

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

C.R.P. (PD) No.1586 of 2002 and C.R.P. (PD) No. 1587 of 2002

1. P.S.Mohamed Ali  
2. P.S.Mohamed Iqbal  
3. J.K.Abdul Jabbar  
4. Fathimabivi  
5. J.K.Abdul Bari  
6. J.K.Abdul Basheer .. Petitioners  
in both petitions

-Vs-

S.Govindan .. Respondent  
in C.R.P.No.1586/2002

S.Gopalan .. Respondent  
in C.R.P.No.1587/2002

PRAYER: Against the orders and decrees even dated 13.6.2002 made in I.A.Nos.8 and 9 of 2001 in R.C.O.P.Nos.9 and 10 of 1999 respectively, on the file of the Rent Controller, Tiruvannamalai.

!For Petitioners : Mrs.Chitra Sampath

^For Respondents : Mr.R.Bharanidharan

:ORDER

The revision petitioners, who are tenants, are the respondents in R.C.O.P.Nos.9 and 10 of 1999 before the learned Rent Controller, Tiruvannamalai, laid by the respondents herein for eviction of the revision petitioners under Sections 10(2)(iii), 10(2), 10(3)(a)(iii) and Sections 10(2)(iii), 10(2), 10(3) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter referred to as the 'Act') respectively, based on the alleged family partition of the respondents herein.

2. Pending the above R.C.O.Ps, the revision petitioners/tenants filed interim applications, viz., I.A.Nos.8 and 9 of 2001 in R.C.O.P.Nos.9 and 10 of 1999 respectively, before the learned Rent Controller, Tiruvannamalai, under Section 19 of the Act, to reject the said R.C.O. P.Nos.9 and 10 of 1999, placing reliance on the order dated 1.9.1995 made in R.C.O.P.No.15 of 1994 on

the file of the learned Rent Controller, Tiruvannamamali, which was subsequently confirmed by the learned Rent Control Appellate Authority, Tiruvannamalai by order dated 20.7.1998 in R.C.A.No.16 of 1995.

3. The learned Rent Controller, Tiruvannamalai, by order even dated 13.6.2002 in I.A.Nos.8 and 9 of 2001 in H.R.C.O.P.Nos.9 and 10 of 1999 respectively, refused to reject the R.C.O.Ps. exercising the powers conferred under Section 19 of the Act. Hence, the above revisions.

4. Mrs.Chitra Sampath, learned counsel for the petitioners contends that even though the respondents claim that they are owners of the petition premises, the execution of the lease deed dated 09.12.1968, which was relied upon by the landlord/petitioner in R.C.O.P. No.15 of 1994 and R.C.A.No.16 of 1995, wherein it was concluded by the learned Rent Controller as well as by the Appellate Authority in the orders dated 1.9.1995 and 20.7.1998 respectively that what was leased out under the lease deed dated 09.12.1968 was only a vacant land but not building had become final in the earlier proceedings and the same is not disputed, and therefore, it is contended by the learned counsel for the petitioners that the learned Rent Controller, Tiruvannamalai ought to have rejected the R.C.O.P.s.9 and 10 of 1999 summarily.

5. In this regard, I am obliged to refer Section 19 of the Act, which reads as follows:

"Section: 19 Decisions which have become final not to be reopened:

Any application under Section 3-A or Section 12, and any application under sub-section (2) or sub-section (3) or sub-section (3-A) of Section 10 or under Sections 14, 15 or 16, shall be summarily rejected by the Authorised Officer or the Controller, as the case may be, if such application raises between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided or as purport to have been finally decided, in a former proceeding-

(i) under this Act, or

(ii) under any other law from time to time in force before the date of the commencement of this Act and relating to matters dealt with in this Act."

6. A plain reading of Section 19 of the Act makes it clear that the same is enacted on the basis of the principles of res judicata, a well known doctrine, which requires compliance of two important requisites, namely, (i) there must be an identity of issues in the two proceedings; and (ii) that the former proceeding must have been decided on the very issues which arise in the latter proceedings. In other words, in the doctrine of res judicata no magic is involved but it is essentially a pragmatic principle which has to be applied on the facts and circumstances of each case, as held by this Court in R.J.MEHTA Vs. PROTTAM SINGH reported in 1979 (2) MLJ 19.

7. The words, viz., the same issues as have been finally decided, employed by the legislature under Section 19 of the Act would clearly indicate

not merely the cause of action viz., as relied upon by the learned counsel for the petitioners, the lease deed dated 09.12.1968, but "the issues" raised in the two proceedings, and such issues should have been formerly adjudicated and finally decided between the parties and these basic principles, on which the doctrine of res judicata rests, cannot be lightly disregarded while exercising the powers conferred under Section 19 of the Act, even though Section 19 of the Act was incorporated and enacted to prevent frivolous litigations.

8. If the facts and circumstances of the case in hand are examined in the light of the above well settled principles, there cannot be any dispute that the learned Rent Controller is right in dismissing the interim applications, viz., I.A.Nos.8 and 9 of 2001, holding that the R.C.O.P.Nos.9 and 10 of 1999 filed by the respondents herein cannot be summarily rejected, for the following reasons:

(i) the issue in R.C.O.P.No.15 of 1994 before the learned Rent Controller, which was subsequently confirmed by the Rent Control Appellate Authority in R.C.A.No.16 of 1995 was related to fixation of fair rent, wherein the Rent Control Appellate Authority had specifically observed that the owner of the building, after proving his title over the building in appropriate civil proceedings before the competent Civil Court can still claim for the rent;

(ii) the respondents/landlords are not even parties to the earlier proceedings, namely R.C.O.P.No.15 of 1994 on the file Rent Controller, Tiruvannamalai.

(iii) the respondents/landlords in the R.C.O.P.Nos.9 and 10 of 1999 on the file of the learned Rent Controller, Tiruvannamalai, have initiated the eviction proceedings against the revision petitioners/ tenants with respect to a totally different premises, which was not the subject matter in the order

dated 1.9.1995 made in R.C.O.P.No.15 of 1994 before the learned Rent Controller, as confirmed by the Rent Control Appellate Authority by order dated 20.7.1998 in R.C.A.No.16 of 1995 ; and

(iv) the respondents/landlords, who have filed R.C.O.P.Nos.9 and 10 of 1999 on the file of the Rent Controller, Tiruvannamalai have initiated eviction proceedings based on a family partition, which issue was neither raised in the earlier proceedings nor dealt with therein, nor finally decided after a former adjudication, as contemplated by well settled principles, after full hearing.

9. For all these reasons, I do not find any illegality or irregularity in the orders even dated 13.6.2002 in I.A.Nos.8 and 9 of 2001 in R.C.O.P.Nos.9 and 10 of 1999 respectively, of the learned Rent Controller, Tiruvannamalai, to hold that he has failed to exercise the jurisdiction conferred under Section 19 of the Act. The above revisions fail and are therefore dismissed. No costs. Consequently, C.M.P.Nos.1 3612 and 13613 of 2002 are also dismissed.

Index: Yes

Internet:Yes

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To:

The Rent Controller  
Tiruvannamalai

P.D.DINAKARAN,J.  
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