
(2008) 11 MAD CK 0011

In the Madras High Court

Case No : C.R.P. (NPD) No. 3471 of 2008 and M.P. No's. 1, 1 and 1 of 2008

Sri Vaishnava Sri Padam Kainkaryam Association

APPELLANT

Vs

M.S. Rajagopalan

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(4), 23(2), 25, 4

Citation : (2012) 6 CTC 781 : (2013) 1 RCR(Rent) 292

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : N.C. Ashok Kumar, for the Appellant; R. Narendran, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—These Civil Revision Petitions arise out of the blanket orders of stay granted by the Appellate Authority, Pending

Appeals arising out of fair rents fixed by the Rent Controller. Heard Mr. N.C. Ashok Kumar, learned Counsel appearing for the Petitioner and

Mr. R. Narendran, learned Counsel appearing for the Respondents.

2. The Petitioner is the landlord and the Respondents in all these Three Civil Revision Petitions are the Tenants. The Petitioner filed Separate

Petitioner u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Respondents in these Three Civil Revision Petitions

in R.C.O.P. Nos. 637, 638 & 639 of 2006, seeking fixation of fair rent. The admitted rent paid by the Respondents in C.R.P. (NPD) Nos. 3472

& 3473 of 2008 was Rs. 1,500/- per month, The admitted rent paid by the Respondent in C.R.P. (NPD) No. 3471 of 2008 was Rs. 1,800/- per

month.

3. After enquiry, the Rent Controller passed independent orders in each of those Petitions on 22.11.2006, fixing the fair rent payable in respect of

each of those portions at Rs. 6,252/- per month. This was on account of the fact that all the three portions occupied by the Respondent in these

three Civil Revision Petitions were of the same area and identical in nature.

4. Aggrieved by the fixation of fair rent made by the Rent Controller, the Respondents in these three Civil Revision Petitions filed separate Appeals

in R.C.A. Nos. 304, 305 & 306 of 2007 on the file of the Appellate Authority. Along with the Appeals, the Respondents also filed Petitions for

interim stay, in M.P. Nos. 407, 408 & 409 of 2007. The Petitioner filed Counter Affidavits in the Petitions for stay, contending that a blanket stay

may not serve the ends of justice. However, the Rent Control Appellate Authority passed independent orders in all the Petitions for stay, on

15.2.2008, granting an unconditional order of stay of the order of Rent Controller, in favour of the Respondents herein. It is against the grant of

unconditional orders of stay in favour of the Respondents that the Petitioner has come up with the present Civil Revision Petitions.

5. As stated earlier, the admitted rent in respect of the Respondents in two Civil Revision Petitions is Rs. 1,500/- per month and the admitted rent

in respect of the portion occupied by the Respondent in C.R.P. (NPD) No. 3471 of 2008 is 1,800/- per month. The Petitioner/Landlord, filed a

report of an Engineer, claiming fair rent at Rs. 9,831/- per month. The Respondents also filed reports of their own Engineers, who had evaluated

the fair rent for each of those portions at Rs. 3,506/- per month. The Rent Controller after analysis of the evidence on record, fixed the fair rent at

Rs. 6,252/-.

6. In view of the above facts, Mr. N.C. Ashok Kumar, learned Counsel for the Petitioner contended that the Appellate Authority was not justified

in granting an unconditional blanket order of stay, especially when the report filed by the Engineers of the Respondent themselves showed the fair

that could be fixed, at Rs. 3,506/-.

7. Mr. R. Narendran, learner Counsel for the Respondents in all the Civil Revision Petitions raise three contentions viz.:

(a) that the Civil Revision Petitions filed under Article 227 of the Constitution are

not maintainable inasmuch as there is a provision for filing a Revision u/s 25 of the Act;

(b) that Section 23(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 empowers the Appellate Authority to grant stay and that

such an exercise of discretion cannot be interfered with; and

(c) that in any case, the fair rent fixed by the Rent Controller would not attain finality till the statutory remedies of Appeal and Revision available under the Act, are exhausted.

8. I have carefully considered the above submissions.

9. In so far as the first contention of the learned Counsel for the Respondents is concerned, it is seen that the Petitioner had originally indicated as

though the Revisions were filed u/s 227 of the Constitution. However, they have in fact filed the Revision Petitions u/s 25 of the Tamil Nadu

Buildings (Lease and Rent Control) Act, 1960. The orders under Revision were actually passed on 15.2.2008 by the Appellate Authority. The

Petitioner had made Copy Applications on 18.2.2008, and the certified copies were made ready on 6.9.2008. On 29.9.2008, the Petitioner had

filed the Revision Petitions, within 30 days, prescribed u/s 25 for filing a Revision. But unfortunately, the cause title indicated as though it was a

Revision under Article 227 of the Constitution and the Petitioner had also paid Rs. 200/- as Court-fee, though the Court-fee payable is only Rs.

50/-. Thus, all the Revision Petitions have been filed within the time limit prescribed for filing a Revision u/s 25 of the Act. The Petitioner has also

carried out necessary correction in the heading by indicating that these are Revision Petitions filed u/s 25 of the Act. However, at the bottom

relating to the prayer, the correction has not been carried out and it appears that the copy served on the Respondents also does not contain the

correction. It does not mean that the Revisions are filed under Article 227 of the Constitution, In any case, if the Revision Petitions have been filed

within the time by quoting a wrong provision of law, there are no fetters on the part of the Court to treat them as Revisions filed under the correct

provision of law. Therefore, the first contention of the learned Counsel for the Respondents is liable to be rejected.

10. Regarding the second contention, it is seen that the Appellate Authority certainly has powers to grant stay u/s 23(2). The power to grant an

interim order is discretionary. However, the exercise of the discretion, must actually follow some rationale. In this case, the only reason stated by

the Appellate Authority is that the fixation of fair rent had not attained finality on this simple ground, the Appellate Authority was not entitled to

grant a blanket unconditional order of stay. A Court which is empowered to grant an interim relief, is always entitled as well as obliged to impose

such conditions as it may deem fit, in the interest of justice, so that the party enjoying the benefit of stay is also put on terms. The Appellate

Authority does not appear to have applied its mind on this aspect and has simply granted a stay order without referring to the facts on record.

Therefore, the second contention that Section 23(2) gives a veto power for the Appellate Authority to grant a blanker stay, cannot be accepted.

11. Coming to the third contention that the order fixing the fair rent did not attain finality, it is seen that such a proposition applies only when a

Tenant is accused of committing wilful default in payment of rent. During the pendency of an Appeal or a Revision, arising out of Fair Rent

Proceedings, this Court as well as the Supreme Court has held that a Tenant cannot be accused of committing wilful default for not paying the fair

rent fixed by the Court of first instance. The decisions relied upon by the learned Counsel for the Respondents viz., in AIR 1975 1297 (SC)

Ganpat Ladha Vs. Sashikant Vishnu Shinde, Santhi and Co. Vs. Desigachary, and V. Janaki Vs. Azimunnisa Begum, are only for the proposition

that there cannot be an allegation of wilful default and also for the proposition that a Petition u/s 11(4), cannot be initiated until the proceedings for

fixation of fair rent attained finality. These decisions do not help the Respondents to sustain a blanket unconditional order of stay.

12. As rightly contended by the learned Counsel for the Petitioner, even according to the Engineer's Report filed by the Respondents, the fair rent

for the premises would work out to Rs. 3,506/- per month for each of the portions. Therefore, the Appellate Authority could have at least directed

a portion of that amount to be deposited into Court as a condition for the grant of stay.

13. The learned Counsel for the Respondent contended that the Engineer is not entitled under the Act to fix the fair rent and that the Engineer's

Report was not accepted by the Respondents. I am unable to accept such a contention for the simple reason that if the Respondents were not

relying upon the Report of their own Engineer, they need not have marked the documents as a piece of evidence. It is true that the Engineer's

Report is not an encyclopaedia or need not be taken to be the biblical truth. But it can at least for a foundation while deciding an Application for

the grant of stay. In such circumstances, I am unable to sustain the grant of a blanket stay by the Appellate Authority. Therefore all the Civil

Revision Petitions are allowed, the order of interim stay granted by the Appellate Authority in M.P. Nos. 407, 408 & 409 of 2007 in R.C.A. Nos.

304, 305 & 306 of 2007 are set aside. The Petitioner for stay M.P. Nos. 407, 408 & 409 of 2007 shall stand allowed and there will be an order

an order of inter is stay in favour of the Respondents subject to the condition that the Respondents deposit a sum of Rs. 3,500/- per month from

the date of filing of the Appeal in R.C.A. Nos. 304, 305 & 306 of 2007 viz., January 2007. The arrears arising out of the difference, from January

2007 upto November 2008 shall be deposited by the Respondents, on or before 31.12.2008 before the Appellate Authority. In respect of future

rents, the Respondents shall pay the admitted rent directly to the Petitioner and shall deposit the balance amount to the credit of R.C.A. Nos. 304,

305 & 306 of 2007, on or before 10th of every succeeding English Calendar month, commencing from December 2008 onwards. The failure of

the Respondents to comply with any one of the above conditions would result in the interim stay granted being automatically vacated. The Civil

Revision Petitions are allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.