



CRP NPD Nos.3056, 3061, 3062,
3063, 3067 and 3094 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.01.2022	Delivered on 04.02.2022
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (NPD) Nos.3056, 3061, 3062,
3063, 3067 and 3094 of 2021

CRP.No.3056 of 2021:

S. Muruganandam .. Petitioner

Vs.

J.Joseph .. Respondent

CRP.No.3061 of 2021:

Peter Daniel .. Petitioner

Vs.

1. Siva Aravindan
Sole Proprietor,
M/s.A.G.Property Management and
Facility Arrangement Company,
No.253, Pillaiyar Kovil Street,
Vaiyavur Post, Bharathi Nagar,
Vaiyavur, Kanchipuram 631 561.

2. Mrs.V.Shanthi .. Respondents



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CRP.No.3062 of 2021:

Dr.Rajeshkumar

.. Petitioner

Vs.

Venkatesh Sangsani
Prop. M/s. Namma kadai,
Shop No.19, Commercial Complex,
Secretariat Colony, O/d No.71,
New No.161, Medavakkam Tank Road,
Kellys, Chennai 600 010.

.. Respondent

CRP.No.3063 of 2021:

1. Neha S. Shukla

2. Neeta M.Shukla

.. Petitioners

Vs.

V.Chandra Sekar

.. Respondent

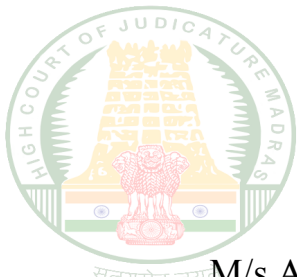
CRP.No.3067 of 2021:

Peter Daniel

.. Petitioner

Vs.

1. Siva Aravindan
Sole Proprietor,



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M/s.A.G.Property Management and
Facility Arrangement Company,
No.253, Pillaiyar Kovil Street,
Vaiyavur Post, Bharathi Nagar,
Vaiyavur, Kanchipuram 631 561.

2. Mr.G.Elangovan

.. Respondents

CRP.No.3094 of 2021:

S.Syed Ibrahim

.. Petitioner

Vs.

Subash Chakkarawarthy

.. Respondent

PRAYER: Civil Revision Petitions filed under under Article 227 of the
Constitution of India,

in CRP 3056/2021: praying to set aside the order and decree dated
29.09.2021 passed in R.L.T.O.P. Sr. No.5061 of 2021 on the file of the X
Court of Small Causes Chennai/Rent Court (FAC), and consequently direct
the Rent Court to number the RLTOP and decide the same on merits.

in CRP 3061/2021: praying to set aside the order and decree dated
22.11.2021 passed in R.L.T.O.P. Sr. No.4470 of 2021 on the file of the X
Court of Small Causes Chennai/Rent Court, and consequently direct the
Rent Court to number the RLTOP and decide the same on merits.



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in CRP 3062/2021: praying to set aside the order and decree dated 16.11.2021 passed in R.L.T.O.P. Sr. No.5697 of 2021 on the file of the X Court of Small Causes Chennai/Rent Court, and consequently direct the Rent Court to number the RLTOP and decide the same on merits.

in CRP 3063/2021: praying to set aside the order and decree dated 16.11.2021 passed in R.L.T.O.P. Sr. No.5766 of 2021 on the file of the X Court of Small Causes Chennai/Rent Court, and consequently direct the Rent Court to number the RLTOP and decide the same on merits.

in CRP 3067/2021: praying to set aside the order and decree dated 22.11.2021 passed in R.L.T.O.P. Sr. No.4471 of 2021 on the file of the X Court of Small Causes Chennai/Rent Court, and consequently direct the Rent Court to number the RLTOP and decide the same on merits.

in CRP 3094/2021: praying to set aside the order and decree dated 16.11.2021 passed in R.L.T.O.P. Sr. No.5241 of 2021 on the file of the X Court of Small Causes Chennai/Rent Court, and consequently direct the Rent Court to number the RLTOP and decide the same on merits.

For Petitioners : Mr. P.B.Balaji
(in all the petitions)



COMMON ORDER

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Challenge in these Civil Revision Petitions is to the orders of the Rent Court passed in various Original Petitions filed under the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, hereinafter referred to as “the New Act” for the sake of brevity and convenience, rejecting the said original petitions on the ground of maintainability.

2. The only reason for rejection of these petitions even at the stage of numbering is the absence of a registered Tenancy Agreement, which according to the Rent Court, is mandatory for the purposes of invoking the jurisdiction of the Rent Court under the New Act. Before dealing with the individual cases, it will be advantageous to refer to the object and the provisions of the New Act, which are germane for our purposes.

3. The object of the enactment is to establish a frame work for the regulation of rent and to balance the rights and responsibilities of



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landlords and tenants and to provide fast adjudication process for resolution of disputes, and matters connected therewith or incidental thereto.

Section 2(a) defines an “Agreement” or a “Tenancy Agreement” as follows:

Section 2(a): “agreement” or “tenancy agreement” means the written agreement executed by the landlord and the tenant as required under this Act and shall include a sub-tenancy agreement and sub-lease agreement;

Section 2(c) defines a “landlord” as follows:

Section 2 (c): “landlord” means a person, who for the time being is receiving, or is entitled to receive, the rent of any premises, on his own account, if the premises were let to a tenant, and shall include his successor-in-interest:

Provided that where a person is receiving rent for any premises is entitled to so receive, on account of, or on behalf of, or for the benefit of, any other person who cannot enter into a contract (such as minor, person with unsound mind, etc.), whether as a trustee, guardian or receiver, then, the said trustee, guardian or receiver shall also be a landlord for the purposes of this Act.



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Section 2(n) defines a “tenant” as follows:

Section 2 (n): “tenant” means a person by whom or on whose account or behalf the rent of any premises is, or, but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

Section 4 deals with a “Tenancy Agreement”, it reads as follows:

Section 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



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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



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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.

Section 4-A deals with effect of non registration of a Tenancy Agreement and it reads as follow

Section 4-A: Effect of non-registration

No document required to be registered under sub-section (3) of Section 4 shall, unless it has been registered,-

- (a) Affect any immovable property comprised therein, or*
- (b) Confer any power to adopt, or*
- (c) be received in evidence of any*



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transaction affecting such property or conferring any right.

Section 5 deals with Period of tenancy and it reads as follows:

Section 5: Period of tenancy

(1) All tenancies entered into after the commencement of this Act shall be for a period as agreed between the landlord and the tenant and as specified in the tenancy agreement.

(2) The tenant may approach the landlord for renewal or extension of the tenancy, within the period agreed to in the tenancy agreement, prior to the end of tenancy period and if agreeable to the landlord may enter into a new tenancy agreement with the landlord on mutually agreed terms and conditions.

(3) If a tenancy for a fixed term ends and has not been renewed or the premises have not been vacated by the tenant and where the landlord has not demanded possession of vacant premises at the end of such tenancy, the tenancy shall be deemed to be renewed on a month-to-month basis on the same terms and conditions as were in the expired tenancy agreement, for a maximum period of six months.



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Section 21 of the Act provides for grounds of repossession/eviction available to the landlord, the same reads as follows:

Section 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-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):*



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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;

(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



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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;

(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



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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.

Section 40 bars jurisdiction of Civil Courts in respect of certain matters and it reads as follows:

Section 40: Jurisdiction of Civil Courts barred in respect of certain matters

(1) Save as otherwise provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the provisions of this Act.

(2) The jurisdiction of the Rent Court shall be limited to tenancy agreement submitted to it as per First Schedule and the question of title and ownership of premises shall be beyond its jurisdiction.



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4. Though the definition of landlord and tenant under the New Act, is much wider and almost similar to the predecessor enactment, viz. The Tamilnadu Buildings (Lease and Rent Control) Act, 1960, the stipulations in Section 4(1) and 4(2) of the Act, relating to registration of tenancy agreements do have the effect of narrowing down the definitions and bringing only certain classes of tenants within the ambit of the New Act, while excluding the others. Sub Section (1) of Section 4 bars any person from letting out or taking on rent any premises except by an agreement in writing. Therefore, an oral tenancy is not recognised by the New Act. It should be remembered that Section 107 of the Transfer of Property Act, enables creation of an oral month-to-month tenancy, if the period of tenancy is less than a year.

5. Sub Section (2) of Section 4 imposes an obligation on the parties to an existing oral lease agreement to enter into an agreement evidencing the terms of the tenancy within a period of 575 days from the date of the commencement of this Act. Proviso to Sub Section 2 enables

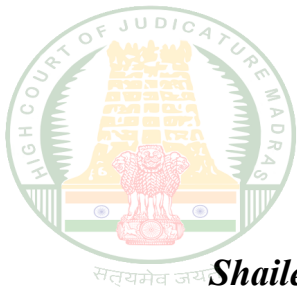


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either the landlord or the tenant to seek termination of tenancy under Clause (a) of Sub Section 2 of Section 21 in the event of failure on the part of any one of the parties to comply with the provisions of Sub Section 2.

6. Sub Section (3), makes it obligatory on the part of the parties to an agreement to have the agreement registered with the Rent Authority irrespective of fact whether the agreement was entered into before or after the commencement of the Act. Sub Sections (4) and (5) provide for acceptance and rejection of the agreement by the Rent Authority and Sub Section (6) provides for uploading the name of the parties and the details regarding the tenancy in the website. Sub Section (3) of Section 5 provides for renewal of a tenancy for a maximum period of six months upon the expiry of the period specified in the tenancy agreement. Section 21 (2) (a) makes the failure to enter into an agreement under Sub Section (2) of Section 4 as a ground for repossession by the landlord.

7. The Principles of interpretation of statute have been succinctly set out by the Hon'ble Supreme Court in *Indore Development Authority v.*



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Shailendra, reported in (2018) 3 SCC 412, wherein, the Hon'ble Supreme Court after referring to several of its earlier decisions concluded that the Court shall take it, that what the legislation wanted has been stated in the provision. The Hon'ble Supreme Court has also warned_Courts against an attempt to aid the defective phrasing or to recast, rewrite or re frame the provision. In doing so, the Hon'ble Supreme Court has observed as follows:

“44. This Court in Nalinakhya Bysack v. Shyamsunder Halder AIR 1953 SC 148, State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772, State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr., (1998) 3 SCC 234, Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744, CST v. East India Cotton Mfg. Co. Ltd., (1981) 3 SCC 531, Paul Enterprises and Ors. v. Rajib Chatterjee & Co. and Ors. AIR 2009 SC 187, Sakshi v. Union of India, (2004) 5 SCC 518, CIT v. Tata Agencies, (2007) 6 SCC 429, Sri Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459, S.P. Gupta v. Union of India, 1981 Supp Scc 87, Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71, P.K. Unni v. Nirmala Industries, (1990) 2 SCC 378, Crawford v.



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Spooner, (1846) SCC Online PC 7, Royal Trust Co. v. Minister of Finance of the Province of British Columbia, AIR 1921 PC 184, Padma Sundara Rao Ors. v. State of T.N. and Ors., (2002) 3 SCC 533 has observed that what legislation wanted has been stated in the provision. The court cannot give extended meaning to the expression. It is not open to the Court to aid defective phrasing of the Act or to make up for the deficiencies. It is not open to the Court to recast, rewrite, or re frame the provision. The court cannot assume omission and add or amend words. Plain and unambiguous construction has to be given without addition and substitution of the words. The temptation of substituting words by explaining what it thought legislation is endeavouring is to be discouraged. Court has to consider what has been said and what has not been said. It is wrong and dangerous to proceed by substituting some other words for the words of the statute. When literal reading produces an intelligible result it is not open to read words or add words to statute. Making any generous addition to the language of the Act would not be a construction of the statutory provision; rather, would be an amendment thereof. While interpreting the provision the Court only interprets the law. The intention of the legislation must be found by the words used by the legislature itself. The legislative casus



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omissus cannot be supplied by judicial interpretative process. When language of the provision is clear, there is no scope for reading something into it. The scenario that thus emerges in relation to an interpretation of a statute can be explained as follows. It is a salutary principle that it is not open to the Court to add or substitute some words in place of the words of the statute. The court cannot reframe the legislation. The court cannot add to, or amend, the provisions; neither can the expressions used in the statute be treated as fungible.”

8. Let us now examine the effect of the provisions of the New Act, in the light of the above principles of statutory interpretation. The definition of tenant under Section 2(n) includes a person who continuous in possession after termination of the tenancy, whether before or after the commencement of the Act. Sub Section (3) of Section 5 restricts renewal of tenancy which has expired to a maximum period of six months. Section 21(2) (a) makes failure on the part of the tenant or the landlord to enter into a written agreement of tenancy a ground for repossession by the landlord. Section 21(2) (a) does not specify as to the reason for failure to enter into



an agreement in writing.
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9. It gives the right to the landlord to sue for repossession dehors the fact that the landlord may be at fault and he may be the reason for non-renewal or failure to enter into an agreement in writing. It is not open to a tenant to contend that despite his request, the landlord did not execute an agreement in writing and therefore, the landlord cannot invoke Section 21(2)(a) seeking repossession. This anomaly or the deficiency throws up several new challenges, before the Rent Courts. Various situations emerge under which the Rent Court has to consider the effect of absence of an agreement in writing.

10. The Scheme of the New Act requires tenancies to be in writing or to be converted into writing and in both cases to be registered as specified under the Act. Under the scheme of the Act, the tenancies can be split into two kinds, one the tenancies that were created prior to the enactment and tenancies that were created after the enactment. As far as the tenancies that were created after the enactment, the parties have no



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other choice but to enter into a written agreement and have it registered as provided under the Act. As regards the tenancies which has been entered into prior to the enactment, the parties are required to reduce the terms of the tenancy into writing and have it registered or if the tenancy is in writing to have it registered under the new Act. Therefore, the Act in effect does away with oral tenancy.

Section 4(1) of the new Act has a non obstante clause, inasmuch as it reads:

*“Notwithstanding anything contained in this Act or
any other law for the time being in force”*

Therefore, in order that a tenancy could be validly created, it has to comply with Section 4 of the New Act. Under the Transfer of Property Act or under the predecessor enactment namely the Tamilnadu Buildings (Lease and Rent Control) Act, a tenant who continues in possession after the expiry of the lease is treated as a tenant holding over and the protection afforded under the Tamilnadu Buildings (Lease and Rent Control) Act, was made available to such tenant also. In view of Sub Section 3 of Section 5 of the New Act, such protection would be available to the tenant only for a period of six months and if the tenant does not enter into an agreement in writing



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as contemplated under Section 4(1) or (2), he would not be a tenant within the meaning of the New Act.

11. The next question that would arise is as to what is the status of such a tenant after the expiry of the six months period, whether the landlord could seek eviction of such a tenant under Section 21(2)(a) of the New Act. Proviso to Sub Section 2 of Section 4 enables the landlord to seek eviction of a tenant on the ground of failure to enter into an agreement only in respect of cases falling under Sub Section 2 of Section 4 and not otherwise. Therefore, it can be said that there is a vacuum or a lacuna created by the Act in respect of eviction of certain classes of tenants and a considerable doubt is also raised as to the remedy of the landlord to seek eviction of such tenants.

12. In the light of the non obstante clause in sub section (1) of Section 4, whether a tenant who continues in possession after six months after expiry of the lease under Sub Section (3) of Section 5 could be termed as a tenant holding over or as a trespasser also looms large. The landlord



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must have a remedy. The question that would arise is what is the remedy that is available to the landlord whether he could terminate the tenancy by issuing a notice of termination under Section 106 of the Transfer of Property Act and seek ejectment or he should sue for recovery of possession treating the tenant as a trespasser. Various contingencies like the one above would crop up and the Rent Courts which are of very limited jurisdiction would be called upon to decide these questions also.

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;
- iii. Written tenancies created prior to the New Act and the period expired after the commencement of the Act;



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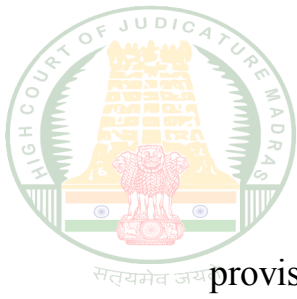
iv. Written tenancies entered after the commencement of the New Act not registered but subsisting;

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.

14. The above are not exhaustive but are various situations that may confront to the Rent Courts, in view of the provisions of the New Act. It will also be useful to refer to the proviso to Section 34 of the New Act, which mandates the Rent Court to give regard to the provisions of the Transfer of Property Act, 1882, the Indian Contract Act 1872, or any other substantive Law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a Civil Court by way of a suit.

15. The bar enacted by Section 40 on the jurisdiction of the Civil Courts is restricted to a suit or proceeding so far as it relates to the



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provisions of the New Act and the Rent Court is also precluded from going into the question of title and ownership of the premises. This is a specific deviation from the predecessor enactment which empowered the Rent Controller to go into the question of title to the limited extent of finding out, as to whether, the denial of title by the tenant is *bona fide* or not. In view of the orders of rejection passed by the Rent Court on the ground that there is no registered written agreement of tenancy in all the six cases, it becomes incumbent to decide, as to whether, such rejection is justified or not.

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, in respect of contingencies 1 & 2 and all other clauses of Section 21(2) in the respect of the third contingency to seek eviction of such tenants where the agreement expired after the commencement of the



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New Act. This is for the reason that the predecessor enactment recognised oral tenancies and the general law namely the Transfer of Property Act also recognised oral tenancies.

Section 107 of the Transfer of Property Act, which deals with creation of a tenancy, reads as follows:

107. Leases how made.— A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term



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exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

17. In *Sengappan v. Arumbatha Veda Vinayagar Temple, reprints Hereditary Trustee*, reported in (2000) 1 MLJ 198, this Court had held that even an unregistered lease deed for a period exceeding one year would in certain circumstances be used in evidence to establish the relationship between the parties and it can also be relied on to prove in what capacity the defendant is occupying the building and the nature of possession. In doing so, this Court had after referring to various judgments on this issue held as follows:

“18. In view of the said legal position, I do not think the contention of the learned counsel for the appellant to be accepted. Even though a term of 3 years is fixed, either party have given the liberty to terminate the lease by giving three months notice that means, within the next day of executing the lease by giving three months notice, the lease could be terminated. Therefore it cannot be said that the



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lease is for a term exceeding one year. It really amounts to tenancy-at-will asking the tenant to surrender possession after a period of three months.

19. ... Even if the Court assumes that the tenancy is for a term exceeding one year, and therefore compulsorily registrable. I do not think that the document could be ignored for all purposes. The document can be relied upon to establish the jural relationship between the parties. The document can also be relied on to prove the admission of the defendant in what capacity he is occupying the building and the nature of possession.”

18. In the light of the above pronouncement of this Court and in the light of Section 107 of the Transfer of Property Act, it can safely be concluded that an oral lease is possible and an unregistered lease deed can be received in evidence under certain circumstances to prove the character of possession. Therefore, it cannot be said that there cannot be a lease without there being a registered instrument. This was taken note of by this Court in its judgment in *V.Manimegalai v. Selvaraj Kannan, reported in 2019 (6) CTC 9*, wherein after considering the provisions of the New Act, held that non-registration of the lease agreement alone would not prevent

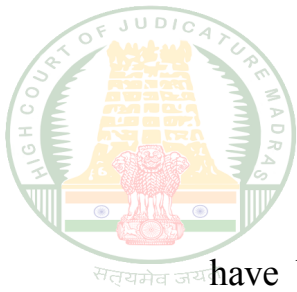


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the landlord from seeking a remedy before the Rent Court. While holding so, this Court had directed the Rent Court to admit the application for eviction and proceed with the same on merits.

19. Mr.P.B.Balaji, learned counsel appearing for the petitioners in all these Revisions would also fairly bring to my notice another judgment of this Court in *Shanmugam Balakumar V. S.Balajee* in CRP PD Nos.976 and 977 of 2020 dated 14.07.2020, wherein Hon'ble Mr. Justice M.Govindaraj, had considered the provisions of the New Act and had concluded that there must be a written agreement and when there is a dispute between the parties on the grounds specified under Section 21, the Rent Court shall decide the same on merits and cannot invoke Order VII Rule 11 to reject the application. The question of requirement of registration was not gone into by the learned Judge in *Shanmugam Balakumar V. S.Balajee*,

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



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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 of Sub section 2 of section 21 in respect of the 3rd contingency, dehors 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.



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22. As regards the fourth class of cases namely written subsisting tenancies entered into after the commencement of the Act, but not registered, there again the answer has to be no and the landlord can seek eviction only under Transfer of Property Act.

23. The fifth category of cases relate to agreements which had been entered into after the commencement of the New Act and had expired at the time of presentation of the eviction petition. Here again there may be two kinds of agreements namely a Registered Tenancy Agreement or an Unregistered Agreement. Under Section 5(3) of the New Act, a tenant can be considered to be a tenant holding over only for a period of six months from the date of expiry of the lease and not thereafter. The effect of Section 5(3) is that a tenant who continues in possession after the expiry of the lease period is deemed to be a tenant for a period of six months within which he could either renew the lease or enter into a fresh lease. The remedy available to a landlord against such tenant, who continues in possession after the expiry of the lease, would depend on the time at which



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the landlord decides to seek eviction. Three possible situations could arise,
they are

- (i) The landlord demanding possession at the end of the tenancy and the tenant refusing to vacate;
- (ii) The landlord demanding possession within the period of six months during which the tenancy is deemed to continue; and
- (iii) There is no demand by the landlord even after the expiry of the six months period.

23.a. In cases which come under the first category, the remedy of the landlord within the six months period during which the tenancy is deemed to be continued will be under the New Act and the landlord can seek eviction on all grounds under Section 21(2) of the New Act, except Clause (a) namely, non execution of a Registered Lease Deed. In view of Section 5(3) of the New Act, the status of the tenant ceases to be that of a tenant after the expiry of the six months period and if the landlord is to seek eviction after the six months period landlord will have to necessarily invoke



the General Law and sue for eviction after terminating the tenancy.

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23.b. In respect of the second category namely where the landlord demands vacant possession within the extended period of six months, the landlord would be entitled to invoke the grounds of eviction available under Section 21(2) except of course Clause (a) of Sub Section 2 of Section 21 of the New Act.

23.c. As far as the third category is concerned despite their having been a valid tenancy in view of the provisions of Section 5(3), the status of the tenant would cease to be that of a tenant **under the New Act**, after the expiry of the six months period. The landlord will have to take recourse to the General Law to sue for ejectment, after determining the tenancy. As regards tenancies which are created after the New Act, where there is no registered instrument, the landlord will have recourse only to the Transfer of Property Act to sue for eviction.

23.d. Insofar as the sixth category of cases where there is no written agreement of tenancy either registered or unregistered, the landlord



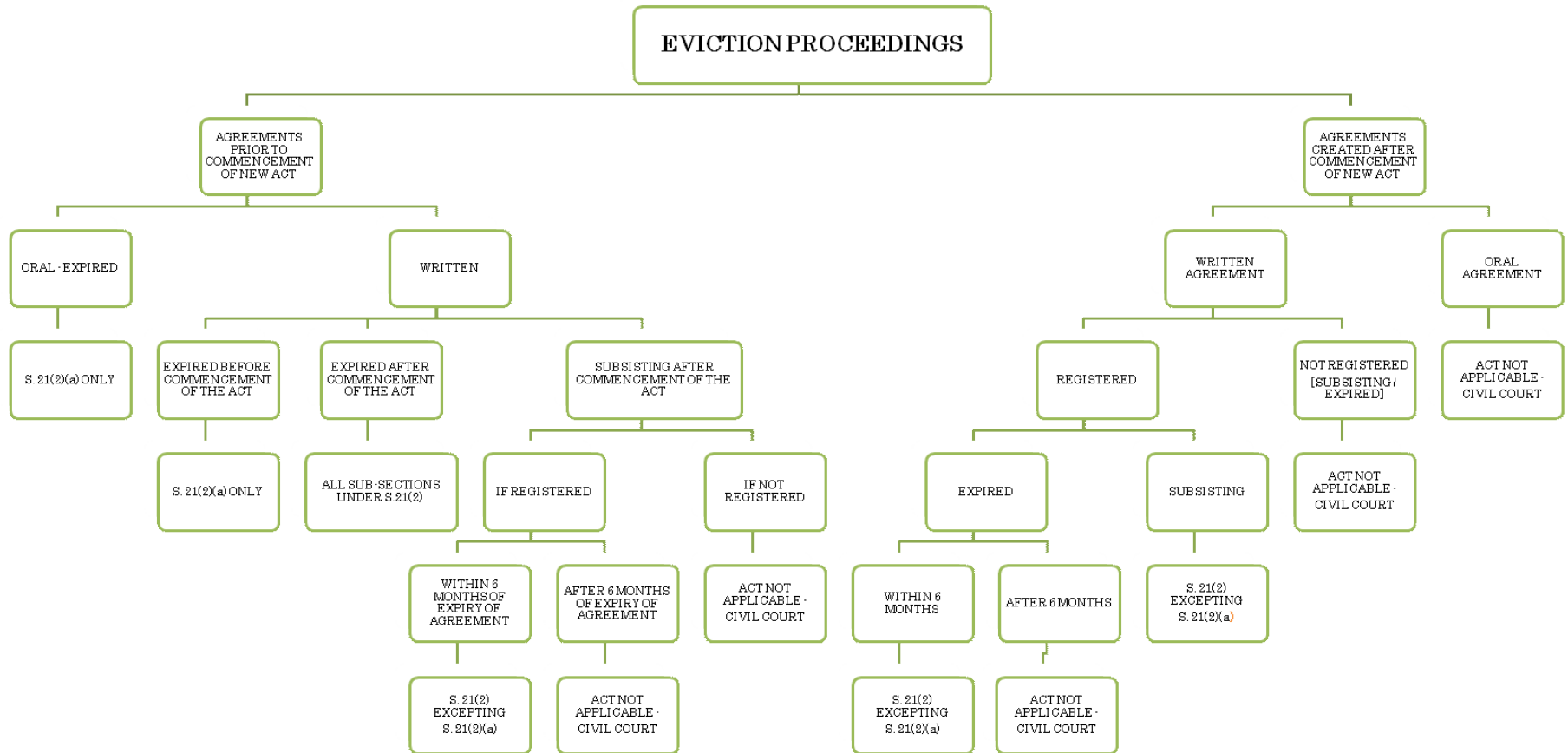
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will have no other option but to seek remedy under the Transfer of Property

Act. In these cases, as could be seen from the object of the enactment, the

Fast Track eviction proceedings will not be available to such landlords.

23.e. The following flow chart would demonstrate the legal position in respect of various categories:

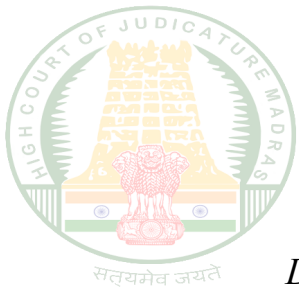




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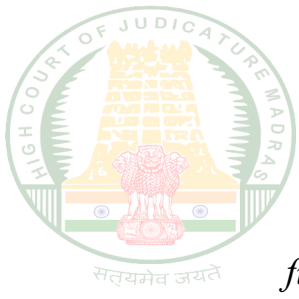
24. Section 40 which bars Civil Suits is also very restricted in its scope, it bars only a suit or proceeding, insofar as it relates to the provisions of the New Act. Therefore, a suit or proceeding which falls outside the provisions of the New Act are not barred. The scope of a bar created under a special enactment was considered by a Full Bench of this Court in *Periyathambi Goundan v. The District Revenue Officer, Coimbatore and others*, reported in *1980 (2) MLJ 89*, wherein the Full Bench had held that the scope of the bar are interdict imposed by a provision of law must be strictly construed and the Court must ascertain the extent of the interdict imposed by the provision of the statute and limit the interdict to that extent alone. In doing so, the Hon'ble Full Bench observed as follows:

“35. The next aspect to be considered, is the ascertainment of the ambit, amplitude and the extent of the interdict imposed by S. 16-A of the Act on the exercise of the jurisdiction, by a Civil Court. We have already extracted S. 16-A. Two things are clear from the language of the section. One is, the interdict is on the jurisdiction of the matters which by or under the Act have to be determined by the Record Officer, the



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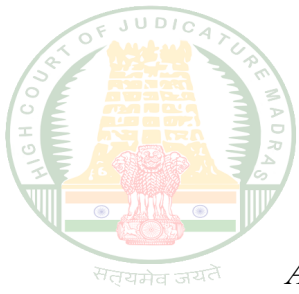
District Collector or other officer or authority empowered by the Act. The section itself does not enumerate as to what those matters are. The second is, the interdict is not on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of these matters. Controversies that come before a court or a tribunal cannot be either pigeon-holed or put in strait-jackets. They may be of different varieties as well as different standards. For the purpose of deciding the main controversy, the court or the Tribunal may have incidentally to decide a number of subsidiary questions or controversies. Therefore, when the section itself does not enumerate the matters in respect of which the jurisdiction of the Civil Court is ousted, one will have to ascertain the said matters with reference to the other provisions of the Act conferring power or jurisdiction on the authorities functioning under the Act. Similarly, a suit or proceeding in a civil court may involve the determination of several matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case the suit or proceeding as such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under Act. Since the section itself does not bar the institution of the suit or a proceeding, it is unnecessary to labour on the second aspect any



further:

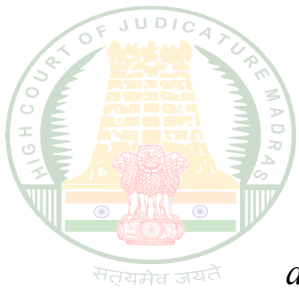
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36. We shall now proceed to consider the first aspect of the matter. As far as the first aspect is concerned, as we have pointed out already, we have to ascertain the matters covered by S. 16-A with reference to the other provisions of the Act dealing with the matters to be determined by the authorities functioning under the Act. Two provisions in the Act which are relevant in this behalf are S. 3(2) and S. 14(1), which we have extracted already, S. 3(2) of the Act refers to the particulars which the record, directed to be prepared under Sub-S.(I) thereof, should contain, while S. 14(1) provides for a certified copy of a record being annexed to an application made in pursuance of the provisions of the enactments enumerated therein. The object of the Act as well as the provisions contained in S. 3(2) make it clear that a Record Officer or the Appellate or Revisional Authority has to determine the following matters—(1) the survey number or sub-division number, extent and local name, if any, of the land let for cultivation by a tenant; (2) the name and address of the landowner; (3) the name and address of the intermediary, if any; and (4) the name and address of the tenant cultivating the land. It may be prima facie stated that these are the four matters which are required to be determined by the Record Officer or the Appellate or Revisional Authority under the provisions of the



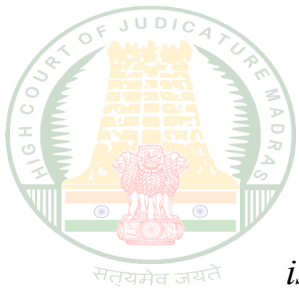
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Act. However, the necessity to determine these question may occur in the context of different controversies and not purely on a specific disputes with respect to these particulars alone. Even the determination of the particulars enumerated in S. 3(2) cannot be in isolation in respect of any one particular matter but can only be in the context of preparing the approved record showing the particulars in respect of the land and who is the tenant and who is the landowner. For instance, the statutory requirement for the preparation of a record under the Act is that the land must have been let for cultivation by a tenant. A controversy may arise whether the land has been let for cultivation by a tenant at all. The question to be considered is, whether the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act so as to bar the jurisdiction of the Civil Court under S. 16-A. From the language of S. 3(2) it cannot be stated that the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act, though the determination of that controversy is basic and fundamental to the exercise of the jurisdiction by the Record Officer and the other authorities under the Act. The very object of the Act is to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands and therefore if there is no tenancy in respect of a land, there is no question of



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any further particulars being determined. This aspect is made clear even from the definition of the expression 'landowner' occurring in S. 2 (5) of the Act, because according to the said definition, 'landowner' means the owner of the land let for cultivation by a tenant and includes the heirs, assignees or legal representatives of such owner or persons deriving rights through him. Consequently, the controversy as to whether a particular piece of land has been let for cultivation by a tenant or not is one constituting the jurisdictional issue which a Record Officer has to decide before he can determine any other matter under the Act. But that controversy cannot be said] to be within the exclusive jurisdiction of the authorities functioning under the Act, because to hold so will enable the statutory authorities to assume jurisdiction by erroneously deciding the jurisdictional issue. If the controversy arises, the authorities functioning under the Act have necessarily to decide the same, because a decision on that controversy alone will determine the jurisdiction of the authorities functioning under the Act. If the decision is that the land has been let for cultivation by a tenant, then the Record Officer will have jurisdiction to determine the further particulars provided for in S, 3 (2) of the Act If, on the other hand, the decision of the controversy is that the land has not been let for cultivation by a tenant there is no question of there being any tenancy rights in respect of the said land and consequently, there



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is no question of the Record Officer ascertaining or determining any further particulars in this behalf. Therefore, if such controversy arises, that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, and any determination of that controversy by the authorities can be said to be only incidental to the assumption of jurisdiction by the authorities under the Act. Subject to this qualification it can be held that once the Record Officer or any other authority functioning under the Act has come to the conclusion that the land has been let for cultivation by a tenant, the matters provided for in S. 3 (2) have to be determined by the Record Officer, or other authority functioning under the Act, and to that extent the jurisdiction of the civil court is barred under S. 16-A of the Act.”

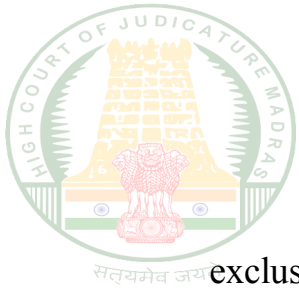
25. This decision was followed by a Single Judge of this Court in ***Sabina Detergents Private Ltd. Rep by its Managing Director v. Janabhai and Nine others***, reported in **2009 (3) CTC 770**, wherein the scope of the bar imposed by Section 23 of the Pondicherry Settlement Act



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was considered. There are various provisions in various statutes which impose a bar on the jurisdiction of Civil Court and Courts have always interpreted those provisions considering the object of the enactment in question and the extent of the interdict imposed by the provision. To cite an example Section 108 of the Tamilnadu Hindu Religious and Charitable Endowments Act, imposes a bar on the jurisdiction of the Civil Courts in respect of matters for deciding which a provision has been made under that Act. Various instances had come up before this Court, as to what are the matters for deciding which a provision has been made under the enactment. This Court had in various decisions held that bar enacted under Section 108 would apply only with reference to a dispute for deciding which a provision is made under that enactment and not otherwise.

26. If we are to examine the scope of the bar enacted by Section 40 of the New Act, in the light of guidelines laid down by the Hon'ble Full Bench of this Court in *Periyathambi Goundan v. The District Revenue Officer*, referred to supra, then it has to necessarily follow that the bar would be with reference to any proceeding that could be within the

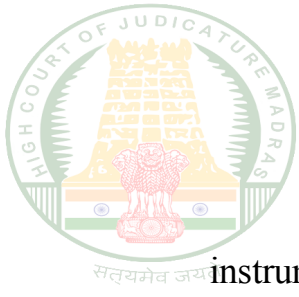


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exclusive jurisdiction of the Rent Court by virtue of the provisions of the New enactment. Therefore, a suit by a landlord for eviction or recovery of possession cannot be said to be barred, if it does not fall within Section 21(2) of the Act.

27. As we have already adverted to, Section 107 of the Transfer of Property Act enables creation of oral lease and an unregistered instrument of lease can also be looked into to decide the nature of possession, therefore, the requirement of the New Act that there should be a registered instrument of lease in order to enable creation of a landlord tenant relationship cannot be said to be universal in its application. No doubt Section 4 starts with a non obstante clause, but proviso to Section 34 requires the Rent Court to have due regard to the provisions of the Transfer of Property Act or any other substantive law applicable to tenancies.

28. Insofar as CRP NPD Nos. 3056, 3062 and 3094 are concerned in all these cases, the tenancy has admittedly commenced or has been renewed after coming into force of an Act by way of an unregistered



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instrument and the tenancy had also expired now. In such cases, it is clear to my mind that in the absence of a written agreement and the tenancy having expired, the landlords cannot invoke the provisions of the New Act, but they will have to resort to the general law.

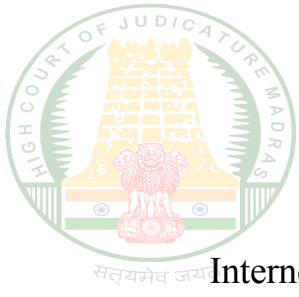
29. In fine, the Civil Revision Petition NPD Nos.3061, 3063 and 3067 will stand **allowed**, the orders of the Rent Court rejecting the applications are set aside and there will be a direction to the Rent Court to number the RLTOPs and proceed in accordance with law. Insofar as the Civil Revision Petition NPD Nos.3056, 3062 and 3094 of 2021 are concerned the orders of the Rent Court rejecting the RLTOPs are sustained. It will be open to the landlords to seek eviction under the general law. No costs.

04.02.2022

jv

Index : Yes

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Internet : Yes
Speaking order
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To

1. The X Judge, (FAC) / Rent Court
Court of Small Causes,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



CRP NPD Nos.3056, 3061, 3062,
3063, 3067 and 3094 of 2021

R.SUBRAMANIAN, J.

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jv

Pre Delivery Order
Civil Revision Petition (NPD) Nos.3056, 3061, 3062,
3063, 3067 and 3094 of 2021

04.02.2022