

Anandan Vs. Lingam

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Court : Chennai

Decided On : Feb-22-2013

Judge : T.Mathivanan

Appellant : Anandan

Respondent : Lingam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

22. 02.2013 CORAM: THE HON'BLE MR.JUSTICE T.MATHIVANAN CRP.(NPD). Nos.2057 and 766 of 2005 Anandan Petitioner in both revision petitions Vs. 1.Lingam 2.Thiyagarajan 3.Bhaskar Respondents in both revision petitions Prayer (C.R.P.(NPD) No.2057 of 2005) : This civil revision petition is filed under Section 6(B) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, against the Order dated 20.07.2004 and made in C.T.P.No.4 of 2000, on the file of the Presiding Officer (Special Deputy Collector), Revenue Court, Cuddalore. Prayer (C.R.P.(NPD) No.766 of 2005) : This civil revision petition is filed under Section 6(B) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, against the Order dated 22.12.2004 and made in C.T.P.No.4 of 2000, on the file of the Presiding Officer (Special Deputy Collector), Revenue Court, Cuddalore. For Petitioner : Mr.A.Muthukumar (in both revisions) For Respondents : Mr.A.Babu (in both revisions) C O M M O N O R D E R The Orders dated 20.07.2004 and 22.12.2004 respectively and made in C.T.P.No.4 of 2000, on the file of the Presiding Officer (Special Deputy Collector), Revenue Court, Cuddalore are under challenge in the

memorandums of civil revision in C.R.P.(NPD) Nos.2057 of 2005 and 766 of 2005.

2. The subject matter in both the civil revisions is one and the same. The parties to the revision petitions also one and the same. Since the issue which is involved in both the civil revisions is common in nature, both the civil revision petitions have been clubbed together, heard jointly and disposed of in this common Order.

3. The respondents herein are the petitioners in the petition in C.T.P.No.4 of 2000. Whereas, the revision petitioner herein is the respondent therein.

4. The revision petitioner herein is the cultivating tenant under the first respondent in respect of the land measuring 0.56 Cents, comprised in Survey No.55/7, Patta No.268 at Sirunaiperugal Village, Kancheepuram Taluk. The lease is for a fixed rent of nine bags of Paddy.

5. Thereafter, it appears that the first respondent herein being the landlord had sold the land to the respondents 2 and 3.

6. It is alleged that the revision petitioner had become a willful defaulter in payment of rent. Since he had failed to pay the arrears of rent even after repeated demands, the respondents 1 to 3 had filed the petition in C.T.P.No.4 of 2000, on the file of the Presiding Officer (Special Deputy Collector), Revenue Court, Cuddalore, claiming the arrears of rent at the extent of 63 bags of Paddy for seven Faslis i.e., from Fasli 1403 to Fasli 1409. At the relevant period, one bag of Paddy was valued at Rs.400/-. For 63 bags of Paddy, the value has been calculated at Rs.25,200/-.

7. It is manifested from the records that after evaluating the evidences both oral and documentary and after hearing both sides, the Revenue Court had passed an interim Order on 20.07.2004 directing the revision petitioner to pay a sum of Rs.9,715/- in four installments to the first respondent and another sum of Rs.9,315/- to the respondents 2 and 3 in four installments as detailed here under: The particulars of the rent payable to the first petitioner from Fasli 1403 to Fasli 1406: ----- Installments Amount to be paid Dates within which amount to be paid

-----	First	Installment	2,428-00
23.08.2004	Second	Installment	2,429-00
23.10.2004	Fourth	Installment	2,429-00
			23.11.2004

----- The particulars of the rent payable to the second and third petitioners from Fasli 1407 to Fasli 1409:

-----	Installments	Amount to be paid
Dates	within which	amount to be paid
-----	First	Installment

23.08.2004	Second	Installment	2,329-00	23.09.2004	Third	Installment	2,329-00
23.10.2004	Fourth	Installment	2,329-00				23.11.2004

----- 8. Being aggrieved by the above Order dated 20.07.2004, the revision petitioner has preferred the revision petition in C.R.P.(NPD) No.2057 of 2005 before this Court.

9. In the interregnum, since the revision petitioner had failed to comply with the Order of the Revenue Court in payment of total rent of Rs.19,030/- on or before 23.11.2004, the above petition in C.T.P.No.4 of 2000 came up for final hearing and on considering the submissions made on behalf of both sides and since the revision petitioner had failed to comply with the interim Order on or before 23.11.2004, the Revenue Court had passed a final Order on 22.12.2004 and thereby the revision petitioner was ordered to be evicted from the tenanted land.

10. Impugning the final Order dated 22.12.2004 and made in C.P.T.No.4 of 2000, the revision petitioner has preferred another revision petition in C.R.P.(NPD) No.766 of 2005 before this Court.

11. Heard Mr.A.Muthukumar, learned counsel appearing for the revision petitioner and Mr.A.Babu, learned counsel appearing for the respondents.

12. Mr.A.Muthukumar, learned counsel appearing for the revision petitioner has submitted that the respondents are entitled to claim the rent only for a period of three years prior to the filing of the petition in C.T.P.No.4 of 2000 as the claim in respect of the arrears of rent prior to the period of three years has been barred by limitation.

13. He has also argued that the revenue divisional officer, without knowing the intrinsic value of the Proviso to Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 had ordered to pay the arrears of rent for seven Fasli years and since the impugned Order was in total negation of the proviso to Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, it is deserved to be set aside as the Special Deputy Collector was not empowered to pass such an Order.

14. He has also argued that if at all, the respondents are entitled to claim the arrears of rent, they could claim only for a period of three years prior to the filing of the petition as the arrears of rent prior to the period of three years had become barred by limitation.

15. He has also drawn the attention of this Court to the Proviso to Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955. It appears that the Proviso to Section 3(4)(b) has been inserted by the Tamil Nadu Act 21 of 1972. The Proviso to Section 3(4)(b) of the Act has been extracted as under: Provided that the Revenue Divisional Officer shall not direct the cultivating tenant to deposit such arrears of rent as have become time barred under any law of limitation for the time being in force.

16. In support of his contention, Mr.A.Muthukumar has placed reliance upon the following decisions: i. M.Palani Gounder vs. S.P.Thangavel Gounder, reported in 1988 (1) LW 499.ii. A.K.Kothandarama Rao vs. Venkatachala Udayar, reported in 1994 (2) MLJ 70.and iii. Chinna Pillai vs. A.Noorjahan and others, reported in (2007) 2 MLJ 758.

17. In the first decision viz., M.Palani Gounder vs. S.P.Thangavel Gounder, reported in 1988 (1) LW 499.the learned single Judge of this Court has held that: It is clear from the above proviso that the Revenue Court is not empowered to direct the tenant to deposit the time barred arrears of rent. In view of the specific Proviso inserted in the very same Act, no reliance could be placed on the earlier decision prior to the enactment of Act 21 of 1972. Hence, in view of the Proviso the order passed by the Revenue Court directing the revision petitioner-tenant to pay arrears from 1977 till 1985 is not legally tenable.

18. In the second decision viz., A.K.Kothandarama Rao vs. Venkatachala Udayar, reported in 1994 (2) MLJ 70, another learned single Judge of this Court has held that: In the instant case, to make it clear that for the purpose of Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, one should not take into account the arrears which fell due beyond the period of three years, this proviso has been inserted. When in a civil suit, a landlord cannot realise the rent for a period beyond three years because of the operation of the provisions of the new Limitation Act, he cannot achieve that purpose in a petition for eviction. So, this proviso cannot be construed as offending Article 14 of the Constitution of India. Learned counsel would submit that there is discrimination between tenants who are in arrears for long period and those in arrears for short period. No such discrimination can be read into that proviso. In fact, the proviso would bring it in tune with a civil claim for arrears of rent inasmuch as a period of three years is prescribed for a civil claim and this proviso limits the period of arrears of rent to three years. The learned single Judge has also made reference to the decision in Palaniswamy v. Kandappa Gowndar, reported in AIR 196 Madras 96. In this case, the following question was raised before the Division Bench of this Court: Whether a revenue Court has jurisdiction in an application for eviction by a landlord to direct a cultivating tenant under Section 3(4)(b) of the Madras Cultivating Tenants Protection Act, 1955, to deposit the entire arrears of rent, irrespective of the fact that part of it may be time-barred and cannot be recovered in a suit for arrears of rent in a civil court?" For this question, in Paragraph No.10, the Division Bench of this Court has held that: We are of the opinion that the Revenue Court has jurisdiction to direct the cultivating tenant to pay the entire arrears of rent in order to avoid being evicted from his holding. But, as already pointed out, cl.(b) of subsection (4) of Section 3 of the Act enables the Revenue Divisional Officer, in the exercise of his judicial discretion to allow a cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent, payable under the Act inclusive of such costs as he may direct, and if the cultivating tenant deposits the same as directed, he shall be deemed to have paid the rent under subsection (3)(b) of Section 3 of the Act. The exercise of judicial discretion is only as regards allowing the cultivating tenant reasonable time to make the deposit of

arrears of rent and not as regards the extent or quantum of arrears." The learned single Judge has also referred the decision in Vasudeva Udpa vs. Krishna Udpa, reported in AIR 192.Madras 418. In this case, it is observed that: If in spite of it the Revenue Court thinks it fit to exercise its discretion even in the case of such a tenant, it is but reasonable that he should be asked to pay the entire arrears of rent which he would have to pay to avoid eviction on the ground of non-payment of rent." In this connection, the learned single Judge of this Court has observed that only subsequent to these rulings, Tamil Nadu Act 21 of 1972 was passed and the aforesaid proviso was inserted to Section 3(4)(b) of the Act. In Paragraph No.6, the learned single Judge has observed that: In Palani Gounder vs. S.P.Thangavel Gounder, 1988 (1) Mad LW 499.K. M. Natarajan, J.

has considered the effect of the proviso inserted to Section 3(4)(b) of the Act and had held that the Revenue Court is not empowered to direct the tenant to deposit the time barred arrears of rent. The Division Bench ruling of this Court supra was rendered prior to the passing of the Tamil Nadu Act 21 of 1972. The ruling of K. M. Natarajan, J, was rendered, after the proviso was inserted in the Act and it holds the field.

19. Based on the above decision viz., A.K.Kothandarama Rao vs. Venkatachala Udayar, reported in 1994 (2) MLJ 70.this Court in Chinna Pillai vs. A.Noorjahan and others, reported in (2007) 2 MLJ 758.has held that: In view of proviso to Section 3(4)(b) of the Act and the provisions of the Limitation Act, the Revenue court ought not to have directed the revision petitioner/tenant to pay time barred arrears of rent i.e. from 1404 to 1406 Faslis. The revision petitioner/tenant is liable to pay arrears of rent only for Faslis 1407 to 1409.

20. On the other hand, Mr.A.Babu, learned counsel for the respondents has argued that the argument advanced by Mr.A.Muthukumar, learned counsel for the revision petitioner/tenant that the rent, which is due for the period beyond three years preceding the petition had been barred by limitation was absolutely wrong and that the provisions of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 alone would be made applicable and not the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955.

21. He has also sought the assistance of the provisions of Sections 4, 5 and 7 of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990. Sections 4 and 5 of the Act should be read together. Sections 4 and 5 of the Act are extracted as under: Option for payment of arrears of rent:

4. (1) Any cultivating tenant who is in arrears of rent payable to the landlord for the fasli year ending with the 30th day of June 1989 and for any previous fasli year (hereinafter referred to as the said years) and outstanding on the date of the publication of this Act shall, within two months from the date of such publication, intimate his option in writing to the competent authority: (i) to pay the current rent and the one-fourth of the said arrears of rent in the manner specified in Part II; or (ii) to pay the current rent and the one-third of the said arrears of rent in the manner specified in Part III, of this Act for availing relief under this Act from the payment of the said arrears of rent. (2) The option given under sub-section (1) shall be final. Relief for payment of arrears of rent:

5. (1) All arrears of rent payable by a cultivating tenant to the landlord for the said years and outstanding on the date of the publication of this Act, shall be deemed to be discharged, whether or not a decree or order has been obtained therefore, if such cultivating tenant pays to the landlord or deposits in the court or before the competent authority, to the account of the landlord in the manner specified in sub-sections (2) and (3)- (a) the current rent; and (b) the one-fourth of the total amount or arrears of rent for the said years without interest (hereinafter referred to as the one-fourth of the arrears of rent).

22. In order to digest the languages of Section 4(1) of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990, explicitly the definition for the following expressions are very much relevant: As defined under Section 3(a) of the said Act, the term 'competent authority' means: (i) in relation to a cultivating tenant as defined in the Tenants Protection Act, the Revenue Divisional Officer in whose jurisdiction the holding in question or part thereof is situate, or an officer of the Revenue Department not lower in rank than the Revenue Divisional Officer empowered by the State Government in this behalf; and (ii) in relation to a cultivating tenant as defined in the Public Trusts Act, the authorised officer.

(d) 'current rent' means the whole of the rent due for the fasli year commencing on the 1st day of July 1989 and ending with the 30th day of June 1990; (e) 'date of the publication of this Act' means the date of the publication of this Act in the Tamil Nadu Government Gazette; (i) 'Tenants Protection Act' means the Tamil Nadu Cultivating Tenants Protection Act, 1955 Tamil Nadu Act XXV of 1955.

23. As envisaged under Section 4(1) of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990, any cultivating tenant: (a) who is in arrears of rent payable to the landlord for the fasli year ending with the 30th day of June 1989; and (b) for any previous fasli year; and (c) outstanding on the date of the publication of this Act (Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990), (d) shall intimate his option in writing to the competent authority, within two months from the date of such publication of the Act; (i) to pay the current rent and the one-fourth of the said arrears of rent in the manner specified in Part II; or (ii) to pay the current rent and the one-third of the said arrears of rent in the manner specified in Part III, of this Act for availing relief under this Act from the payment of the said arrears of rent.

24. As contemplated under sub-section (ii) to Section 4 of Act, once the option is given under sub-section (1), it shall be final.

25. The Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 is an Act to provide relief to the cultivating tenants in respect of certain arrears of rent. The objects and reasons for the enactment of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 are as under: WHEREAS by the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1989 (Tamil Nadu Act 41 of 1989), cultivating tenants in the State were given protection from eviction on the ground of arrears of rent; AND WHEREAS the said Act was in force upto and inclusive of the 31st day of March 1990; AND WHEREAS after the expiration of the said Act, it will be difficult for the cultivating tenants to pay the entire arrears of rent; AND WHEREAS due to default in the payment of arrears of rent, landlords may take action against cultivating tenants for eviction and for recovery of arrears of rent; AND WHEREAS in the interests of the general public, cultivating tenants should, at the present time, be spared the distractions and expenditure involved in

such action in order that the maximum possible advantage may result to the State in the matter of production of food crops; AND WHEREAS it is considered necessary, as part of agrarian reform, to give relief to cultivating tenants from the heavy burden of discharging arrears of rent, on certain conditions specified; 26. The Act viz., the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 was enacted by the Legislative Assembly of the State of Tamil Nadu.

27. It is obvious to note here that a question may arise as to what necessitated the Legislators to enact an Act under the name of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990, when already an Act called the Tamil Nadu Cultivating Tenants Protection Act, 1955 is in existence and in force? 28. By way of answering the above question, the Legislators in the opening portion of the above Act have stated that whereas the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1989 (Tamil Nadu Act 41 of 1989), which was given protection to the tenants from eviction on the ground of arrears of rent was in force upto and inclusive of the 31st day of March 1990 and in the interests of the general public, cultivating tenants should, at the present time, be spared the distractions and expenditure involved in such action in order that the maximum possible advantage may result to the State in the matter of production of food crops and as a part of agrarian reform, to give relief to cultivating tenants from the heavy burden of discharging arrears of rent, the above said Act has been enacted.

29. It may be more significant to note here that the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 does not have any overriding effect on the Tamil Nadu Cultivating Tenants Protection Act, 1955.

30. By way of enactment of the above Act, the Tamil Nadu Cultivating Tenants Protection Act, 1955 has not been superseded. But, still the Tamil Nadu Cultivating Tenants Protection Act, 1955 is in force. But, the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 is construed to be the moratorium law, which was enacted by the Legislators in the interests of general public to give certain relief to the cultivating tenants for the present.

31. As defined earlier, the date of publication of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 is 10.10.1990, which came into force on

30.04.1991.

32. This Act is applicable only to the cultivating tenant, who is in arrears of rent payable to the landlord for the fasli year ending with the 30th day of June 1989 and for any previous fasli year and outstanding on the date of the publication of this Act. Therefore, the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 could not be made applicable to the arrears of rent payable to the landlord for the fasli year after 30th day of June 1989.

33. For the reasons as afore-stated, the Special Deputy Collector (Revenue Court) is not empowered to direct the revision petitioner to pay the time-barred arrears of rent in view of the specific proviso inserted in the very same Act to Section 3(4)(b).

34. That expression itself shows that the section refers only to the amount due to the landlord on the date of the publication of the Act after giving credit to the amounts already paid to him. Further, Clause (2) of Sub-section (1) expressly refers to said amount as 'said arrears of rent'. Hence, the section contemplates only the amount due and payable on the date of publication of the Act. Section 5 of the Act no doubt uses the expression "total amount of arrears of rent". That expression itself shows that it refers to the amount remaining due after giving credit to the payments already made. Learned Counsel contends that the expression 'total amount of arrears of rent' would mean total amount of rent fixed between the parties. That contention cannot be accepted. When the Section uses the term 'arrears', it would automatically mean that the amount payable is only rent due after taking into account the amounts already paid. This proposition has been well expounded by the learned single Judge of this Court in *M.Palanichamy vs. Muthiah Pillai*, reported in (1992) 2 MLJ 523.

35. However, the Special Deputy Collector (Revenue Court) has miserably failed to take note of the proviso to Section 3(4)(b), which appears to have been inserted by Act XXI of 1972. Therefore, the following decisions viz., i. *Kathan Muthiriyar vs. Gopal Rathinam*, reported in 1994 (1) MLJ 373.ii. *Marudaveeran Moopan vs. U.K.Krishnan*, reported in 1994 (1) MLJ 518.iii. *Muniappa Reddiar vs. Ganesa Reddiar and another*, reported in 1994 (1) MLJ 494.iv. *Sivagnanam vs. Natesan Chettiar*, reported in 1995 (1) MLJ 393.v. *Maruthiah Nattar vs. Khan*, reported in

1996 (2) MLJ 189.vi. Swamimalai Devasthanam, Swamimalai vs. T.Marimuthu and others, reported in 1998 (2) MLJ 1.and vii. B.Anraj Pipada vs. V.Umayal, reported in 1998 (2) MLJ 524.are not made applicable to the instant case on hand.

36. As observed in M.Palani Gounder vs. S.P.Thangavel Gounder, reported in 1988 (1) LW 499.in view of the proviso, which has been inserted by Act XXI of 1972 to Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, the Revenue Court should not direct the revision petitioner (cultivating tenant) to pay such arrears of rent as has become time barred.

37. In the petition in C.T.P.No.4 of 2000, the respondents have claimed totally 63 bags of Paddy for seven fasli years commencing from 1403 to 1409. The fasli years 1403 to 1409 are relating to the Christian A.D., as detailed below: FASLI YEAR CHRISTIAN A.D.

1993. 140

1405. 199

1996. 140

1408. 199

1999. 38. The Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 is also not applicable to the claim as the claim falls in respect of the fasli year 1403 to 1409 i.e., for the years from 1993 to 1999 for the simple reason that as contemplated under Section 4(1) of the Act it is made applicable for the arrears of rent for the fasli year ending with 30th day of June 1989 and also for the outstanding arrears of rent as on the date of the publication of the Act i.e., as on 10.10.1990.

39. Since this claim in respect of the rent is relating to the years from 1993 to 1999, the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 would not be made applicable and therefore the arguments made by Mr.A.Babu, learned counsel for the respondents are discarded.

40. For the reasons stated above, the revision petitioner is liable to pay the arrears of rent only for the Fasli years 1407 to 1409 and not beyond that.

41. Having regard to the related facts and circumstances, this Court finds that the above civil revision petitions are deserved to be allowed and the impugned Orders are modified to the effect that the revision petitioner/tenant shall have to pay the arrears of rent for the Fasli years 1407 to 1409.

42. It appears from the records that while granting stay in C.M.P.No.5714 of 2005 in C.R.P(NPD) No.766 of 2005, this Court has imposed a condition on the revision petitioner to deposit a sum of Rs.3,000/- to the credit of the petition in C.T.P.No.4 of 2000, on the file of the Special Deputy Collector, Revenue Court, Cuddalore.

43. It is brought to the notice of this Court that the conditional Order has been complied with and now the above said Rs.3,000/- is lying in the credit of C.T.P.No.4 of 2000, on the file of the Revenue Court.

44. Therefore, deducting this amount, the revision petitioner shall have to deposit the remaining balance as afore-stated.

45. In the result, these civil revision petitions are allowed and the impugned Orders dated 20.07.2004 and 22.12.2004, on the file of the Presiding Officer (Special Deputy Collector), Revenue Court, Cuddalore, are modified. Consequently, connected miscellaneous petitions are closed. No costs. 22.02.2013 Index : Yes/No Internet : Yes/No krk To: The Special Deputy Collector, Revenue Court, Cuddalore. T.MATHIVANAN, J.

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