

P.M.Selvaraj vs Thirumangalam Pandiyakula on 26 September, 2022

Author: B.Pugalendhi

Bench: B.Pugalendhi

CRP(MD)Nos.1917 and 1918

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)Nos.1917 and 1918 of 2022
and
CMP(MD)No.8672 of 2022

P.M.Selvaraj

... Petitioner

Vs

Thirumangalam Pandiyakula
Kshatriya Nadars Vidhyasala
Sangam Committee,
Through its Secretary
No.308, Madurai Road,
Thirumangalam,
Madurai District.

... Respondent

PRAYER: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the order dated 16.04.2021 made in RCA.Nos.19 of 2015 and RCA.No.5 of 2018 on the file of the Sub Court, Thoothukudi confirming the order dated 01.02.2014 passed in RCOP No.61 of 2012 and the order dated 27.06.2018 passed in RCOP No.34 of 2015 on the file of the Principal District Munsif Court, Thothukudi.

For Petitioner : Mr.S.Vellaichamy
For Respondent : Mr.T.R.Jeyapalam

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

CRP(MD)Nos.1917 a

COMMON ORDER

These civil revision petitions are filed challenging the order dated 16.04.2021 made in RCA.No.19 of 2015 and RCA.No.5 of 2018 on the file of the Sub Court, Thoothukudi confirming the order dated 01.02.2014 passed in RCOP No.61 of 2012 and the order dated 27.06.2018 passed in RCOP No.34 of 2015 by the Principal District Munsif Court, Thoothukudi.

2.Since both cases relate to the same property, they are heard together and disposed of by this common order.

3.The learned Counsel for the petitioner submits that the petitioner is the tenant. The respondent Trust is the landlord. The suit schedule property is a non-residential building with vacant land, which belongs to the respondent. The petitioner entered into an oral rental agreement with respondent Trust in the year 1991 with regard to the suit schedule property for Rs.250/- per month. After occupying the property, with the permission of the landlord the petitioner spent Rs.7,00,000/- for improving the property. The petitioner is running paddy and <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 rice business therein. Later on the rent has been enhanced by 15% every year. While so on 01.08.2005, they entered into a written rental agreement for three years from 01.08.2005 to 31.07.2008 and the rent was fixed as Rs.1,690/-. It was renewed from 01.08.2008 to 31.07.2011 and the rent was enhanced to Rs.2,030/- and the petitioner has been paying the rent regularly through demand draft and as cash. On 06.12.2011 the petitioner sent a cheque for Rs.10,150/- towards the rent from July 2011 to November 2011. However, the respondent refused to receive the cheque and returned it that the rental agreement got expired as on 31.07.2011 and directed the petitioner to vacate the property and to hand it over to the respondent. Subsequently the petitioner on 31.01.2012 sent a demand draft for a sum of Rs.16,040/- towards the rent from July 2011 to January 2012, which was received by the respondent and adjusted towards the rent and the rent was increased to Rs.15,000/- per month. Though the petitioner paid Rs.9,340/- as rent for four months through demand draft, the respondent without receiving, returned it to the petitioner on 27.08.2012. The respondent agreed for settlement of arrears of rent, but he is not receiving the <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 rent and delaying the receipt of rent. Therefore the petitioner has filed a petition before the Rent Controller to permit the petitioner to deposit the rent before the Court. However, the Rent Controller without considering the case of the petitioner dismissed the petition. Challenging the same, the petitioner filed an appeal before the Rent Controller Appellate Authority and the appeal was dismissed. Aggrieved over the same, the petitioner has filed CRP(MD)No.1917 of 2022.

4.Another petition in CRP(MD)No.1918 of 2022 has been filed as against the order of the learned Rent Controller Appellate Authority, confirming the order of the learned Rent Controller in RCOP.No.34 of 2015, directing the petitioner to vacate the suit property within a period of two

months. The said RCOP.No.34 of 2015 was filed by the landlord for eviction on the ground of wilful default.

5.The learned Counsel further submits the petitioner was paying the rent regularly and though he sent the demand draft / cheque to the respondent towards rent, the respondent refused to receive and sent a letter that <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 rent has been enhanced to Rs.15,000/- without any agreement. Both the Courts failed to consider the petitioner's bonafideness that he was ready to pay the rent and it is the respondent, who refused to receive the rent. Therefore, prays for allowing these civil revision petitions.

6.The learned Counsel for the respondent submits that it is true that the respondent entered into an agreement with the petitioner and it was renewed from time to time and it got expired on 31.07.2011 itself. Even on the date of the petition ie., on 21.12.2012, the petitioner was having arrears of rent for nine months, which is evident from the payment of rent in lump sum. Thus the petitioner failed to comply with the provisions of Section 8(2), 8(3) and 8(4) of the Act. Considering all these aspects the Courts below dismissed the petitions filed by the petitioner. Further since the petitioner has been a defaulter in payment of rent and he did not vacate the property even after expiry of the lease period, the petition filed by the respondent for eviction on the ground of wilful default was allowed with a direction to <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 the petitioner to vacate the property and hand over it to the respondent and the appeal filed by the petitioner was dismissed by the Rent Control Appellate Authority.

7.The learned Counsel for the respondent further submits that as on date the petitioner has to pay rent of Rs.2,94,210/- from March 2012 to August 2016, which is 126 months. Though the petitioner has vacated the property, he has not handed it over to the respondent and retaining it with him with dishonest intention. Moreover electricity connection to the suit property was disconnected due to non payment of electricity charges. Therefore, there is no reason to interfere with the orders of the Courts below and the petitions filed by the petitioner are liable to be dismissed.

8.This Court considered the rival submissions and perused the materials on the record.

9.These revision petitions are arising out of RCOP.No.61 of 2012 filed by the petitioner under Section 8(5) of the Tamil Nadu Buildings Lease and Rent Control <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 Act, 1960 permit him to deposit the rent before the Court and RCOP.No.34 of 2015 was filed by the respondent for eviction of the petitioner on the ground of wilful default, under section 10(2)(1) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960.

10.The grievance of the petitioner in RCOP.No.61 of 2012 is that the rent for the building was fixed at Rs.2,030/- and the petitioner was paying the fixed rent regularly and all of a sudden, the respondent refused to receive the rent paid by the petitioner, demanding enhanced rent of Rs.15,000/-. The petitioner filed an application under Section 8 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 for depositing the rent before the Court.

11.For sake of convenience, Section 8 of the said Act is extracted hereunder:

“8. [Landlord liable to give receipt for rent or advance]. - [(1) Every landlord who receives any payment towards rent by advance shall issue a receipt duly signed by him for the actual amount of rent or advance received by him.] (2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing/ require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the landlord:

Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within [five kilo metres] of the limits thereof.

Explanation. - It shall be open to the landlord to specify, from time to time, by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by money order, after deducting the money order commission.

a.(5) If the landlord refuses to receive the rent remitted by money order under sub- section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building.”

12. Before filing the application under Section 8(5) of the Act, the tenant ought to have complied with the other procedures contemplated under Section 8 of the Tamil Nadu Buildings Lease and Rent Control Act and the tenant cannot straightaway approach the Court without exhausting the other procedures contemplated under Section 8(4) of the Act.

13.The Hon’ble Supreme Court in E.Palanisamy v. Palanisamy, reported in (2003) 1 SCC page 123 has held that mere refusal of the rent by the landlord does not entitle the tenant to invoke Section 8 of the Act and the relevant portion is extracted under:

“5.The rent legislation is normally intended for the benefit of the tenants.

At the same time, it is well settled that the benefits conferred on tenants through the relevant provisions can be enjoyed only on the basis

<https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 provisions. Equitable consideration has no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal* [(1996) 1 SCC 243] and *M. Bhaskar v. J. Venkatarama Naidu* [(1996) 6 SCC 228]. “8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken.

We are unable to agree with this. The <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises, in pursuance of the High Court judgment.”

14.Perusal of the records shows that the petitioner as PW1 has admitted that he has not requested the landlord for bank account details for depositing the rent by way of any notice. The petitioner has also not taken any step to pay the rent to the respondent by way of a money order. <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 As held by the Hon'ble Supreme Court in the above decision, the respondent has not followed the procedure contemplated under Section 8 of the Act, wherein the earlier step is a precondition for the next step. Therefore a strict compliance of the previous step is necessary and the petitioner cannot straightaway invoke section 8(5) of the Act. Thus there is no reason to interfere with the orders of the Courts below.

15.The petition in RCOP.No.34 of 2015 is filed by the respondent landlord for eviction of the petitioner on the ground of willful default of rent. The respondent alleges that the petitioner was irregular in payment of rent and even during the pendency of his application for depositing the rent in RCOP.No.61 of 2012, he did not pay the rent. The respondent claims that the arrears of rent on the date of filing of the petition in RCOP.No.34 of 2015 is Rs.95,735/- for 41 months from March 2012 to July 2015 and as on date the petitioner has to pay rent of Rs.2,94,210/- from March 2012 to August 2016, which is 126 months. The petitioner has also marked Exs.B1 and Exs.B2 in

RCOP.No.29 of 2016. <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 The petitioner / tenant relying on these documents contends that there is no wilful default on his part.

16.It has been held by this Court in H.J. Siwani v. U.Ugma Bhai, reported in (2007) 5 CTC page 254 that as far as payment of rent is concerned, no duty is cast on the landlord to make demand every month and it is the duty of the tenant to pay rent regularly. The petition in RCOP.No.29 of 2016 was filed only after the institution of eviction proceedings by the respondent. Even in this proceedings, the petitioner has paid the rent in lump sum and the rent was not paid every month promptly. This itself shows that there is a willful default on part of the petitioner in paying the rent every month.

17.A reference can be made to the judgment of this court in V. Dinesh Kumar, Chennai v. Dr.Indira Bai, reported in 2007 2 MLJ page 976 wherein, it was held that tenant has no right to accumulate rents and pay in lump sum and he is expected to pay rent without demand from the landlord. Thus, it is clear that the petitioner / tenant has to pay the rent every month and not in lump sum for several months. <https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022

18.In the light of the above discussion, there is no reason to interfere with the orders of the Courts below and the civil revision petitions are dismissed. No costs. Consequently connected miscellaneous petitions also stand dismissed.

26.09.2022 Index: Yes/No. dsk To

1.The Rent Control Appellate Authority/ The Principal Sub Judge, Thoothukudi.

2.The Rent Controller / The Principal District Munsif, Thoothukudi.

<https://www.mhc.tn.gov.in/judis> CRP(MD)Nos.1917 and 1918 of 2022 B.PUGALENDHI, J.

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