment in the Modern Hotel, Gudur, Represented by M.N. Narayanan Vs.

K. Radhakrishnaiah and Others,

Mr.Rao binding upon the ratio of these two decisions rightly contended before us that when the landlord has Rs.5,000 on tenant's account with

him which he was holding for years without paying interest and against the clear statutory bar, there could be no justification for granting a decree

of eviction on the plea of arrears of rent. In view of the fact that the stipulation that the amount would be refundable at the end of the tenancy is null

and void u/s 7(3) of the Act, the amount became payable to the tenant immediately and the landlord with Rs.5,000 of the tenant with him could not

contend that the tenant was in default for a smaller amount by not paying the rent for some months.

Then held that,

on the facts of that case the landlord was bound to immediately refund that excess amount even before the arrears accrues 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.

15. The decision of the Supreme Court will squarely apply to the facts of the present case. Even in the petition for eviction the receipt of a sum of

Rs.7,750 as advance is admitted. The rent for the premises was Rs.120 per month. For all practical purposes we can ignore the stipulation in the

agreement between the parties as to payment of Rs.60 only per month and the adjustment on the balance Rs.60 in the advance paid. The period

for which it was alleged that the tenants had committed default is 42 months from 1.5.1977 to 31.10.1980. The amount payable was Rs.5,040.

There was an excess amount of Rs.2,710 still available with the owner. On the date of filing of the eviction petition the landlady had no cause of

action. It was clearly wrong on her part to have alleged that the tenants had committed wilful default in the payment of rent. We are not going in to

the fact as to whether the claim by the tenants that they had paid the rent for that period, no doubt, at Rs.60 to the landlady, that she had not

passed receipts, that it was unnatural for a landlady to keep quiet for over three years without making a demand for arrears of rent, if really the rent

had not been paid, cannot be gone into, in view of the concurrent finding by both the authorities below. It is also to be noticed that for the period

August to November, 1980 the tenants had paid Rs.240 though at the rate of Rs.60 per month and had also paid rent for December 1980 and

during the pendency of the Rent Control Petition the rent had been regularly paid. As already noticed on the date the eviction petition was filed

there was no cause of action for filing the eviction petition at all. I am not going into the question as to whether there was default during the

pendency of the proceedings before the Appellate Authority and in the civil revision petition, as according to me the very basis for initiating the

eviction proceeding had no legs to stand.

16. Having regard to the decision of the Supreme Court in K. Narasimha Rao Vs. T.M. Nasimuddin Ahmed, the other decisions relied on by the

learned counsel for, the second respondent will have no application to the facts of the present case.

17. It is contended by the learned counsel for the second respondent that the revision petitioners had deliberately impleaded the wrong person as

the legal representative of the deceased Andalammal though they had knowledge that the second respondent alone was the legal representative

entitled to be substituted as a party in the proceedings. There was a CMP filed in CMP No.467I of 1999 by the second respondent for

substitution of the second respondent herein as the Executive Trustee. At an earlier stage soon after Andalammal died the revision petitioners filed

CMP.No.3530 of 1995 to bring on record the second respondent therein namely, the Naidu Community Boys and Girls Charity Education Trust

represented by one R.Ayal. When the said application was pending she died and the revisions petitioners took out another application

CMP.No.5388 of 1998 to substitute the name of one V.Ramdoss Naidu in the place of R.Ayal. It was at that stage CMP.No.4671 of 1999 came

to be filed by the second respondent herein R.Rajaraman describing himself as the Executive Trustee of the Parents Memorial Maduari

S.Rengawamy Naidu, Naidu Community Boys and Girls Education Charity Fund to be impleaded as the respondent in then place of Andalammal.

R.Balasubramanian, J heard the applications allowed CMP.No.4671 of 1999 filed by the second respondent R.Rajaraman and dismissed

CMP.No.5388 of 1998. The question as to whether Ramdoss Naidu is a beneficiary or not and whether he would be entitled to move the Court

for appropriate direction in such capacity has been left open by the learned judge. I do not think that the revision petitioners could be faulted for

non impleading the second respondent herein in the place of deceased landlady Andalammal, nor do I think that they lacked bona fides in this

regard. In fact, in C.M.P.No.5388 the second revision petitioner alleged that he had filed CMP.No.3530 of 1995 to substitute the second

respondent trust/second respondent in the CMP in the place of the deceased first respondent. The Trustee R.Ayal having died in 1996 one

Ramdoss Naidu was sought to be substituted as Trustee in the place of Ayal Naidu in the said CMP. It cannot therefore be said that the revision

petitioners were tacking in bona fides and that they had deliberately impleaded a wrong person to represent the trust. The contention of the learned

counsel for the second respondent Rajaraman in this regard is therefore not tenable and the same is rejected.

18. The discussion above obliges me to interfere in revision and consequently the order of the authorities below ordering eviction on the ground of

wilful default is set aside, the same being opposed to the established legal position which had been ignored by the Authorities. The power of this

Court under section-25 to warrant interference if the Authorities below on the admitted facts choose to draw an improper and wrong inference

which cannot be supported or sustained cannot be denied. The order of the authorities below is irregular, illegal and improper. The CRP will stand

allowed. The eviction petition filed by the owner in RCOP.No.1980 will stand dismissed. No costs.