

M / S . P r i m e x H e a l t h c a r e A n d R e s e a r c h . . . v s Mr.A.A.L.Ramaswamy on 29 September, 2022

Author: R.N.Manjula

Bench: R.N.Manjula

C.R.P.Nos.587

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.R.P.No.587 of 2022	15.06.2022
Reserved on	
C.R.P.No.1937 of 2022	24.06.2022
Reserved on	
Pronounced on	29.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

C.R.P.Nos.587 & 1937 of 2022 and
C.M.P.Nos.3065 and 3343 of 2022

C.R.P.No.587 of 2022

M/s.Primex Healthcare and Research Pvt. Ltd.,
Rep by its Director,
Office at No.30/1, Bazullah Road,
T.Nagar, Chennai 600 017.

Vs.

Mr.A.A.L.Ramaswamy

...

Respondent
C.R.P.No.1937 of 2022

The Suguna Vilasa Sabha,
Rep by its Honorary Secretary Mr.R.Kumar,
having office at Old Door No.14 – 14A,
Present Door No.57, next to Cosmopolitan Club,
Mount Road, Anna Salai, Chennai 600 002.

... Pe

Vs.

1.Mr.Rajesh Mootha

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<https://www.mhc.tn.gov.in/judis>

C.R.P.Nos.587 & 1937 of 2

- 2.Khajanchi's Property Pvt. Ltd.,
Rep by its Director Rajesh Mootha,
Having its Administrative Office at
No.555, MKN Road, Alandur,
Chennai – 600 016.
- 3.Federal Bank Limited Headquarters,
Rep by its Managing Director,
Federal Towers, P B. No.103,
Aluva, Ernakulam,
Kerala – 683 101, India.
- 4.Federal Bank,
Chennai Mount Road Branch,
Rep by its Managing Director,
SVS Club Building,
No.61, Anna Salai,
Next to Cosmopolitan Club,
(Inside SVS Club Compound),
Chennai, Tamil Nadu 600 002.
- 5.Remi Sales & Engineering Ltd.,
Rep by its Managing Director,
Corporate Marketing Office,
Remi House, 3rd Floor, 11,
Cama Industrial Estate, Walbhat Road,
Goregaon (East), Mumbai – 400 063.
Maharashtra, India.
- 6.Remi Group,
Remi Scales & Engineering Ltd.,
Rep. by its Managing Director,
59, Anna Salai, Post Box No.3705,
Next to Cosmopolitan Club,
(inside SVS Club Compound), Anna Salai,
Chennai, Tamil Nadu – 600 002.
- 7.Shravan Engineering Enterprises Pvt. Ltd.,
Rep by its Managing Director,
Registered Office at No.37, K.B.Dasan Road,
Teynampet, Chennai 600 018.
- 8.Shravan Engineering Enterprises Pvt. Ltd.,

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<https://www.mhc.tn.gov.in/judis>

C.R.P

Rep. by its Managing Director,
Cold Chain Centre,
No.61, Anna Salai,
Next to Cosmopolitan Club,
(inside SVS Club Compound), Anna Salai,
Chennai, Tamil Nadu 600 002.

PRAYER in C.R.P.No.587 of 2022: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order passed by the learned XVI Small Causes Court, Chennai in M.P.No.1 of 2021 in RLTOP No.420 of 2020 dated 31.01.2022.

PRAYER in C.R.P.No.1937 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree passed in RLTOP SR.No.694 of 2022 dated 18.04.2022, on the file of the Small Causes Court, Chennai and consequently, direct the Rent Court to number the RLTOP and decide the same on merits.

In C.R.P.No.587 of 2022

For Petitioner : Mr.Anirudh Krishnan

For Respondent : Mr.M.L.Ganesh

In C.R.P.No.1937 of 2022

For Petitioner : Mr.M.Sunil Kumar

COMMON ORDER

<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 The Civil Revision Petition in C.R.P.No.587 of 2022 has been preferred to set aside the order passed by the learned XVI Small Causes Court, Chennai in M.P.No.1 of 2021 in RLTOP No.420 of 2020 dated 31.01.2022.

2. The Civil Revision Petition in C.R.P.No.1937 of 2022 has been preferred to set aside the order and decree passed in RLTOP SR.No.694 of 2022 dated 18.04.2022, on the file of the X Small Causes Court, Chennai and consequently, direct the Rent Court to number the RLTOP and decide the same on merits.

3. Heard Mr.Anirudh Krishnan and Mr.M.Sunil Kumar, learned counsels for the petitioners in both Civil Revision Petitions and Mr.M.L.Ganesh, learned counsel for the respondent in C.R.P.No.587 of 2022 and also perused the materials placed on record.

4. The short facts of the case in C.R.P.No.587 of 2022 are as follows:

The revision petitioner claims himself as a tenant under the respondent/landlord. The respondent landlord filed an eviction petition in <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 RLTOP.No.420 of 2020, for recovery of possession under the new Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Act 42 of 2017 as amended by Act 39 of 2018). During the pendency of the said petition, a miscellaneous petition was filed by the petitioner herein in M.P.No.1 of 2021, seeking to dismiss the eviction

petition as not maintainable, in view of the repugnancy between Section 5(3) of the Act (Act 42 of 2017) and Section 116 of Transfer of Property Act (Act 4 of 1882). The said petition was dismissed by the Rent Controller. Aggrieved over that, the tenant has filed this Civil Revision Petition.

5. The short facts involved in the Miscellaneous Petition are as follows:

The revision petitioner is a Diagnostic Centre by name M/s.Primex Healthcare and Research Private Limited which involves in providing medical services like scan and other laboratory services. The petitioner Centre was established at the respondent's premises on a rental basis. The terms of the rent was reduced into writing by virtue of an agreement of lease dated 22.01.2011.

The monthly rent was agreed at Rs.5,41,000/-per month in the beginning and later it was reduced to Rs.4,05,750/- per month. Owing to Covid-19 pandemic <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 and resultant lock down, the petitioner suffered a rough phase. Hence he needed to shut down his centre from 24.03.2020. However the petitioner has paid rent upto December 2020 in terms of the lease agreement. But the respondent had chosen to file a petition for eviction on the ground of failure to enter into an agreement and wilful default in payment of rent and parting with the possession of the property without obtaining a written consent of the landlord. The petitioner was remitting the rent regularly and that is being accepted by the respondent, the original lease agreement that was entered into on 02.04.2018 was subsequently amended on 15.12.2019 by which the rent was reduced from Rs.5,41,000/- to Rs.4,05,750/-. After the expiry of lease agreement in December 2020, the petitioner continues to be in possession of the suit property and the respondent has also accepted the same.

5.1. While Section 116 of Transfer of Property Act recognizes holding over of lease, Section 5(3) of the New Act (Act 42 of 2017) prohibits holding over. Since the Transfer of Property Act is a Central Act and the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is a State Act, there is repugnancy between the State Act and the Central Act.

When there is repugnancy, the State Act which did not receive the presidential <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 assent, cannot prevail over the Central Act. Hence the petition filed by the respondent for eviction should be dismissed as not maintainable.

6. The respondent landlord has resisted the above application by stating that the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is a Special Act which provides faster adjudication of the disputes between the landlord and the tenant and it has replaced the Tamil Nadu buildings (Lease and Rent Control) Act, 1960. Section 40 of the New Act (Act 42 of 2017) bars the jurisdiction of the Civil Court for the dispute with regard to the tenancy agreement

between the landlord and the tenant. But the Special Act governs rights and responsibilities of the landlord and tenant. Hence invoking Section 116 of the Transfer of Property Act does not arise. After issuing legal notice on 17.10.2020, the respondent has filed an application by invoking Section 21(2)(a), 21(2)(b), 21(2)(c) of the Act. Hence the petitioner cannot invoke Section 116 of the Transfer of Property Act for a proceedings pending before the Rent Control Court. The question of repugnancy does not arise because Section 5(3) clearly spells out the status of tenant and the landlord. While filing the petition for eviction under the Tenancy Act, there is no need to give notice under Section 106 of Transfer of <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Property Act. The applicability of the New Act or the existing Act ought to have been challenged by the petitioner by way of filing a Writ Petition and not by way of filing a Miscellaneous Petition. Hence the petition should be dismissed.

7. The learned Rent Controller has dismissed the petition by observing that the Rent Court has got no power to decide about the validity of any Act or provision on the ground of repugnancy and that the Rent Controller can exercise his power only within the bounds of the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Act, 2017. Aggrieved over the said order, the tenant has preferred the Civil Revision Petition in C.R.P.No.587 of 2022.

8. The short facts of the case in C.R.P.No.1937 of 2022 are as follows:

The revision petitioner/landlord is a society and it is being represented by its honorary Secretary. The petitioner and one Sangvi entered into a lease agreement on 25.05.1968 for 55 years in respect of 'B' schedule of the agreement and it was registered lease agreement and it was registered on <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 14.06.1968 at the Sub- Registrar office, Triplicane. The subject matter of the above lease was subsequently assigned by Sangvi in favour of the respondents 1 and 2 and respondents 3 to 11 claim tenancy rights under the respondents 1 and 2. Since the building is in a dilapidated condition, the landlord has filed a petition for eviction in RLTOP.SR.No.694 of 2022 under Section 21(2) (e) of the Act. The said petition was rejected at the threshold on the observation that the tenancy agreement was not registered with the Rent Authority as required under Section 4(3) of the Act. Aggrieved over that, this Civil Revision Petition has been preferred.

9. The grounds stated in the Revision Petition is that the petitioner had registered the tenancy agreement even prior to commencing of the New Act and it has also been registered properly under the Registration Act and hence there is no necessity to register the tenancy once again. The Rent Court has wrongly interpreted Section 4(3) of the Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Act, 2017 (for the sake of brevity TNRRRLT Act). Hence the Central Act viz., The Transfer of Property Act mandates registration only if the rent agreement is beyond eleven months. The classification laid down by this Court in the case of S.Muruganandam Vs. <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 J.Joseph in C.R.P.Nos.3056, 3061, 3062, 3063, 3067 and 3094 of 2021 dated 04.02.2022, is only illustrative and not exhaustive. The case of the petitioner does not fall under the situations dealt in the said judgment. Hence the

Rent Court ought not to have applied the findings of the said judgment to the facts of this case. Since the statutory requirement has been complied in accordance with the situation prevailed in the year 1968, the Rent Court ought to have entertained the petition.

10. In view of the interconnection of many of the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Act, 2017, while deciding the above revisions, I felt it convenient to make a common discussion and decide the cases by a common order.

11. Now the following questions will arise for consideration:

1. Whether the petitioner/tenant in C.R.P.No.587 of 2022 is a tenant by holding over under Section 116 of the Transfer of Property Act and for that reason whether the eviction petition filed by the landlord under the New Act is not maintainable?

2. Whether the petitioner / landlord in C.R.P.No.1937 of 2022 can maintain an Application for eviction under the New Act by <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 claiming that his 55 years lease agreement dated 25.05.1968, was registered under the registration Act and hence he is not obligatory to comply Section 4(3) of the New Act?

12. The arguments of the respective counsels are in the line of their grounds raised in their respective revision petition. The main thrust of the contentions of the parties are based upon the impact of Section 4 and Section 5(3) of the New Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Act, 2017 (Act 42 of 2017).

13. The object of the TNRRRLT Act is to establish a frame work for the regulation of rent and to balance the rights and responsibilities of landlords and tenants and to provide faster adjudication process for resolution of disputes, and matters connected therewith or incidental thereto.

14. The idea to bring the New legislation is to resolve tenancy issues in the line of Model Tenancy Act and in response to the recommendation of the Government of India. In view of the New legislation which came into effect from 22.02.2019, the old Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, got repealed.

<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022

15. The learned counsels frequently referred the recent judgment of this court made in C.R.P.Nos.3056, 3061, 3062, 3063, 3067 & 3094 of 2021, in the case of S.Muruganandam Vs. J.Joseph. In the above judgment Hon'ble Justice. R.Subramanian has held that in some of the situations dealt in that case, the landlord cannot invoke the provisions of the New Act for eviction, but will resort to general law and seek remedy for re-possession.

16. In S.Muruganandam Vs. J.Joseph, the following six contingencies have been dealt.

“i. Written tenancy created prior to and expired prior to the commencement of the Act (Tenant holding over under an oral tenancy);

ii. Oral tenancies created prior to the New Act and no written agreement entered into;

iii. Written tenancies created prior to the New Act and the period expired after the commencement of the Act;

iv. Written tenancies entered after the commencement of the New Act not registered but subsisting;

v. Written tenancies created after the commencement of the New Act and had presently expired (either registered or unregistered) vi. Oral tenancies created after the New Act.”
<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022

17. It is held in the above judgment that the landlord would have the right to invoke Section 21(2)(a) of the New Act in respect of contingencies 1 and 2 and all other clauses of Section 21(2) in respect of third category for seeking eviction. In respect of 4th contingency the landlord has to seek eviction only under Transfer of Property Act. In respect of 5th contingency, the landlord can invoke all grounds under Section 21(2) except 21(2) (a), if the landlord files Application for eviction under the New Act and if the landlord seeks eviction beyond 6 months he has to seek eviction only under the Transfer of Property Act. In respect of the 6th contingency, the landlord has no other option except seek eviction under the Transfer of property Act. Section 40 of the New Act which excludes the jurisdiction of Civil Court was reconciled by placing reliance on the judgment of the Full Court held in Periathambi Goundan Vs The District Revenue Officer, Coimbatore and others. (1980(2) MLJ 89).

18. I feel the applicability of the TNRRRLT Act can be viewed from some other angles also and the various situations surrounding the disputes between landlord and tenant can be accommodated before the Rent Court itself <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 to the extent possible. Since fulcrum of regulations, revolutions, hurdles, limitations and differences revolve around Sections 4 and 5(3) of the New Act, it is essential to reproduce and read the said provisions segment by segment.

19. Section 4(1) of the New Act states that no person shall let or take on rent any premises except by an agreement in writing. Since this revolutionary provision starts with a non-obstante clause, it tries to make the oral tenancy obsolete, atleast under the Rent Law Jurisprudence. Since the substantive law like Transfer of Property Act still recognizes oral lease for a period below one year and the Central Law has the advantage of prevailing over the State law in case of repugnancy, it is reliably learnt that this provision is said to be under challenge in a Writ Petition. If no such writ is filed so far, it might happen sooner or later.

“Section 4(1):

Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing.”

20. As per Section 4(2), if no written agreement was entered into <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 between the landlord and the tenant in respect of the tenancies in force before the commencement of the New Act, it shall be obligatory on the part of the parties to enter into a written agreement within a period of 570 days from the date of commencement of the New Act. The proviso to Section 4(2) would give right to both the landlord and tenant to terminate the tenancy under Section 21(2)(a), if either of them fails to enter into a written agreement.

“Section 4(2):

Where, in relation to a tenancy created before the commencement of this Act, no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy within a period of five hundred and seventy five days from the date of commencement of this Act, Provided that where the landlord or tenant, fails to enter into an agreement under this sub-Section , the landlord or tenant shall have the right to apply for termination of the tenancy under clause (a) of sub-Section (2) of Section 21.”

21. As per Section 4(3), the written tenancy agreement entered between <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 the parties either before or after the commencement of the Act shall be registered with the Rent Authority by making an application.

“Section 4(3) - Every agreement referred to in sub-

Section(1) and sub-Section(2) and any tenancy agreement in writing already entered into before the commencement of this Act, shall be registered with the Rent Authority by the landlord or tenant, by making an application in the Form specified in the First Schedule within such time as may be prescribed.”

22. Rule 3 of the Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Rules, 2019, prescribes the time line for registration as under:

“(i) The tenancy agreement entered into between the parties after the commencement of the Act shall be registered with the Rent Authority (before 22nd day of August 2019 or within ninety days from the date of execution of such agreement, whichever is later

(ii) Written Tenancy agreement created before the commencement of the Act as per Section 4(2), within 90 days from the date of execution of the agreement.

(iii) Written tenancy created before the commencement of the Act, the registration shall be done within 570 days from the <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 date of publication of the Rules in the Government Gazette (i.e.) with effect from 22.02.2019.”

23. The impact of non- registration in accordance with Section 4(3) read with Rule 3 is stated under Section 4-A as shown below.

“Section 4-A: Effect of non-registration No document required to be registered under sub-Section (3) of Section 4 shall, unless it has been registered,-

(a) Affect any immovable property comprised therein, or

(b) Confer any power to adopt, or

(c) be received in evidence of any transaction affecting such property or conferring any right.”

24. The above provision conveys that in the event of non-registration of a tenancy agreement, the tenancy agreement shall not be received in evidence and hence it is difficult for the parties to an unregistered tenancy agreement to claim the rights and safeguards available under the Act.

25. Before proceeding to Section 5(3), in view of the proviso to Section 4 (2), a birds eye-view about Section 21 is necessary. As per Section 21(1), no tenant shall be evicted during the continuation of the tenancy agreement. It is due the binding nature of contract rental agreement and the inviolability <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 of the contracts. However, Section 21(2) would prescribe the grounds under which the tenant can be evicted during the continuation of the contractual tenancy, except Section 21(1)(a).

26. If both the parties to a tenancy agreement agree to have a tenancy agreement for any specific period they should get it written. If the landlord fails to come forward to enter into a written agreement, the tenant can terminate the tenancy and vacate the premises any time before the expiry of the agreed period of tenancy and the landlord cannot claim damages for such termination done at the instance of the tenant. If the tenant does not come forward to execute a written agreement, then the landlord can evict the tenant in accordance with Section 21(2)(a). Since the failure to execute the written tenancy agreement itself a ground for eviction, the Rent Court cannot expect the landlord to produce a written and registered tenancy agreement at the time of filing an Application for eviction. It is to be noted that no time limit is prescribed either under the Act for filing a petition for eviction by the landlord on the ground of absence of written tenancy agreement (Section 21(2)(a)).

27. To examine of Section 5 is very much essential to understand the <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 impact of rent law on holding over. For the purpose of convenience, the Section 5 is extracted as under:

“Section 5: Period of tenancy (1) All tenancies entered into after the commencement of this Act shall be for a period as agreed between the landlord and the tenant and as specified in the tenancy agreement.

(2) The tenant may approach the landlord for renewal or extension of the tenancy, within the period agreed to in the tenancy agreement, prior to the end of tenancy period and if agreeable to the landlord may enter into a new tenancy agreement with the landlord on mutually agreed terms and conditions.

(3) If a tenancy for a fixed term ends and has not been renewed or the premises have not been vacated by the tenant and where the landlord has not demanded possession of vacant premises at the end of such tenancy, the tenancy shall be deemed to be renewed on a month-

to-month basis on the same terms and conditions as were in the expired tenancy agreement, for a maximum period of six months.” <https://www.mhc.tn.gov.in/judis C.R.P.Nos.587 & 1937 of 2022>

28. In S. Muruganandam’s case it is held that a landlord who allows his tenant to hold over for more than 6 months should file a suit for eviction under the common law. It has stemmed out from an opinion that the tenant who is holding over for more than 6 months cannot be termed as ‘tenant’ and hence the relationship of landlord and tenant had ceased to exist. It is appropriate to extract the relevant portion of the judgment as under:

“11. The next question that would arise is as to what is the status of such a tenant after the expiry of the six months period, whether the landlord could seek eviction of such a tenant under Section 21(2)(a) of the New Act. Proviso to Sub Section 2 of Section 4 enables the landlord to seek eviction of a tenant on the ground of failure to enter into an agreement only in respect of cases falling under Sub Section 2 of Section 4 and not otherwise. Therefore, it can be said that there is a vacuum or a lacuna created by the Act in respect of eviction of certain classes of tenants and a considerable doubt is also raised as to the remedy of the landlord to seek eviction of such tenants.

12. In the light of the non obstante clause in sub Section (1) of Section 4, whether a tenant who continues in possession after six months after expiry of the lease under Sub Section (3) of Section 5 could be termed as a tenant holding over or as a trespasser also looms large. The <https://www.mhc.tn.gov.in/judis C.R.P.Nos.587 & 1937 of 2022> landlord must have a remedy. The question that would arise is what is the remedy that is available to the landlord whether he could terminate the tenancy by issuing a notice of termination under Section 106 of the Transfer of Property Act and seek ejectment or he should sue for recovery of possession treating the tenant as a trespasser.

Various contingencies like the one above would crop up and the Rent Courts which are of very limited jurisdiction would be called upon to decide these questions also.”

29. The term ‘tenant’ is defined under Section 2(n) of the New Act as under:

“Section 2 (n): “tenant” means a person by whom or on whose account or behalf the rent of any premises is, or, but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.”

<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022

30. A person who continues to be in possession after the termination of the tenancy whether before or after the commencement of this Act, still falls under the definition of 'tenant'. The above definition excludes explicitly only those persons against whom any order or decree for eviction has been made. So the tenants who continue to hold over for more than 6 months from the date of expiry of the agreement are still seen to be covered under the definition of ‘tenant’. Omitting the category of those persons against whom any order or decree for eviction has been made has cured the impact created under Section 10(1) of the old Tamil Nadu Buildings (lease and Rent Control) Act 1960. Under Section 10(1) of the Old Act, there was a prohibition to evict a tenant who suffered a decree for eviction before the commencement of the Old Act. The definition of the tenant for the New Act removes the said interdiction. In the case of our own High Court Mandhirikodi Vs E.Balaraman, reported in 2020(4) CTC 659, Hon’ble. Justice.R. Subramanian has dealt the direct reflection of Section 10(1) of the Old Act in a classic case and held as under:

“18. No doubt, Mr.V.Sesachari would contend that there is a interdict on execution of the decree under the Tamilnadu Buildings (Lease and Rent Control) Act. But the said interdict no longer survives in view of the fact that the very enactment namely, the Tamilnadu Buildings (Lease and <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Rent Control) Act, 1960 has been repealed and the new Act has been put in place. The new Act namely, the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 does not bar execution of a decree obtained against a tenant, in view of the definition of tenant under the new Act. I therefore conclude that the S.A.Nos. 100 & 101 of 2014 decree passed by the Civil Court is executable in the changed scenario. In the absence of any provision in the 2017 Act, I do not think the suit could be said to be barred and the decree could be said to be invalid. I therefore, conclude that the decree passed in O.S.No.1061 of 2004 is valid and is executable.”

31. With regard to the status of parties to a tenancy agreement, subsequent to its expiry, it is relevant to refer an important judgment of the full Bench of this Court held in Raval And Co. And Anr. Vs. K.G. Ramachandran (Minor) And Ors. on 20 January, 1966, reported in (1966) 2 MLJ 68. It was a matter on reference and in which 4 questions had emerged for consideration, which

included the constitutional validity of the Tamil Nadu Rent Control Act. The opening paragraph Nos. 1 and 2 and the answering paragraph 44 of the above judgment is extracted as under for ready reference:

“1. W.P. No. 1124 of 1963 comes before us on a Reference made by one of us (K. Srinivasan, J.). It was a proceeding in Prohibition, of Messrs. Raval & Company (petitioners), seeking to restrain the respondents, including <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 the Chief Rent Controller, Madras (fourth respondent), from prosecuting or proceeding with a petition for the fixation of fair rent, under the Madras Rent Control Acts. Connected with this are two other proceedings, namely, C.R.P. No. 1816 of 1963 and Application No. 2443 of 1964 in C. S. No. 163 of 1962, in which certain closely inter-linked questions are involved. Our learned brother (Srinivasan, J.) felt the difficulty that the catena of decisions of this Court, as far as the Madras Rent Control Acts are concerned, had been only in the consistent directions that these Acts did purport to interfere with contractual tenancies, both as regards the fixation¹ of fair rents and as regards the respective rights of landlords and tenants, in the matter of eviction and the grounds for eviction; while certain recent decisions of the Supreme Court, no doubt not upon the Madras Acts but upon similar enactments of other States, appear to justify the interpretation that the contractual tenancies should first be terminated by a notice under Section 111(h) of the Transfer of Property Act, after which alone the procedure under the special Acts would become applicable, their object being to give this additional protection to what are termed 'statutory tenancies'.

2. This explains the Reference, and, as the matter has been argued before us, the following questions emerge for our <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 consideration:

1. Do the Madras Act, including the latest Amending Act XI of 1964, enact as self-contained Code governing all relationships between landlords and tenants, during their subsistence, including contractual as well as statutory tenancies, within their ambit ?

2. In particular, do they enable landlords and tenants to obtain the determination of fair rents for buildings, even during contractual tenancies, and notwithstanding the contract of rent, to which the tenancies relate ?

3. Similarly, do they enable the landlords and tenants to work out their respective rights in the matter of the liability of the tenants for eviction on the grounds specified in the Acts, even during a contractual tenancy, and without that tenancy being first determined by the landlord in accordance with Section 111(h) of the Transfer of Property Act ?

4. Can this interpretation be sustained, as a matter of legislative competence and legislative intendment, notwithstanding the absence of a non-obstante clause in the Acts ?

44. In our view, therefore, the Reference must be answered in the terms that we have indicated earlier. The Madras Rent Control Acts, viewed, from any perspective, <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 such as that of legislative competence legislative intendment or the plain significance of the structure of the enactments, admits only of one interpretation; they interfere both with contractual and statutory tenancies, by affording a special protection to tenants against eviction, and also balancing this by certain corresponding obligations imposed on tenants. For this reason, the determination of a contractual tenancy by notice under the Transfer of Property Act is not essential for the Landlord to obtain eviction on the grounds specified in Section 10, as those are the very terms of the protection afforded to tenants, even after the determination of tenancies. The Act is a complete Code for Tribunals exercising this jurisdiction for the execution of the orders of such Tribunals, and for appeal and revision. The absence of a non obstante clause does not affect the interpretation of the Act' with regard to the inroads it makes upon the previous property law of landlords and tenants of buildings. Equally, it enables both landlords and tenants to seek the benefit of the fixation of fair rent, under its provisions, and by the special machinery provided, whether a contractual tenancy with different terms prevails, or it has been determined. The Acts are within the competence of the Legislature and validly passed, including Act XI of 1964. None of them is liable to be struck <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 down, either on the ground of hostile discrimination under Article 14, or on the ground that there has been an unreasonable restriction of fundamental rights guaranteed under Article 19(1)(f) of the Constitution.”

32. The above judgment was challenged before the Supreme Court, on Appeal and it was placed before a constitutional bench. The Constitutional bench of Supreme Court per majority (3:2) had upheld the decision of the Full bench of the High Court. It is worthwhile to extract the portion of the judgment of the Supreme Court held in Raval & Co Vs. K. C. Ramachandran & Ors on 11 December, 1973 (1974 AIR 818, 1974 SCR (2) 629) , as under.

“.....We have already referred to the definition of the terms 'landlord' and 'tenant' which applies both to subsisting tenancies as well as tenancies which might have come to an end. We may also refer to the provision in Section 7(2) which lays down that where the fair rent of a building has not been fixed the landlord shall not claim anything in addition to the agreed rent, thus showing that the fair rent can be fixed even where there is an agreed rent. That is why we have earlier pointed out that the various English decisions which provide for fixation of rent only where the contractual tenancy has come to an end do not apply here. We may also refer to sub- Section (3) of Section 16 which <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 deals with cases where a landlord requires a residential or non-residential building for his own use. Clause (d) of that sub-Section

provides that where the tenancy is for a term the landlord cannot get possession before the expiry of the term, thus showing that in other cases of eviction covered by Section 10 eviction is permissible even during the continuance of the contractual tenancy if the conditions laid down in Section 10 are satisfied.

The Madras High Court reviewed all the decisions of this Court' except the latest one in Manujendra v. Purendu Prosad. We have already pointed out that the criticism made in that decision regarding Krishnamurthy's Case was not justified. We are in agreement with the view of the Full Bench of the Madras High Court that the various decisions of this Court were based upon particular provisions of the Acts, which were under consideration, mainly the Bombay Act which is vitally different from the Madras Act. A close analysis of the Madras Act shows that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies as well as what are popularly called statutory tenancies. As noticed earlier the definition of the term 'landlord' as well as the term 'tenant' shows that the Act applies to contractual tenancies as well as cases of "statutory tenants" and their landlords. On some supposed <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 general principles governing all Rent Acts it cannot be argued that such fixation can only be for the benefit of the tenants when the Act clearly lays down that both landlords and tenants can apply for fixation of fair rent. A close reading of the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant. Or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent act fair rent for the building, something like an incident of the fair regarding the building.”

33. The above judgment of the Supreme Court was followed by various decisions including the judgment of the Division Bench of this Court in Bapalal And Co. Vs. P. Thakurdas And Ors. on 28 April, 1982 reported in ((1982) 2 MLJ 174). The said judgment was cited by the learned counsel for the petitioner in C.R.P.587/2022 in support of his contentions. In the said case, the court had to deal with the case where the plaintiff had challenged the constitutional validity of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, by attacking the action of his landlord in filing Applications before the Rent Court for fixation of fair rent and eviction on the ground of demolition and reconstruction. It was argued on behalf of the plaintiff that providing <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 grounds for eviction during the subsistence of the contractual tenancy in the Rent Control Act and thereby terminating a contractual tenancy (even while it was subsisting) and converting it into a statutory tenancy is unconstitutional. The following reliefs were sought by the plaintiff in the suit filed by him.

“(a) For declaring that the rights and liabilities between the plaintiffs as lessees and the defendants 1 to 7 as lessors are exclusively governed by the lease deed dated 26- 8-1977 and by the provisions of the Transfer of Property Act. 1882;

(b) for declaring that the Rent Controller has no jurisdiction to entertain and Proceed with H. R. C. Petitions Nos. 1146 and 1147 of 1979.

(c) for declaring that the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 is wholly ultra vires and void and restraining the State of Tamil Nadu by injunction from taking any action under the Act or enforcing the provisions of the Act;

(d) for declaring that sub-clause (iii) in Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 exempting non-residential buildings with rent above Rs.400 per month inserted by Tamil Nadu Act 2 of 1962 is in force notwithstanding the purported repeal thereof by Tamil Nadu <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Act 11 of 1964.”

34. His lordship Ramanujam.J, as he then was and who wrote the judgment for the bench referred the judgment of the Supreme Court in Raval's case. As stated already, in Raval's case the Supreme Court confirmed the judgment of the Full bench of this court which upheld the constitutional validity of the Rent Control Act. For an interesting insight and understanding, it is relevant to extract the relevant portion of the judgment as below:

Bapalal And Co. Vs. P. Thakurdas And Ors. on 28 April, 1982. (AIR 1982 Mad 399)

“21. The Full Bench has to consider in Raval's case, the following four questions-

(1) Do the Madras Acts including the latest Amending Act XI of 1964, enact a self-contained Code governing all relationships between landlords and tenants, during their subsistence including contractual as well as statutory tenants, within their ambit?

(2) In particular, do they enable landlords and tenants to obtain the determination of fair rents for buildings, even during the contractual tenancies and notwithstanding the contract of rent. to which the tenancies relate?

<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 (3) Similarly do they enable the landlords and tenants to work out their respective rights in the matter of the liability of the tenants for eviction on the grounds specified in the Acts, even during a contractual tenancy, and without that tenancy being first determined by the landlord in accordance with S. 111(h) of the Transfer of Property Act?

(4) Can this interpretation be sustained as a matter of legislative competence and legislative intendment, notwithstanding the absence of a non obstante clause in the Act?

After a detailed and elaborate consideration of the legal position and the relevant decisions rendered earlier by the Supreme Court, the Full Bench came to the conclusion that the legislative intendment or the plain significance of the structure of the enactment admits only of one interpretation i.e.. they interfere both with contractual and statutory tenancies by affording a special protection to tenants against eviction and also balancing this by certain corresponding obligations imposed on tenants that the Act is a complete Code in itself for eviction and for determination of fair rent in respect of tenancies both contractual as well as statutory and that absence of non obstante clause does not affect the interpretation of the Act with regard to inroads it makes upon the previous property law of

landlords and tenants of <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 buildings, that the Act enables both landlords and tenants to seek the benefit of the Act under the provisions of the Act, whether contractual tenancy with different terms prevails or whether it has been determined. Dealing with the doctrine of inviolability of contractual rights, the Full Bench pointed out that it is impossible to accept that decision in the context of the welfare legislation which has become a marked characteristics of modern times and that, therefore, notwithstanding the terms of an existing contract it is open to the Legislature to enact that both a landlord and tenant may apply for determination of the fair rent for premises though the contract may be subsisting. The facts in that case are more or less identical with the facts of this case. In that case also there was a subsisting contractual tenancy lease which had fixed a particular period and a sum as the monthly rent. The tenant filed an application for determination of the fair rent for the building even during the subsistence of the contractual tenancy notwithstanding the agreed rent. The lessors also filed eviction petition against the tenant notwithstanding the period fixed under the lease.

22. This decision of the Full Bench was taken to the Supreme Court in *Raval & Co. v. Ramachandran*. The Supreme Court by a majority of 3:2 affirmed the view taken by the Full Bench and held that an analysis of the Tamil Nadu <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Buildings (Lease and Rent Control) Act 1960, showed that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies, that the definitions of 'landlord' and 'tenant' also show that the Act applies to contractual as well as statutory tenancies, that the provision for fixation of fair rent is for the benefit of both landlords and tenants whether it is contractual tenancy or a statutory tenancy, that the provision that both the tenant and the landlord can apply for fixation of fair rent would become meaningless if the fixation of fair rent will only be downwards from the contracted rent and that the provision also indicates that the Act is intended to apply to both contractual tenancies as well as statutory tenancies. The relevant observations of the Supreme Court are these (at . 823).

"The provisions of the Act under consideration show that they are to take effect notwithstanding any contract even during the subsistence of the contract. We have already referred to the definition of the terms 'landlord' and 'tenant' which applies both to subsisting tenancies as well as tenancies which might have come to an end. We may also refer to the provisions in S. 7(2) which lays down that where the fair rent of a building has not been fixed the landlord shall not claim anything in addition to the agreed rent, thus showing that the fair rent can be fixed even where there is an <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 agreed rent. That is why we have earlier pointed out that the various English decisions which provide for fixation of rent only where the contractual tenancy has come to an end do not apply here. We may also refer to sub-Section (3) of S. 10 which deals with cases where landlord required a residential or non residential building for his own use. Clause (d) of that sub-Section provides that where the tenancy is for a term the landlord cannot get possession before the expiry of the term, thus showing that in other cases of eviction covered by S. 10 eviction is permissible even during the continuance of the contractual tenancy if the conditions laid down in S. 10 are satisfied."

23. Thus there is a direct decision of the Full Bench of this court in Raval's case and of the Supreme Court in Raval and Co. v. K. G. Ramachandran, holding that the provisions of the Act relating to fixation of fair rent and eviction apply to all tenancies either contractual or statutory, if the conditions laid down in the said Section s are satisfied.”

35. While confirming the constitutional validity of the Tamil Nadu Rent Control Act once again in the above manner, the acceptance of the High Court and the Supreme Court for the terms ‘landlord’ and ‘tenant’ was also underlined and held that those terms are applicable to both the contractual <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 tenancy and statutory tenancy. By following the above dictum the Division Bench of this court had held in Bapalal’s case that a tenant whose contractual tenancy has come to an end should also be evicted only under due process of law and for a tenant to file a suit to restrain his landlord from dispossessing him without due process, he need not seek to declare his status as ‘tenant’. Because his status had already been settled as tenant even after the termination of the tenancy.

36. By reading of the above judgments, it can be safely understood that a contractual tenant is a person who is in occupation of the demised premises during the subsistence of the tenancy agreement and the statutory tenant is the one whose contractual tenancy had come to an end either by efflux of time or by act of parties or by law, but who continues to be in possession of the premises. In case the landlord opts to receive rent from a tenant even after his tenancy got terminated, he is a tenant by holding over within the meaning of Section 116 of the Transfer of Property Act.

37. Even a tenant whose tenancy got terminated should also be evicted only under due process. Since such a statutory protection is given such <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 tenancies are called statutory tenancies. For a contractual tenancy, protection is self-made by the parties as per the terms of their agreement. So a person whose tenancy has already been expired, but still who cannot be evicted except under a due process of law, is a statutory tenant. So the following conclusions can be arrived so far as the status of a tenant.

“(i) The terms landlord and ‘tenant’ under rent law includes both contractual and statutory tenant. (as upheld by the High Court and the Supreme Court in Raval’s case).

(ii) So long as a person comes under the folder of either contractual or statutory tenancy, his status as ‘tenant’ need not seek a relief for declaration about his status before any court of law. (Bapalal’s case).

(iii) Once the due process for eviction is initiated and an order/decreed for eviction is passed, the statutory process is over and hence the tenant ceases to be a statutory tenant and thereafter he is only a judgment debtor.

(iv) It is needless to mention that his contractual tenancy has already got terminated and hence he ceased to be a contractual tenant also.

(v) So, only a person against whom an order/ decree for eviction has been passed will lose the status of 'tenant' and that is the reason why in the definition of 'tenant' under Section 2(n) of the new TNRRRLT Act, that category alone is excluded." <https://www.mhc.tn.gov.in/judis C.R.P.Nos.587 & 1937 of 2022>

38. Again there can not be any controversy between Section 5(3) of TNRRRLT Act and Section 116 of the Transfer of Property Act which speaks about holding over. But the only difference in the TNRRRLT Act is that there is a damocles' sword hanging over the head of a tenant who continues to hold over for more than 6 months, without having a written extension of his tenancy. Because his landlord can any time file a petition for eviction either under Section 21(2), for failure to enter into a tenancy agreement or for being in possession after the termination of the agreement (Section 5(1)) or for remaining as a holding over tenant for more than 6 months (Section 5(3)).

39. Section 5 of the New Act speaks only about the period of tenancy and not about the change in the status of the parties. Neither does it state that the landlord's right to seek eviction before the Rent Court will get expired at the end of 6 months of holding over tenancy. It is at the risk or at the will and pleasure of the landlord to allow his tenant to hold over possession for more than 6 months. But once the landlord chooses not to extend the agreement, he can immediately file a petition for eviction either under Section 5(1). If the landlord allows the tenant to continue to be in possession by receiving rent, <https://www.mhc.tn.gov.in/judis C.R.P.Nos.587 & 1937 of 2022> without any written extension of the agreement, his right to seek eviction opens at the end of 6 months of such holding over under Section 5(3). While Section 21 provides grounds for eviction, Section 5(1) and (3) provide situations when the tenant should vacate or get evicted. In fact they are deadlines for the tenant to vacate the premises.

40. Since the terms of contract or contractual obligations are inviolable, certain specific grounds for eviction during the subsistence of the contract is provided under Section 21. In other words, Section 21 is an exception to the general law that the terms of contract are inviolable. The constitutional validity for providing such grounds for eviction under the Rent law, during the continuation of the tenancy agreement, has already been upheld by the constitutional bench of the Supreme court in Raval's case, as stated above.

41. Section 5(3) of the New Act has just limited the time for holding over for six months, but by accepting the principle of 'tenancy by holding over'. In my view, it is an yet another enabling provision by which the landlord can knock the doors of the rent Court for eviction, despite he had chosen to receive the rent for some time after the expiry of the tenancy, but not <https://www.mhc.tn.gov.in/judis C.R.P.Nos.587 & 1937 of 2022> intended to renew the tenancy agreement. Since the situations for seeking eviction under Section 5(1) or 5 (3) would arise only after the termination of the contractual tenancy, the landlord is not under any obligation to plead or prove any of the grounds under Section 21(2) for getting re-possession. In other words, after the expiry of the tenancy, a landlord can seek eviction without the aid of Section 21(2). To put it in legal terminologies, it can be said that the clauses under Section 21(2), except 21(2) (a) are applicable to contractual tenancies and Section 5(1) and (3) are applicable to statutory tenancies.

42. In the event of filing an Application for eviction under Section 5(3), the tenant cannot claim that he has a right to continue to be in possession beyond six months, by stating that he is still a tenant holding over and his tenancy is lawful under Section 116 of the Transfer of Property Act. It is not because Section 5(3) of the TNRRRLT Act claims any supremacy over Section 116 of Transfer of Property Act, but because of the constitutional validity given to the Rent Acts to accommodate grounds to terminate tenancy (even during the subsistence of the contractual tenancy) immaterial of it having or not having a non-obstante clause. The above exemption from the general <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 law is given because of the regulatory and balancing nature of the Rent law Jurisprudence, and its ability to co-exist with the general law.

43. Since the principle applied is unique to Rent law, it cannot be argued that Raval's case had dealt only the old Rent Control Act and not the new one and hence such principles cannot be applied to the present situation. However, I limit this approval for exemption from general law only with regard to providing grounds for eviction and the constitutional validity of which had already been set at rest. Since the validity for such grounds has been upheld for terminating the subsisting contract of tenancy, there can not be any fuss to provide situations prescribing deadlines for agreements which have got expired already.

44. Since I only find Section 5(3) is an another enabling provision for seeking eviction, I have no difficulty in answering the Revision Petitioner in C.R.P. (PD) No. 587 of 2022 that a tenant who continues to be in possession beyond the prescribed period of six months under Section 5(3) is still a tenant by holding over within the meaning of Section 116 of the Transfer of Property Act. But he is a tenant at the risk of getting evicted at the instance of his <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 landlord any time after 6 months in view of the regulatory provision of Section 5(3) of the Rent Act. It does not mean that the landlord who had chosen to receive rent without having an intention to renew the agreement, cannot file an Application for eviction immediately after the expiry of the agreement. If a landlord had chosen to receive rent after the expiry of the tenancy agreement, his tenant might take a defence of holding over atleast for a period of 6 months. Even according to Section 116 of the Transfer of Property Act, the effect of holding over of the premises can only be renewed by once in six months or month by month, depending on the purpose and at the option of the landlord to receive rent at every renewal.

45. In the order of the Rent Controller in C.R.P. (PD) No. 587 of 2022, it is observed that the Rent Court can only deal with any matter relating to the rent agreement and not the issue raised by the tenant in C.R.P. (PD) No. 587 of 2022. It is probably because of the contentions made about repugnancy between Section 5(3) and Section 116 of the Transfer of the Property Act and constitutional validity of some other provisions. As per Section 34 of the Act, the jurisdiction of the Rent Court is given as under:

“34. Jurisdiction of Rent Court:

<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Notwithstanding anything contained in any other law for the time being in force, in the areas to which

this Act extends, only the Rent Court and no Civil Court shall have jurisdiction, except the jurisdiction of Rent Authority under Section 39, to hear and decide the applications relating to disputes between landlord and tenant and matters connected with and ancillary thereto covered under this Act:

Provided that the Rent Court shall, in deciding such applications relating to tenancies and premises, give due regard to the provisions of the Transfer of Property Act, 1882, the Indian Contract Act, 1872 or any other substantive law applicable to such matter in the same manner, in which such law would have been applied had the dispute been brought before a Civil Court by way of suit.”

46. In view of the duty bestowed on the Rent Court to decide the applications relating to disputes between the land lord and tenant and matters connected and ancillary there to covered under the Act, the Rent court can not shy away from deciding the claim raised by the tenant by invoking Section 116 of the Transfer of Property Act and render a finding. But the tenant need not have filed a separate miscellaneous application to decide the above point as maintainability issue, though it is at his option to raise it as his defence.

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47. In fact the proviso to Section 34 would make the job of the Rent Controller more responsible as it requires to strike a harmony between the provisions of the New Act and the provisions of the substantive law like Transfer of Property Act and Indian Contract Act, 1872. So, every caution needs to be taken to avoid head on collision between the various provisions of the new enactment and the substantive law. Since the proviso to Section 34 itself demands harmonious interpretation by giving due regard to other law wherever applicable, it is obligatory for the Courts to give maximum force to both the Regulatory Rent Act and the substantive law to avoid any hardship or the risk of repugnancy, by keeping in mind the object of the New Act and by adopting the principle of harmonious construction. This is especially so for the new TNRRRLT Act (Act 42 of 2017), because of the fact that the Act itself has been enacted on the recommendation of the Government of India in order to enact an Act in the line of model tenancy Act. So, it is always safe and better to bring all the disputes between the tenant and the landlord to be left to the jurisdiction of the Rent Court in terms of Section 34 of the Act.

48. The jurisdiction of the Civil Court is barred under Section 40 of the <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Act, so far as it relates to the provisions of the Act. The above provision is carefully worded as under:

“Section 40: Jurisdiction of Civil Courts barred in respect of certain matters (1) Save as otherwise provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the provisions of this Act.

(2) The jurisdiction of the Rent Court shall be limited to tenancy agreement submitted to it as per First Schedule and the question of title and ownership of premises shall be beyond its jurisdiction.”

49. However, to understand the scope of the jurisdiction of the Rent court one has to read Section 40(2) conjointly with Section 34 and not in isolation. The combined import of Section 34 and Section 40 (2) is that, though at times the rent courts need to deal with the appropriate provisions of the substantive law like a civil court, that should be for a limited purpose of deciding the dispute between the landlord and tenant and matters connecting to tenancy and not otherwise. And the question of title or ownership of the premises shall be dealt by the Civil Court in a regular suit and not by the Rent Court. Similarly, if Section 34 and 40(1) are read together, it will only convey that the civil court shall not have the jurisdiction decide the dispute between <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 the landlord and tenant and issues connected to or ancillary to the tenancy, unless it involves a title dispute between themselves in respect of the premises.

50. I feel it is relevant to mention that the TNRRRLT Act does not prescribe any period of limitation for the both landlord and tenant to invoke Section 21(2) (a), on account of failure to enter into a written tenancy agreement in accordance with Section 4(2). Though a time limit is prescribed under Section 4(2) to enter into written tenancy for those tenancies created before the commencement of the Act, no time limit is prescribed to file an Application for eviction under Section 21(2)(a). Similarly no time limit is prescribed for the landlord to invoke Section 5(3) for filing an Application for eviction, though it limits the time limit for holding over tenancy.

51. Obviously, the rent court cannot insist for producing a written tenancy agreement, for filing a petition for eviction under Section 21(2)(a). The position has been made clear by this court in the judgment of this court held in V.Manimegalai vs . Selvaraj Kannan and reported in (2019) (6) CTC 9. In the said judgment, the Hon'ble Mr.Justice R. Suresh Kumar has <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 held as under:

“12. Therefore, it has become clear that, even in the absence of a written rental agreement between the landlord and tenant especially the tenancy created before the commencement of the Act i.e. on or before 22.02.2019 even in such circumstances, on the sole ground of failure to enter into an agreement between the landlord and tenant, both can approach the Rent Court under Section 22(1)(a) of the Act to seek for termination of tenancy.

13. When that being the position, it cannot be construed that, for approaching the Rent Court for getting relief of either termination of tenancy or repossession of the premises by the landlord, such application to be filed under Section 21 of the Act be accompanied with a registered rental agreement. Therefore, Section 4(3) can only be construed that, by virtue of the provisions of the Act, there must be a written agreement between the landlord and tenant and that is compulsorily registerable and without being a registered document i.e. C.R.P.(NPD).No.3317 of 2019 rental

agreement, it does not have an evidentiary value, in other words, it is inadmissible in evidence. Only to that purpose or to that extent alone, the effect of non-

registration of rental agreement can be construed or the provision of Section 4-A can be pressed into service.” <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022

52. For those tenancies which have been created before or after the commencement of this Act through a written agreement, the tenancy shall be in force only for the period which is agreed in the tenancy agreement. If the parties do not wish to renew the tenancy, there is no difficulty and the tenant can vacate the premises. If the landlord does not wish to renew the tenancy, though the tenant intends, it is open to the landlord to file an Application for eviction, as his tenant can not compel him to renew the tenancy.

53. As told already under Section 5(3) a time maximum limit of 6 months is prescribed tenancy by holding over. Though this is also an enabling provision for the landlord along with Section 5 (1) to seek eviction, there is no time limit prescribed for the landlord to file an Application for eviction. The time limit prescribed under the rules to register the tenancy agreement with the Rent Authority will be applicable only to those cases, where the landlord is willing to renew the expired tenancy. As stated already, the tenant cannot take a defence of holding over for more than 6 months, in case his landlord files an <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Application for eviction after the termination of the agreement. Hence the tenant needs to be vigilant in getting his tenancy duly renewed and registered as per the Act in order to safeguard his interest. No tenant can compel his landlord to renew the tenancy agreement, in case he does not choose to renew the tenancy agreement and the tenant has to simply vacate the premises after the agreement expires. Though as per Rule 5, the landlord has to intimate the expiry of tenancy within 15 days, no consequential action or penalty is contemplated for violation. Hence there are possibilities to flout the written tenancy agreement rule, subsequent to its expiry indirectly by way of filing applications for eviction any time under Section 21(2) (a) or under Section 5(1) and 5(3).

54. As a matter of clarity, I would like to add that the law of limitation applicable to suits for recovery possession is entirely on a different footing and it has nothing to do with the applications for eviction filed before the Rent Court. Even for any extraneous reasons if it is presumed that Article 137 of the Limitation Act should be invoked for Applications filed for eviction under Section 21(2) (a), 5(1) and 5(3), there can be a continuing cause of action for the landlord so long as his tenant occupies the premises and so long as the <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 terms landlord and tenant is applicable to both the contractual and statutory tenancies. Since the term ‘tenant’ is inapplicable only to those persons against whom order / decree for eviction has been passed, the cause of action for the landlord to file an application for eviction shall continue to exist so long as the person in occupation of the premises falls under the definition of tenant. In fact the Act does not exclude the applicability of the Act to any type of landlords and tenants, but only to certain type of places and premises. Even while exempting certain premises, liberty is given to the owners of the exempted premises to opt to come under the purview of the Act by expressing the desire to the Rent Authority and avail the fast-track remedies.

55. The danger of depriving the status of tenant for those persons who continue to occupy the premises after the expiry of the agreement and driving the landlord to file a suit for ejectment, is to put the landlord to face the risk of law of limitation for recovery of possession, against his own tenant and also to undergo the time consuming civil court proceedings to the advantage of a defaulted tenant. This would cause an imbalance between two defaulting parties who had failed to execute or renew the written tenancy and that is totally against the object of the New Act.

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56. Except the consequence and impact of the unwritten and unregistered tenancy under Section 4-A of the Act, no other consequence or impact is stated in the Act for not adhering to its directions. Even the failure to register the written agreement within the time stipulated under the rules of the New Act can be mitigated by filing a petition to condone the delay under Section 5 of the limitation Act. It is needless to state that Section 5 of the Limitation Act is applicable for any appeal or application. It is better to extract Section 5 of the Limitation Act:

Limitation Act- Section 5 Extension of prescribed period in certain cases:

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.”

57. Hence in case of delay in registering the tenancy agreements entered between the parties in compliance of Section 4(1) and (2), that can be <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 done by filing an Application under Section 4(3) along with the petition to condone the delay in filing a the Application under Section 4(3).

58. In C.R.P.No.1937 of 2022, the revision petitioner is the landlord. He has stated that his tenancy agreement with the tenant was a written and registered tenancy agreement dated 25.05.1968 for 55 years. In the understanding of the said petitioner, the “registration” contemplated is the registration under the Registration Act. The petition for eviction filed by the landlord was rejected at the threshold itself on the observation that the tenancy agreement was not registered with the Rent Authority as required under Section 4(3) of the Act.

59. Since the tenancy agreement dated 25.05.1968 is for 55 years and it is written, it is still in force. The registration contemplated under Section 4 (3) of the New Rent Act is independent and immaterial of the compliance of the mandatory registration requirement contemplated under Section 17(d) of the Registration Act. Because Section 4-A of the New Rent Act is also independent and immaterial of Section 49 of the Registration Act. For the sake of completion I would add that the mandatory written agreement required <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 under Section 4(1) of the New Rent Act is also independent and immaterial of Section 107 of the Transfer of Property Act. However, I am not on deciding the constitutional compatibility of

those provisions, as this is not a writ petition. The registration mandated under the New Rent Act is a kind of enrolment of tenancy in the Roll of tenancy register maintained by the Rent Authority. It is like the enrolment of any other kind of business dealing or profession required under the relevant enactments.

60. In any case, the learned Rent Controller need not have rejected the petition, since the rent agreement is a written one and is still in force. Instead, the petition could have been returned to comply the registration formalities under rule 4 of the New Rent rules and represent it after compliance. Since the agreement period is going to expire shortly, if the landlord complies the registration formalities of the Act, he can get a green signal for eviction under Section 5(1) also.

61. Since the lease agreement dated 25.05.1968 is a written and registered under the registration Act, it is upto the landlord to register the same in accordance with Rule 4 of the Tamil Nadu Regulation of Rights and <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Responsibilities of Landlord and Tenant Rules 2019, if the time limit is still available. If the time limit is expired, he can still file an application for registration along with a petition to condone the delay in registration. It is needless to state that while calculating the time limit prescribed under Rule 4, the time during which the proceedings were pending before the Court shall be excluded as per Section 12 of the limitation Act.

62. Since the lease period is going to expire shortly, if the landlord complies the above formality, he can also file a petition for eviction under Section 5(1) of the New Act. In that event, he need not seek an accommodation in any of the compartments given under Section 21 of the Act. As stated already Section 21 comes into picture only when an Application for eviction needs to be filed during the subsistence of the tenancy agreement or when the parties fail to enter into a written agreement.

63. One question that would linger in the minds of parties to the oral tenancy agreement or the parties who failed to register their written tenancy agreement would be should they remain remediless under the New Act. In case the parties are willing to continue the tenancy but have not chosen to <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 reduce the terms of tenancy into writing, it is always open to them to enter into a fresh tenancy agreement by giving effect to the tenancy from the date when the tenancy agreement is entered. The said written tenancy agreement can be registered in terms of Section 4(3) of the Act. However, neither the tenant nor the landlord can seek any of their respective dues or liabilities that might have accrued to them in view of the oral or unregistered tenancy pending between themselves prior to the date of their newly written agreement. Because those claims are non-est in the eyes of the New Act, since they fall outside its purview. Anything falls outside the purview of the whole of the Act includes the bar under Section 40 also. Hence the parties are not deprived to file civil suits if they have any valid claims between the above said period and if they are maintainable under any of the law in force.

64. Since the New Act is still a toddler more awareness needs to be given about the evils of oral tenancy and non-registration of tenancy under the New Act. Though the Act is applicable to urban area, due to the mixed demography of the urban mass it is not easy for the New Act to percolate in the minds of the people, who still stick to the time-tested old law and practice where they enjoyed

oral tenancy. And the time limit of 570 days <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 is still not too long a period to change that practice. The irony of the New Act is that though it brings the sub-tenants who do not have any sort of privity of either oral or written contract of tenancy with the landlord under its wings, it excludes the parties to oral tenancy agreement. Hence the Rent Authorities shall be liberal whenever application for registration of tenancy is filed with a petition to condone the delay in filing the said Applications.

65. In the result,

(i) C.R.P. (PD) No. 587 of 2022 is disposed in terms of the observation given under paragraph No.44. No costs. For the sake of convenience paragraph No.44 is reproduced as below:

“44. Since I only find Section 5(3) is an another enabling provision for seeking eviction, I have no difficulty in answering the Revision Petitioner in C.R.P. (PD) No. 587 of 2022 that a tenant who continues to be in possession beyond the prescribed period of six months under Section 5(3) is still a tenant by holding over within the meaning of Section 116 of the Transfer of Property Act. But he is a tenant at the risk of getting evicted at the instance of his landlord any time after 6 months in view of the regulatory provision of Section 5(3) of the Rent Act. It does not mean that the landlord who had chosen to receive rent without having an intention to renew the agreement, cannot file an Application for eviction <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 immediately after the expiry of the agreement. If a landlord had chosen to receive rent after the expiry of the tenancy agreement, his tenant might take a defence of holding over atleast for a period of 6 months. Even according to Section 116 of the Transfer of Property Act, the effect of holding over of the premises can only be renewed by once in six months or month by month, depending on the purpose and at the option of the landlord to receive rent at every renewal.”

(ii) C.R.P.No.1937 of 2022 is partly allowed in terms of the observation rendered under paragraph Nos. 59 and 60 and the order and decree of the learned Rent Controller/ X Small Cause Judge, Chennai passed in RLTOP SR.No.694 of 2022 dated 18.04.2022 is set aside and the unnumbered Petition filed in RLTOP SR.No.694 of 2022 is ordered to be returned with a direction to represent it after complying of the registration formalities under Section 4(3) of the New Act in accordance with Rule 4. No costs. As observed already the revision petitioner is at liberty to file his Application for registration under Section 4(3) along with the petition to condone the delay in filing the Application under Section 4(3). For the sake of convenience paragraph Nos.

59 and 60 are reproduced as under:

“59. Since the tenancy agreement dated 25.05.1968 is for 55 years and it is written, it is still in force. The registration <https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 &

1937 of 2022 contemplated under Section 4(3) of the New Rent Act is independent and immaterial of the compliance of the mandatory registration requirement contemplated under Section 17(d) of the Registration Act. Because Section 4-A of the New Rent Act is also independent and immaterial of Section 49 of the Registration Act. For the sake of completion I would add that the mandatory written agreement required under Section 4(1) of the New Rent Act is also independent and immaterial of Section 107 of the Transfer of Property Act.

However, I am not on deciding the constitutional compatibility of those provisions, as this is not a Writ Petition. The registration mandated under the New Rent Act is a kind of enrolment of tenancy in the Roll of tenancy register maintained by the Rent Authority. It is like the enrolment of any other kind of business dealing or profession required under the relevant enactments.

60. In any case, the learned Rent Controller need not have rejected the petition, since the rent agreement is a written one and is still in force. Instead, the petition could have been returned to comply the registration formalities under Rule 4 of the New Rent Rules and represent it after compliance. Since the agreement period is going to expire shortly, if the landlord complies the registration formalities of the Act, he can get a green signal for eviction under Section 5(1) also”
<https://www.mhc.tn.gov.in/judis> C.R.P.Nos.587 & 1937 of 2022 Connected miscellaneous petitions are closed.

Index: Yes/No
Speaking / Non Speaking Order
gsk

.09.2022

To

1. XVI Small Causes Court, Chennai.
2. X Small Causes Court, Chennai.

<https://www.mhc.tn.gov.in/judis>

C.R.P.Nos.587 & 1937 of 2022

R.N.MANJULA, J

gsk

C.R.P.Nos.587 & 1937 of 2022 and
C.M.P.Nos.3065 and 3343 of 2022

.09.2022

<https://www.mhc.tn.gov.in/judis>