

J.Selvakumar vs Rajeswari (Deceased) on 12 September, 2022

C.R.P.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2820 of 2022

and

C.M.P.No.15236 of 2022

J.Selvakumar

... Petition

vs

Rajeswari (Deceased)

M.Avinash

... Responde

Prayer: Civil Revision Petition is filed under Article 227 of the Cons of India, praying to set aside the Fair and Decreetal Order dated 29.0 made in R.L.T.A.No.11 of 2022 on the file of the VI Additional City Ci Court, Chennai by confirming the Fair and Decreetal Order dated 20.12. made in R.L.T.O.P.No.389 of 2021 on the file of the Rent Court/XII Cou Small Causes, Chennai by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Ayyadurai
Senior Advocate
for Mr.D.Raghu

For Respondent : Mr.N.Vijayaraj

ORDER

<https://www.mhc.tn.gov.in/judis> The tenant is the revision petitioner and the landlord is the respondent. The respondent/landlord filed a petition in R.L.T.O.P.No.389 of 2021 before the Rent Court/XII Court of Small Causes, Chennai under Sections 21(2)(a), 21(2)(b) and Section 23 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (hereinafter called as 'TNRRLT Act, 2017' for brevity) for eviction of the petitioner/tenant and for compensation. The said petition was allowed by the Rent Court on the ground of Section 21(2)(a) (failure of the parties to enter into an agreement in writing under TNRRLT Act). The relief sought for in other grounds were negatived.

2. Aggrieved by the same, the revision petitioner/tenant has filed an appeal before the VI Additional City Civil Court (Rent Tribunal), Chennai in R.L.T.A.No.11 of 2022. The learned Appellate Authority concurred with the order passed by the Rent Court and aggrieved by the same, the petitioner/tenant

has come up with this civil revision petition.

3. According to the respondent/landlord, the demised premises, a non-<https://www.mhc.tn.gov.in/judis> residential building, was let out by husband of the 1st respondent and father of the 2nd respondent viz., Late B.Mohan to the petitioner's father Late P.Jayapandian in the year 1965 for a monthly rent of Rs.60/-. The rent has been increased periodically from time to time and on the date of filing the application, the agreed rent was Rs.32,000/-. The respondent/landlord claimed that the last rental agreement between the petitioner/tenant and the respondent/landlord was entered into on 01.03.2003. The tenancy was for a period of 11 months commencing from 01.03.2003 to 29.02.2004. It was also alleged that the rental agreement was not renewed thereafter, even after coming into force of TNRRRLT Act, 2017. Even after coming into force of TNRRRLT Act, 2017, inspite of several requests made by the respondent/landlord, the petitioner/tenant failed and neglected to co-operate for renewal of rental agreement. Hence, the respondent/landlord sought for eviction under Section 21(2)(a) of TNRRRLT Act, 2017 for failure of the parties to enter into an agreement in writing. The respondent also alleged that the petitioner was a chronic defaulter and failed to pay rent regularly and sought for eviction on the ground of default in payment of rent.

4. The petitioner/tenant had filed a counter, wherein he raised specific <https://www.mhc.tn.gov.in/judis> plea that in view of the fact that the petitioner and the respondent had not entered into any agreement as mandated by TNRRRLT Act, 2017, the provisions of said Act will not govern the parties and consequently, the petition for re-possession filed by the respondent/landlord by invoking TNRRRLT Act, 2017, was not maintainable. The petitioner/tenant also claimed in his counter that the rental agreement was last renewed between the parties on 05.06.2015 for a period of 11 months and agreed rent was Rs.26,000/-. It was further averred that inspite of failure of the parties to renew the rental agreement, the rent was increased from Rs.26,000/- to Rs.32,000/- in the year 2017. The petitioner also denied the averment found in the respondent's eviction petition that he had committed default in payment of arrears.

5. Both the Courts below found that the written rental agreement entered into between the parties expired prior to coming into force of TNRRRLT Act, 2017 and the same was not renewed as per the provisions of TNRRRLT Act, 2017. The said position was not disputed by the learned Senior Counsel for the petitioner. Consequently, both the Courts below <https://www.mhc.tn.gov.in/judis> rendered a finding that the petitioner/tenant is liable for eviction under Section 21(2)(a) of TNRRRLT Act, 2017 for failure of the parties to enter into a written agreement as provided under Section 4(2) of TNRRRLT Act, 2017. With regard to other reliefs sought for by the respondent/landlord, the same were negatived.

6. The learned Senior Counsel for the petitioner submitted that the finding rendered by the Courts below that the respondent/landlord was entitled to get eviction of petitioner on the ground of failure of the parties to enter into an agreement in writing, is unsustainable in law. He elaborated his contention by saying that though both the parties failed to enter into any written agreement as mandated by Section 4(2) of TNRRRLT Act, 2017, the petitioner continued as tenant by holding over under common law.

7. The respondent/landlord in their averments in the eviction petition, stated that they issued a legal notice terminating the tenancy under Section 106 of Transfer of Property Act, 1882. Having invoked the Transfer of Property Act, 1882 and terminated the tenancy, it is not open to the <https://www.mhc.tn.gov.in/judis> respondent/landlord to invoke the provisions of TNRRRLT Act, 2017 instead of pursuing their remedy under common law before the regular Civil Court.

8. The learned counsel by drawing the attention of this Court to the proviso to Section 34 of TNRRRLT Act, 2017, contended that the Rent Court has got power to decide the validity or otherwise of notice issued under Section 106 and the said jurisdiction was not exercised by the Rent Court while deciding the petition. He also contended that when there is plurality of remedies and the respondent having chosen one remedy under common law by invoking Section 106 of Transfer of Property Act, 1882, cannot be permitted to pursue the other remedy also under the provisions of TNRRRLT Act, 2017.

9. The learned counsel for the respondent/landlord contended that when both the parties failed to enter into a written agreement as mandated by Section 4(2) of TNRRRLT Act, 2017, the respondent/landlord is entitled to seek re-possession under Section 21(2)(a) of TNRRRLT Act, 2017. The learned counsel further submitted that TNRRRLT Act, 2017 is a Special Act <https://www.mhc.tn.gov.in/judis> governing the rights and responsibilities of the landlord and tenant in the urban areas of the State of Tamil Nadu to which the Act is made applicable. The demised premises is situated within the city of Chennai and hence, the parties are governed by the provisions of TNRRRLT Act, 2017. He further submitted that whenever there is a conflict between Special Law and Common Law, the Special Law will prevail over the provisions of the Common Law and hence, merely because, the petitioner issued a notice under Section 106 of Transfer of Property Act, 1882 terminating the tenancy, the respondent/landlord cannot be precluded from invoking Section 21(2)(a) of TNRRRLT Act, 2017 seeking re-possession on the ground of failure of the parties to enter into a written agreement as mandated by Section 4(2) of TNRRRLT Act, 2017.

10. Heard the arguments of the learned Senior Counsel for the petitioner and the learned counsel for the respondent and perused the pleadings of the parties.

11. Before the Rent Court, both the parties did not chose to lead any <https://www.mhc.tn.gov.in/judis> oral and documentary evidences. The petition for re-possession filed by the respondent was disposed of based on the pleadings.

12. Section 4 of TNRRRLT Act, 2017, read as follows:-

“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 [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.

(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.

(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.”

13. Section 21 of TNRRRLT Act, 2017, which gives right of re- possession to the landlord, read as follows:-

“21. Repossession of the premises by the landlord.- (1) A tenant shall not be evicted during the continuance of tenancy agreement except in accordance with the provisions of sub-

<https://www.mhc.tn.gov.in/judis> section (2).

(2) The Rent Court may, on an application made to it in the manner as may be prescribed, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:— [(a) that the landlord and tenant have failed to enter into an agreement under sub-section (2) of section 4;]

(b) that the tenant has not paid the arrears in full of rent payable and other charges payable as specified in sub-section (1) of section 13 for two months,including interest for delayed payment as may be specified for in the tenancy agreement or as

prescribed, as the case may be, within one month of notice of demand for the arrears of such rent and all charges payable being served on him by the landlord in the manner provided in sub-section (4) of section 106 of the Transfer of Property Act, 1882 (Central Act IV of 1882):

Provided that no order for eviction of the tenant on account of default of payment of rent shall be passed, if the tenant makes payment to the landlord or deposits with the Rent Court all arrears of rent including interest within one month of notice being served on him:

Provided further that this relief shall not be available again, if the tenant defaults in payments of rent consecutively for two months in any one year subsequent to getting relief once;

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(c) that the tenant has, after the commencement of this Act, parted with the possession of whole or any part of the premises without obtaining the written consent of the landlord;

(d) that the tenant has continued misuse of the premises even after receipt of notice from the landlord to stop such misuse.

Explanation.—For the purpose of this clause, “misuse of premises” means encroachment of additional space by the tenant or use of premises which causes public nuisance or causes damage to the property or is detrimental to the interest of the landlord or for an immoral or illegal purposes;

(e) that the premises or any part thereof are required by the landlord for carrying out any repairs or building or rebuilding or additions or alterations or demolition, which cannot be carried out without the premises being vacated:

Provided that the re-entry of the tenant after such repairs, building, rebuilding, addition, alteration or demolition shall be allowed only when it has been mutually agreed to between the landlord and the tenant and the new tenancy agreement has been submitted with the Rent Authority:

Provided further that re-entry of the tenant shall not be allowed in the absence of such mutual agreement submitted with the Rent Authority and also in cases where the tenant has been evicted under the orders of the Rent Court;

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(f) that the premises or any part thereof are required by the landlord for carrying out any repairs, building, rebuilding, additions, alterations or demolition, for change of

its use as a consequence of change of land use by the competent authority;

(g) that the premises let for residential or non-residential purpose are required by the landlord for occupation for residential or non-residential purposes for himself or for any member of his family or for any person for whose benefit the premises were held;

(h) that the tenant has given written notice to quit and in consequence of that notice, the landlord has contracted to sell the accommodation or has taken any other step, as a result of which his interests would seriously suffer if he is not put in possession of that accommodation.

(3) In any proceedings for eviction under clause (e) of sub-section (2), the Rent Court may allow eviction from only a part of the premises, if the landlord is agreeable to the same.”

14. A combined reading of Sections 4 and 21 of TNRRRLT Act, 2017, would suggest that in cases where the tenancy agreement was entered into between the parties even prior to coming into force of TNRRRLT Act, 2017 and the period of tenancy had expired by efflux of time even prior to coming into force of Act, as in the present case, the landlord and tenant shall enter into an agreement in writing with regard to the tenancy within a period of 575 days from the date of commencement of this Act. The proviso to Section 4(2) of TNRRRLT Act, 2017 would suggest that consequence of failure to enter into a written agreement contemplated under Section 4(2) of TNRRRLT Act. It says, if the parties failed to enter into an agreement as mandated by Section 4(2) of TNRRRLT Act, 2017, either party is entitled to file an application for termination of tenancy and seek re-possession under Section 21(2)(a) of TNRRRLT Act, 2017.

15. As per the admitted stand of the parties in the present case, the last rental agreement entered into between the parties expired even prior to coming into force of TNRRRLT Act, 2017. According to the respondent/landlord, the last rental agreement was entered on 01.03.2003 and the period of tenancy got expired by efflux of time on 29.02.2004. According to the petitioner/tenant, the last rental agreement was entered on 05.06.2015 for 11 months and the same got expired on 04.05.2016 by efflux of time. Therefore, when the Act came into force on 22.02.2019, there was no written agreement. Hence, as per the mandate of Section 4(2) of TNRRRLT Act, 2017, the parties should have entered into an agreement within 575 days. As per the admitted case of both the parties, no written agreement was entered into under the said Act. Therefore, the respondent/landlord is entitled to seek re-possession under Section 21(2)(a) of TNRRRLT Act, 2017.

16. The contention of the learned Senior Counsel for the petitioner that the respondent by issuing notice under Section 106 of Transfer of Property Act, 1882, had chosen the remedy of common law and hence, he is precluded from invoking provisions of TNRRRLT Act, 2017, cannot be accepted. The Section 4 of TNRRRLT Act, 2017, starts with non-obstante clause, therefore, undoubtedly the provisions of TNRRRLT Act, 2017, which is special enactment, will prevail over the common law. Sections 4(2) and 21(2)(a) of TNRRRLT Act, 2017 have to be interpreted by its literal meaning when

there is no ambiguity. While interpreting the provision, the object and reasons should also be taken into consideration.

17. The statement of object and reasons for TNRRRLT Act, 2017, read <https://www.mhc.tn.gov.in/judis> as follows:-

“... 2.The purpose of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 Tamil Nadu Act 18 of 1960 was to regulate the rent as well as give powers to the Government to take certain properties on rent at fair rent even against the wish of the property owner if it was desirable in the interest of the State or required by the Government. These provisions made long back when supply of rental accommodation was limited, real estate business had not evolved and properties were vested in the hands of very few people.

3. Now the scenario has changed. Robust real estate and availability of enough housing stock makes the existing rent control Act out of place. The existing Act has created lot of vested interest against the landlords. Further, the supply of the rental housing and growth of rental housing market has been severely affected leading to growth of slums in absence of sufficient stock of rental houses. To tackle the problem, the new Law has to be enacted for the State, after repealing the existing Tamil Nadu Building (Lease and Rent) Control Act, 1960. ...

4. The Government have decided to enact the Tamil Nadu Regulation of Right and Responsibilities of Landlords and Tenants Act, 2017 on the lines of the mode bill suggested by the Government of India. The new Law aims to regulate the rent as per the terms and conditions of the agreement to be entered into <https://www.mhc.tn.gov.in/judis> between the owner of the premises and the tenant. It also aims to balance the rights and responsibilities of the landlord and the tenant and provide regulation of the rent as per the agreement.”

18. The reading of the above object and reasons would suggest that earlier Rent Control Act was loaded heavily against the landlord and present enactment was passed with the object of balancing the rights and responsibilities of both landlord and tenant on equal footing. In order to advance that object Section 4(2) mandates that the parties to the erstwhile tenancy should enter into a new written agreement under the provisions of the TNRRRLT Act, 2017. The statement of objects clearly says that the rights and liabilities of parties shall be regulated as per agreement. The Act wants to give primacy to rental agreement and hence, failure to enter into agreement is made as a ground for re-possession. Only with that object in mind legislature had given grace period of 575 days to the parties to enter into written agreement under the Act.

19. The Act unambiguously declared that if the parties failed to enter into a written agreement as mandated by TNRRRLT Act, 2017, it would result <https://www.mhc.tn.gov.in/judis> in termination of tenancy and landlord is entitled to seek re-possession of tenanted premises under Section 21(1)(a) of TNRRRLT Act, 2017. Therefore, the contention made by the learned Senior Counsel for the

petitioner does not merit acceptance.

20. In a case law S.Muruganandam vs. J.Joseph reported in 2022 (1) LW 752 = Manu/TN/1366/2022, the learned Single Judge of this Court had taken a view that in cases where written tenancy created prior to coming into force of TNRRRLT Act, 2017 and expired before commencement of TNRRRLT Act, 2017, the landlord is at liberty to seek eviction under Section 21(1)(a) of the TNRRRLT Act, 2017. The relevant observation of this Court in the said judgement is as follows:-

“13. From the instances that had arisen in these six revisions, the different types of cases that may arise before the Rent Court can be broadly classified as follows:

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;

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

16. I have enumerated the six possible contingencies that would arise in respect of either execution of a written agreement or registration thereof under the provisions of the New Act. As far as the first three contingencies are concerned, it can straight away be concluded without much difficulty that all of them will be covered by Section 4(2) and its proviso. Thus the landlord would have the right to invoke Section 21(2)(a) of the New Act,...

20. As I have already pointed out the first three classes of cases enumerated above, do not pose any difficulty as the tenancies therein would have been entered into prior to the commencement of the Act and Sub Section 2 of Section 4 not having been complied with by the tenant or the landlord, the landlord is at liberty to seek eviction under Section 21(2) (a) of the New Act in respect of contingencies 1 and 2 and all clauses <https://www.mhc.tn.gov.in/judis> of Sub section 2 of section 21 in respect of the 3rd contingency, de hors the question of registration of a Tenancy Agreement.

21. In CRP Nos.3061, 3063 and 3067 of 2021 on the facts set out in the petition, I find that the Rent Agreements were entered into prior to the commencement of the Act and they had expired either prior to or after the commencement of the Act and no new agreement in writing as required under Section 4(2) of the Act has been entered

into or the existing agreement has been registered within a period of 575 days from the date of the commencement of the new Act. Therefore, these three Revisions will have to be allowed with a direction to the Rent Court to number the application and dispose of the same as the existence or otherwise the requirement of a written registered instrument for creation of a tenancy in these cases will not arise.”

21. I respectfully agree with the view expressed by the learned brother Judge in the above decision that in cases where tenancy created and expired before coming into force of TNRRRLT Act, 2017, the landlord is entitled to seek re-possession by invoking Section 21(2)(a) of said Act.

22. In view of the discussions made above, the contention of the learned Senior Counsel for the petitioner/tenant that the respondent/landlord having opted for common law remedy by issuing a notice under Section 106 <https://www.mhc.tn.gov.in/judis> of Transfer of Property Act, 1882, is not entitled to invoke provisions of TNRRRLT Act, 2017, is not acceptable to this Court. Once TNRRRLT Act, 2017 has come into operation, the relationship between landlord and tenancy in urban areas, to which the Act applies, are governed by the Special Act. In view of the employment of non-obstante clause in Section 4 of TNRRRLT Act, 2017, the said Act will prevail over the common law and mere issue of notice by landlord under Section 106 of Transfer of Property Act, 1882 will not take away his right available under the special enactment. There is no estoppel by conduct as against statute. Therefore, I do not find any illegality or irregularity in the finding recorded by the Courts below that in view of failure of the parties to enter into a written agreement as mandated by Section 4(2) of the TNRRRLT Act, 2017, the petitioner/tenant is liable to be evicted and the respondent/landlord is entitled to re-possession of the demised premises.

23. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, the connected civil miscellaneous petition is closed.

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

12.09.2022
(1/2)

Index : Yes / No
Speaking Order : Yes / No

dm

To

1.The VI Additional City Civil Court,
Chennai.

2.The Rent Court/XII Court of Small Causes,
Chennai.

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

S.SOUNTHAR , J.

dm

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