



Citation : CDJ 2018 MHC 4305

Court : Before the Madurai Bench of Madras High Court

Case No : C.R.P.(MD)(PD)Nos. 1351 to 1354 of 2018

Judges : THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

Parties : B. Venkatesh Versus Nagarajan & Others

Appearing Advocates : For the Petitioner: J. Barathan, Advocate. For the Respondents: K. Chellapandian, Additional Advocate General.

Date of Judgment : 12-07-2018

Head Note :

The Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 - Tamilnadu Buildings (Lease and Rent Control) Act - Section 10(2)(i), Section 10(3)(a)(iii) - Constitution of India - Article 227 – Enactment - Petitioner/Landlord challenged order of Rent Controller/District Munsif, returning Rent Control Original Petitions on ground saying that in view of enactment of new Rent Control Act namely Act, 2017 came in to force on prescribed date, Rent Control Tribunal has no jurisdiction to try cases –

Court held - RETURN made by Rent Controller, was not sustainable - Rent Controller was supposed to know present legal position with regard to enactment of new Rent Control Act or otherwise, Rent Controller ought to have clarified present position from Government Pleader attached with District Court - return made by Rent Controller, vide docket order was liable to be set-aside, accordingly set aside - Rent Controller/District Munsif Court, was directed to number above four R.C.O.Ps filed by revision Petitioner and to proceed with same further in accordance with law - Civil Revision Petitions allowed.

Paras:10,11

Comparative Citations:

2018 (3) LW 1005, 2018 (2) MWN(Civil) 770, 2018 AirCC 2460,

Judgment :

(Common Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of return dated 27.06.2018 in R.C.O.P.SR.Nos.2217, 2219, 2221 and 2223 of 2018 respectively, on the file of the District Munsif Court-cum-Rent Controller, Ramanathapuram.)

Common Order:

In all these Civil Revision Petitions, the Landlord is one and the same and he is the revision petitioner, challenging the order of the Learned Rent Controller/District Munsif, Ramanathapuram

returning the Rent Control Original Petitions on the ground saying that in view of the enactment of new Rent Control Act namely “The Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Tamilnadu Act 42/2017)” came in to force on 04.08.2017, the Rent Control Tribunal has no jurisdiction to try the cases.

2. The Learned Counsel for the Revision Petitioner would submit that the Revision Petitioner/Landlord has filed four separate R.C.O.P. Among the four cases, he sought for Eviction as against three tenants on the ground of own use and occupation under Section 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent Control) Act, (Act 18 of 1960). In one case (in the case of tenant Nagarajan) the Revision petitioner filed Eviction on the ground of willful default and own use and occupation under Sections 10(2)(i) and 10(3)(a)(iii) of the Old Rent Control Act.

3. All the above Rent Control original Petitions were returned by the learned Rent Controller by the impugned docket order dated 27.06.2018 by holding that in view of the enactment of “The Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Tamilnadu Act 42/2017), the Rent Control Tribunal Court has no jurisdiction to try the cases under the old Rent Control Act. Hence, these Civil Revision Petitions have been filed under Article 227 of the Constitution of India questioning the aforesaid return.

4. According to the learned counsel for the revision petitioner, the above said new Rent Control Act has not been notified and has not come into force. However, the learned Rent Controller without applying his mind and without ascertained the fact that the said Act has not been notified, has made the above “RETURN” as if the said Act has already been notified on 04.08.2017 and therefore the Court below has no jurisdiction to try the case.

5. In this regard the learned counsel for the Revision Petitioner would draw the attention of this Court to the Judgment of our High Court reported in 2017 (5) L.W 860, wherein it is held as follows:

“5. Thereafter, it was brought to my notice that the new Rent Control Act was tabled by the Tamil Nadu Legislative Assembly as Bill No.38 of 2017, assent of the Government received was on 04.08.2017 and even published in the Tamil Nadu Government Gazette on 07.08.2017, but there is some doubt about whether it has been brought into force by notification as adumbrated/mandated in Sub-section (3) of Section 1 of the New Rent Control Act. Though sub-section (3) is most relevant, I deem it appropriate to extract entire Section (1) of the new Rent Control Act, which reads as follows:

“1. Short title, extent and commencement.- (1) This Act may be called the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017.

(2) It shall extent to all urban areas of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different provisions of this Act:

Provided that the Government may, by notification exclude any area or units or class of buildings from the operation of this Act or any provision thereof.”

6. Therefore, by order dated 31.10.2017 (extended by order dated 07.11.2017), I kept the order in the aforesaid writ petition i.e., in W.P.No.7012 of 2005 in abeyance and requested the learned Government Pleader to ascertain the exact position regarding coming into force of the New Rent Control Act and place the same before the Court by way of an affidavit from the concerned Secretary to the Government.

7. Pursuant to my aforesaid request/direction, learned Government Pleader, has, today filed an

affidavit dated 10.11.2017 sworn to by the Principal Secretary to Government, Housing and Urban Development Dept. Secretariat, Chennai – 600 009, wherein it comes to light that though the passing of the Bill in the Legislative Assembly and publication in Government Gazette, as aforesaid, have happened, the Government is yet to notify/bring into force the new Rent Control Act as adumbrated/mandated in Section 1(3) of the new Act extracted supra.

8. The relevant paragraph of the aforesaid affidavit is Paragraph 3 and I deem it appropriate to extract the same. Paragraph 3 reads as follows:

“3. I further submit that the Government introduced a Bill namely “The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenancy Bill 2017 (LA Bill No.38 of 2017)” in the Legislative Assembly to repeal the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960) to register and regulate rental agreements between the landlords and tenants on mutually agreed terms and conditions specified in written rental agreements and the same was passed in the Legislative Assembly on 14.7.2017. The said Bill received the assent of the Hon'ble Governor on the 4th August 2017 and the same has been published in Part IV -Section 2 of the Tamil Nadu Government Gazette Extraordinary, dated 7.8.2017 as Tamil Nadu Act 42 of 2017. This department is taking necessary action to frame Rules under the said Act and then bring both said Act and the Rules into force simultaneously. The said Tamil Nadu Act 42 of 2017 aims to balance the rights and responsibilities of the landlords and the tenants and provide regulation of the rent as per the contract.”

(underlining made by me to supply emphasis)

9. In the light of the above stated position of the Government, which has been confirmed in a sworn affidavit, I deem it appropriate to recall my entire order made in W.P.No.7012 of 2005. I do so for the sake of absolute clarity and to avoid any difficulty in interpretation of my order.”

6. By quoting the above said judgment of our Hon'ble High Court, the learned counsel for the revision petitioner would strenuously contented that the new Rent Control Act namely “The Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Tamilnadu Act 42/2017)” has not been notified so far and the Government is taking necessary steps to frame Rules under the above said Act. Therefore, the learned counsel would submit by giving emphasis to Section 1(3) of the new Rent Control Act stating that the new act shall come into force in such date as the Government may, by notification, appoint and different dates may be appointed for different profession of this act. As per the aforesaid Sub-Section 3 of Section 1 of the new Act, the Government has not been notified the same and therefore the learned counsel would precisely state that the Act has not come into force as on today. Hence, the learned Rent Controller, Ramanathapuram is having jurisdiction to try the cases filed under the old Rent Control Act and the learned Rent Controller ought to have numbered the R.C.O.Ps filed by the revision petitioner, but it was returned without even knowing the correct position of law as on today. Hence, he sought for a direction before this Court to number the R.C.O.Ps.

7. This Court has carefully considered the submissions made by the learned counsel for the revision petitioner and also perused the Judgment of this Court reported in 2017 (5) L.W 860.

8. From the above, this Court would able to see that though the Government has enacted the new Rent Control Act namely “the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Tamilnadu Act 42/2017)” and the same was also published in part IV- Section 2 of the Tamilnadu Government Gazette extraordinary dated 07.08.2017 as Tamilnadu Act 42 of 2017, it has not been notified by the Government as on today for want of framing rules.

9. This Court also clarified the position as to whether the new Rent Control Act has come into force or not from the Learned Additional Advocate General Mr.Chellapandian, who assisted this Court in

letter and spirit and reported that the Government has not yet notified the new Rent Control Act as on today.

10. Therefore, it is made clear that Eviction Petitions or proceedings before the Rent Control Authorities could be filed by the Landlords/Landladies by invoking the provisions available under the old Rent Control Act namely the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. Therefore, in the present case on hand, the RETURN made by the learned Rent Controller, Ramanathapuram is not sustainable. The learned Rent Controller is supposed to know the present legal position with regard to the enactment of new Rent Control Act or otherwise, the learned Rent Controller ought to have clarified the present position from the Learned Government Pleader attached with the District Court.

11. In view of the discussion above, these Civil Revision Petitions are allowed and the return made by the learned District Munsif-cum-Rent Controller, Ramanathapuram, vide impugned docket order dated 27.06.2018 is liable to be set-aside, accordingly set aside. Further, the Learned Rent Controller/District Munsif Court, Ramanathapuram is directed to number the above four R.C.O.Ps filed by the revision petitioner and to proceed with the same further in accordance with law.

12. In the interest of justice and in order to avoid further returns like the present cases by the learned Rent Control Authorities in all over Tamilnadu, this Court deems it proper and necessary to issue the following directions:

(a) All the Landlords/Landladies are entitled to file/initiate Rent Control proceedings by invoking old Rent Control Act namely the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 until the new Act is notified by the Government;

(b) All the Rent Control Original Authorities/Appellate Authorities/Court of Small Causes in Chennai City is concerned are hereby strictly directed to number all the Rent Control Original Petitions and Rent Control Appeals filed under the old Act i.e the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 till the new Act viz; the Tamilnadu Regulations of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Tamilnadu Act 42/2017) is notified by the Government and;

(c) The Registry of this Court is directed to circulate this order to all the Rent Control Original Authorities and Appellate Authorities in Tamilnadu through concerned District Courts forthwith.