

R.Venkatesan vs State Of Tamil Nadu on 20 December, 2022

Author: T.Raja

Bench: T.Raja

W.P. N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. No.34025 of 2022

R.Venkatesan

... Peti

Vs

1.State of Tamil Nadu

Rep. by Secretary to Government

Housing and Urban Development Department

Fort St. George, Chennai 09

2.Union of India

Rep. by Secretary to Government

Ministry of Housing and Urban Development Department

Nirman Bhawan New Delhi

3.M.Avinash

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India for Writ of Declaration declaring the provisions of Tamil Nadu Regulation of Landlords and Responsibilities of Landlords and Tenants Act, 2017 (as amended) particularly Sections 4, 5, 6 to 11, 12 to 29 Sections 30 to 39, 40 thereof as ultravires unconstitutional and invalid.

Page 1 of 10

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

For the Petitioner	::	Mr.A.Chidambaram
For the Respondents	::	Mr.P.Muthukumar, State Government Pleader, for the first respondent
		Mr.R.Rajesh Vivekanandan, for the second respondent

ORDER

(Made by the Hon'ble Acting Chief Justice) The petitioner has filed this writ petition praying for a Writ of Declaration to declare the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (as amended) particularly Sections 4, 5, 6 to 11, 12 to 29, 30 to 39, 40 and 43 thereof as ultra vires, unconstitutional and invalid.

2. Learned counsel for the petitioner submitted that the petitioner is a tenant under the third respondent in respect of two commercial shop portions measuring 200 sq.ft. situated at No.89, Kodambakkam High Road, T.Nagar, Chennai 17, and carries on chicken stall business. Presently, he is paying monthly rent at Rs.9,350/- and the tenancy is one according to the English Calendar month. Continuing the arguments, learned counsel for the petitioner <https://www.mhc.tn.gov.in/judis> would submit that originally, the petitioner's late father Thiru.Rajagopal became a tenant some 30 years ago under late Tmt.V.Rajeswari, mother of the third respondent, who was the sole and absolute owner of the entire property and after the demise of petitioner's father, the petitioner was recognized as tenant by late Tmt.V.Rajeswari and the petitioner had also been paying the rent regularly. The said Tmt.V.Rajeswari died on 08.06.2021, leaving behind the third respondent as her legal representative and he had also recognized the tenancy.

3. Tmt.V.Rajeswari had been pressurising the petitioner from the year 2017 to vacate the tenanted premises, stating that she was planning to sell the entire property. The other tenants were not agreeable since the tenanted premises is the only source of their livelihood. The petitioner filed civil suit in O.S.No.6027 of 2017, on the file of V Assistant, City Civil Court, Chennai against the third respondent and also obtained interim orders, under the Tamil Nadu Building Lease and Rent Control Act, 1960. The said suit is still pending adjudication.

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4. In the meanwhile, the landlord filed an original petition in RLTOP No.390 of 2021 before the learned XII Judge, Small Causes Court, Chennai (Rent Court) for eviction of the petitioner on the ground of absence of rental agreement under Section 21(2)(a) read with Section 4 of the Tamil Nadu Regulations of the Rights and Responsibilities of the Landlords and Tenants Act, 2017. The petitioner had also filed a counter-affidavit contending that in view of the litigation already pending

before the Civil Court, it was the third respondent who failed and neglected to enter into the rental agreement. The eviction proceedings initiated against the petitioner was ordered by the learned XII Judge, Small Causes Court, Chennai by order dated 20.12.2021 holding that as per the Act of 2017, once there is no written rental agreement, the petition for eviction has to be allowed without any further investigation. As against the said order, the petitioner has filed an appeal in RLTA No.14 of 2022 before the learned III Additional City Civil Court, Chennai (Rent Tribunal) and the same is pending adjudication.

5. Section 4(1) of the Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017 states that after the commencement of the Act, no person shall let or take on rent any premises <https://www.mhc.tn.gov.in/judis> except by an agreement in writing. However, the tenancy of the petitioner is existing for a long period, since the times of the parents of the petitioner and the third respondent. The petitioner has therefore filed this writ petition questioning the validity of Sections 4, 5, 6 to 11, 12 to 29 Sections 30 to 39, 40 and 43 of the Act of 2017.

6. It is relevant to extract Section 4 of the Act of 2017 for better appreciation of the contentions put-forth by the petitioner. The Section 4 of the Act of 2017 reads as under:

“Section 4. Tenancy Agreement:-

(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.

(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 ninety days from the date of commencement of this Act; provided that where the landlord or <https://www.mhc.tn.gov.in/judis> 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.

(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.

(4) on receipt of application under sub-

Section(3), the Rent Authority shall, within a period of thirty days, register the agreement subject to the provisions of this Act and the Rules made thereunder, and provide a registration number.

(5) The Rent Authority shall reject the application submitted under sub-Section (3) for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules made thereunder: provided that no application shall be rejected unless the parties have been given an opportunity of being heard.

<https://www.mhc.tn.gov.in/judis> (6) The Rent Authority shall upload the name of the parties, details of the premises and tenure of the tenancy of all tenancies along with the registration number to be provided under sub- Section (4), in the form and manner as may be prescribed, on its website within fifteen days from the date of registration.”

7. A perusal of the above Section clearly shows that eviction order dated 20.12.2021 passed by the learned XII Judge, Small Causes Court, Chennai (Rent Court) prima facie appears to be correct. We do not wish to express any opinion further since the petitioner's appeal in RLTA No.14 of 2022 before the learned III Additional City Civil Court, Chennai (Rent Tribunal) is pending adjudication and any observation made by this Court would affect the pending appeal.

8. When Section 4 of the Act of 2017 clearly mandates that no person shall, after the commencement of this Act, let or take on rent any premises except by agreement in writing, admittedly in the present case, there is no written agreement. In the absence of written agreement as required under Section 4 of the Act, we have to consider the petitioner as an unlawful tenant. <https://www.mhc.tn.gov.in/judis> To question the validity of certain Sections of the Act of 2017, the petitioner should be a lawful tenant in the first place. In the absence of such agreement, he is not entitled to question the same.

9. Therefore, we are unable to entertain this writ petition. The writ petition fails and the same is dismissed. There will be no order as to costs. Consequently, WMP No.33486 of 2022 is closed.

(T.R., ACJ.) (D.B.C., J.) 20.12.2022 Index: Yes/No tar <https://www.mhc.tn.gov.in/judis> To

1.The Secretary to Government Housing and Urban Development Department Fort St. George, Chennai 09

2.The Secretary to Government Ministry of Housing and Urban Development Department Nirman Bhawan, New Delhi <https://www.mhc.tn.gov.in/judis> T.RAJA, ACJ, and D.BHARATHA CHAKRAVARTHY, J.

(tar) 20.12.2022 <https://www.mhc.tn.gov.in/judis>