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RESERVED ON : 22.08.2025

PRONOUNCED ON : 08.01.2026

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)Nos.968 to 970, 1423, 1424 of 2019 and 11 of 2021

and

C.M.P(MD)Nos.9012 to 9014, 5438 to 5441, 7578 of 2019 and 14193 of 2023

C.R.P.(MD)No.968 of 2019

M/s.Chemmens (Regd),
Through its Sole Proprietrix,
Mrs.Mary Cherian (Died),

M/s.Chemmens (Regd),
Through its Sole Proprietor,
C.Cherian,

...Petitioner/2nd Appellant

Vs.

1. M/s.Krishna & Co,
147, North Car Street, Tuticorin,
Through its Sole Proprietor,
K.Ramachandran Bhat.

...1st Respondent/1st Respondent/Plaintiff

2. M/s.The Tuticorin Co Operative
Industrial Estate Ltd (Ind. No.589),
Through its Administrative Officer,
Korampallam, Tuticorin.

...2nd Respondent/2nd Respondent/
2nd Defendant



PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 22.11.2018 passed in CMA(CS)No.6 of 1995 on the file of Special Tribunal for Co-operative Cases(Principal District Judge), Thoothukudi and allow the Civil Revision Petition.

For Petitioner : M/s.B.Dhanaraj

For Respondents : Mr.Rathina Asohan for R2
Mr.H.Lakshmi Shankar for R1

C.R.P.(MD)No.969 of 2019

M/s.Chemmens (Regd),
Through its Sole Proprietrix,
Mrs.Mary Cherian (Died),

M/s.Chemmens (Regd),
Through its Sole Proprietor,
P.C.Cherian (Died)

P.C.Cherian @ Suresh

...Petitioner/8th Respondent

Vs.

1. M/s.The Tuticorin Co Operative
Industrial Estate Ltd (Ind. No.589),
Through its Administrative Officer,
Now by Special Officer, Korampallam, Tuticorin.

...1st Respondent/Appellant/1st Defendant

M/s.Krishna & Co, (M.No.8)
147, North Car Street, Tuticorin,
Through its Sole Proprietor,
K.Ramachandran Bhat.

...1st Respondent/Plaintiff-counter claimant



2.Lalitha

3.Saraswathi

4.Varadhalakshmi

5.Nandhini

...Respondents 2 to 5/Respondents 4 to 7

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 14.02.2019 passed in CMA(CS)No.5 of 1995 on the file of Special Tribunal for Co-operative Cases(Principal District Judge), Thoothukudi, confirming the award passed in ARC.No.1/88-89/1 CB-1 by Arbitrator/the Deputy Director of Industries and Commerce(Industrial Cooperatives) Kosmico, Kovilpatti dated 19.05.1990 and allow the CRP.

For Petitioner : M/s.B.Dhanaraj

For Respondents : Mr.Rathina Asohan for R1
Mr.H.Lakshmi Shankar for R2

C.R.P.(MD)No.970 of 2019

M/s.Chemmens (Regd),
Through its Sole Proprietrix,
Mrs.Mary Cherian (Died),

C.Cherian (Died)
P.C.Cherian @ Suresh

...Petitioner/4th Respondent-
LR of deceased/2nd Respondent

Vs.

M/s.Krishna & Co,
147, North Car Street, Tuticorin,
Through its Sole Proprietor,
K.Ramachandran Bhat.

...1st Appellant/Claimant



Lalitha

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2.Saraswathi

3.Varadhalakshmi

4.Nandhini

...Respondents 1 to 4/Appellants 2 to 5/
LRs deceased claimant

5.M/s.The Tuticorin Co-Operative
Industrial Estate Ltd (Ind. No.589),
Through its Administrative Officer,
Korampallam, Tuticorin.

...5th Respondent/1st Respondent/1st Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 14.02.2019 passed in CMA(CS)No.7 of 1995 on the file of Special Tribunal for Co-operative Cases(Principal District Judge), Thoothukudi, confirming the award passed in ARC.No.1/88-89/1 CB-1 by Arbitrator/the Deputy Director of Industries and Commerce(Industrial Cooperatives) Kosmico, Kovilpatti dated 19.05.1990 and allow the CRP.

For Petitioner : M/s.B.Dhanaraj

For Respondents : Mr.H.Lakshmi Shankar for R1 to R4
Mr.Rathina Asohan for R5

C.R.P.(MD)No.1423 of 2019

M/s.The Tuticorin Co-Operative
Industrial Estate Ltd (Ind. No.589),
Through its Administrative Officer,
Korampallam, Tuticorin.

...Petitioner/Petitioner/Appellant

Vs.

M/s.Krishna & Co, (M.No.8) died

4/42



Through K.Ramachandran Bhat.

M/s.Chemmens (Regd),
through its Sole Proprietrix Mary Cherian (died)

M/s.Chemmens (Regd),
through its Sole Proprietor P.C.Cherian (died)

Lalitha

2.Saraswathi

3.Varadhalakshmi

4.Nandhini ...Respondents 1 to 4/Respondents 2 to 5/
LRs deceased claimant

5.P.C.Cherian @ Suresh ...5th Respondent/2nd Respondent/
LR of deceased 2nd respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 14.02.2019 passed in CMA(CS)No.5 of 1995 on the file of Special Tribunal for Co-operative Cases(Principal District Judge), Thoothukudi, and dismiss the counter claim filed by the respondent-1 before the Arbitrator.

For Petitioner : M/s.Rathna Asohan
Prescilla Pandian

For Respondents : Mr.H.Lakshmi Shankar

C.R.P.(MD)No.1424 of 2019

M/s.The Tuticorin Co-Operative
Industrial Estate Ltd (Ind. No.589),

5/42



Through its Administrative Officer,
Now by Special Officer

...Petitioner/Petitioner/Appellant

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Vs.

M/s.Krishna & Co,
Through its Sole Proprietor,
K.Ramachandran Bhat.(since deceased)

...Respondent 1/Appellant/Claimant

1.Lalitha

2.Saraswathi

3.Varadhalakshmi

4.Nandhini

...Respondents 2 to 4/Appellants 2 to 5/
LRs deceased claimant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 14.02.2019 passed in CMA(CS)No.7 of 1995 on the file of Special Tribunal for Co-operative Cases(Principal District Judge), Thoothukudi, in so far as it relate to partly modifying the award passed in ARC.No.1/88-89/1 CB-1 by Arbitrator/the Deputy Director of Industries and Commerce(Industrial Cooperatives) Kosmico, Kovilpatti dated 19.05.1990.

For Petitioner : M/s.Rathna Asohan
Prescilla Pandian

For Respondents : Mr.H.Lakshmi Shankar

C.R.P.(MD)No.11 of 2021



M/s.Krishna & Co,
Through its Sole Proprietor,
K.Ramachandran Bhat.(died)

- 1.Lalitha
- 2.Saraswathi
- 3.Varadhalakshmi
- 4.Nandhini

*(The petitioners 2 to are represented through their
power of attorney agent 1st petitioner)*

....Petitioners/Petitioners/Appellant

1.The Tuticorin Co-Operative
Industrial Estate Ltd (Ind. No.589),
Through its Administrative Officer,
Korampallam, Tuticorin.

M/s.Chemeens(Regd.)
through its sole proprietix, Mary Cherian(died)

C.Cherian (died)

2.P.C.Cherian @ Suresh

...Respondents/Respondent/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the civil revision petition and set aside the judgment and decree dated 14.02.2019 made in CMA(CS)No.7 of 1995 on the file of the Principal District Court, Tuticorin, in so far as mesne profits concerned.

For Petitioner : M/s.H.Lakshmi Shankar
for M.Kirithiga for P1

For Respondents : Mr.Rathina Ashohan for R1
Mr.B.Dhanaraj for R2

* * * * *



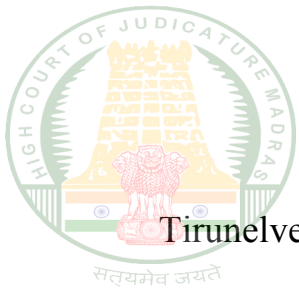
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COMMON ORDER

The present revision petitions have been filed challenging the orders passed in C.M.A.(CS).Nos.5, 6, 7 of 1995 on the file of the Principal District Court, Tuticorin/Special Tribunal Co-operatives Cases which were filed in A.R.C.No.1/88-89/1 CB-1 before the Arbitrator/Deputy Director of Industries and Commerce (Industrial Co-operatives) Kosmico, Kovilpatti.

(A) The facts leading to the filing of these revision petitions are as follows:-

2. The Tuticorin Co-operative Industrial Estate Limited was registered as a Co-operative Society under the Madras Co-operative Societies Act, 1932 for the purpose of establishing and running of industrial estates for small scale industries. The said industrial estate is governed by its by-laws. One of the objects of the said Society is to acquire land and develop it by levelling and dressing it and divide it into plots and thereafter, let out these plots to its members either on rent or rent-cum-higher-purchase for running business establishment. As per the by-laws, the membership is open to existing small industrial units, individuals, Co-operative Societies and other body corporates and partnership firms who want to start small scale industries in the estate. However, the members shall be residents within the Revenue Taluk of



Tirunelveli District. The members have to purchase shares of the estate and they would become a member of the Society.

3. As per the by-laws of the Society, if a member is a persistent defaulter in payment of dues of the estate is liable to be expelled from the membership by a majority vote of members of the estate. The member is also eligible to receive dividend at the rate not exceeding 6% on the paid up value of each share.

4. As per by-laws, if any dispute touching upon the business of the estate arises among the members, then Registrar of the Industrial Co-operative Society, may on receipt of such reference, can either decide the dispute by himself or refer it for disposal to an Arbitrator or Arbitrators. The by-laws further point out that the decision or award of the Registrar of Industrial Co-operative shall be final subject to the provision of the Sub Section 5 of Section 51 of the Co-operative Societies Act and may be enforced.

5. Agreeing to the above said by-laws, M/s.Sundar and Chandar, a Proprietary concern, became a member of the estate on 04.09.1961 on payment of Rs.20,000/- as share capital and membership No.8 was allotted to the said



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concern. By way of resolution dated 01.07.1968, industrial unit DB-17 was allotted in the name of the above said concern. On 22.11.1968, by way of resolution, the cost of the above said industrial plot was fixed at Rs.1,04,474.96/- The concern has to pay the balance amount within 15 years in 30 equated half yearly instalments along with 6% under lease-cum-sale-agreement. The first instalment fell due on 31.12.1968 and the said instalment was paid on 08.01.1969. The second instalment fell due on 30.06.1968 and it was paid on 19.09.1970.

6. The instalments were not paid by M/s.Sundar and Chandar. By way of a letter dated 07.12.1972, the Proprietor of the concern requested the Administrative Officer to transfer the unit to M/s.Krishna and Co. Thereafter, communications were sent by the estate to M/s.Sundar and Chandar to pay arrear instalments and they received a reply from them to the effect that only Krishna and Co. is the occupier of the industrial unit and therefore, the arrears may be collected from M/s.Krishna and Co.

7. By communication dated 28.04.1973, the Industrial Estate called upon M/s.Krishna and Co. to settle the dues on 08.02.1977. A final notice was issued by the estate to M/s.Krishna and Co. granting time upto 28.02.1977 to remit the

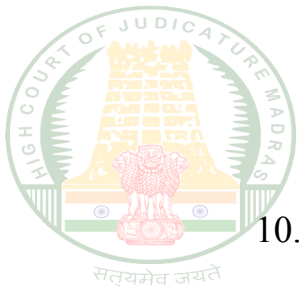


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arrears of principal and interest and in case of non-payment, it was informed that they would resume the unit. However, there was no response from M/s.Krishna and Co. The unit was re-possessed by the Industrial Estate on 19.04.1977. The communication was sent to M/s.Krishna and Co. on 04.05.1977 to the effect that they have forfeited their right to be in occupation and the estate has taken possession of the unit.

8. The Industrial Estate initiated arbitration proceedings in A.R.C.No. 3/77-78, claiming a sum of Rs.1,36,368.44/- against M/s.Sundar and Chandar. By way of an award dated 29.11.1977, the Arbitrator dismissed the proceedings on the ground that all the transactions are in the name of M/s.Krishna and Co. and therefore, arbitration proceedings cannot be initiated as against M/s.Sundar and Chandar.

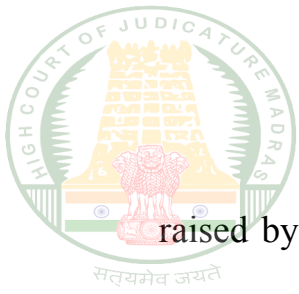
9. The Industrial Estate by its Board resolution, dated 04.03.1978, admitted M/s.Chemmeens, as a member of the Industrial Estate and granted allotment of the re-possessed unit, namely DB-17, on payment of Rs. 1,04,474.96/- under lease-cum-sale-agreement. M/s.Chemmeens has entered into the lease-cum-sale-agreement with the Industrial Estate on 28.03.1978.



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10. In view of the dismissal of the arbitration proceedings as against M/s.Sundar and Chandar, a fresh arbitration proceeding was initiated by the Industrial Estate as against M/s.Krishna and Co in A.R.C.No.9/83-84 claiming a sum of Rs.31,900.98/-. The second arbitration proceedings were initiated on 03.04.1983. In the said arbitration proceedings, M/s.Krishna and Co. filed counter claim by way of an affidavit against the Industrial Estate raising 28 questions for reference before the Arbitrator. The second Arbitrator dismissed the claim of the Industrial Estate primarily on the ground that it is time barred under the provision of the Limitation Act and the outstanding amount was not properly calculated. The counter claim filed by M/s.Krishna and Co. was also dismissed. The second award was passed on 11.09.1985.

11. Challenging the second award, M/s.Krishna and Co. preferred C.M.A. (CS)No.117 of 1985 before the Co-operative Tribunal/District Court, Madurai. Pending appeal I.A.No.386 of 1986 was filed to implead M/s.Chemmeens as the respondent. The said I.A. was allowed on the ground that M/s.Chemmeens is a necessary party. C.M.A.No.117 of 1985 was allowed and the counter claim was remitted back to the Arbitrator. Pending appeal, M/s.Krishna and Co. had filed I.A.No.158 of 1987 for receipt of additional evidence. The Special Tribunal has allowed the said application and directed the Arbitrator to decide the 11 issues



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raised by the Co-operative Tribunal. It is to be noted that the Industrial Estate has not preferred any appeal as against the dismissal of their arbitration petition.

12. After remand, the third Arbitrator initiated his proceedings in A.R.C.No.1/88-89. He had framed 11 issues and an award came to be passed on 19.05.1990. In the award, the following findings were rendered:-

- a) M/s.Krishna and Co. had acquired the membership of Industrial Estate by estoppel.
- b) M/s.Krishna and Co. had committed default in payment of lease cum sale agreement.

However, the industrial estate was not legally justified in retaining the possession of the property. It further found that dispossession from M/s.Krishna and Co. was otherwise, then in due course of law adopting extra judicial means. It further found that there was inordinate delay on the part of M/s.Krishna and Co. in initiating a counter claim and therefore, they cannot seek any monetary remedy towards damage, loss of prestige and reputation within the provisions of the Tamil Nadu Co-operative Societies Act and Rules. It further pointed out that M/s.Krishna and Co. is free to approach the appropriate forum for redressal. Based on the said findings, the claim of M/s.Krishna and Co. was partly allowed and re-allotment in favour of M/s.Chemmeens was also set aside. The



Arbitrator had directed re-delivery of the possession to M/s.Krishna and Co. after remitting the over dues instalment with 6% interest per annum.

13. Aggrieved by the third award dated 19.05.1990, all the three parties, namely, the Industrial Estate, M/s.Chemmeens and M/s.Krihsna and Co. preferred appeals before the Co-operative Tribunal/Principal District Court, Madurai. The Industrial Estate preferred C.M.A.(C.S).No.48 of 1990, M/s.Chemmeens preferred C.M.A.(C.S).No.67 of 1990 and Krishna and Co. preferred C.M.A.(C.S).No.79 of 1990 challenging the disallowed reliefs. All the three appeals were transferred from Madurai to Tuticorin and they were renumbered as C.M.A.(CS).Nos.5, 6 and 7 of 1995.

14. The Co-operative Tribunal/Principal District Judge, Tuticorin, had framed 9 points for consideration in the above said appeals. After hearing all the three appeals, a common order came to be passed on 24.02.1997 dismissing all the three appeals. The Tribunal found that as far as the prayer seeking re-delivery by M/s.Krishna and Co. is concerned, it deals with a dispute relating to the immoveable property and therefore, the Tribunal cannot decide the issue. The Tribunal further found that as far as payment of compensation is concerned, the Co-operative Tribunal does not have any jurisdiction. Based upon the above



said findings, all the three appeals came to be dismissed. Pending appeal, M/s.Krishna and Co. had filed I.A.No.35 of 1995 in C.M.A.(C.S).No.7 of 1995 seeking permission to receive 33 documents as additional evidence and the same was allowed and marked as Ex.A10 to Ex.A42.

15. The common order passed in C.M.A.(CS)Nos.5, 6 and 7 of 1995 by the Co-operative Tribunal/ Principal District Court, Tuticorin, were challenged by the Industrial Estate before the High Court in W.P.No.13889 of 1997. M/s.Krishna and Co. had preferred C.R.P.(PD)No.1173 of 1998. The revision petition and the writ petition were heard together and the question of law relating to the applicability of the Tamil Nadu Co-operative Societies Act, 1986, was considered. By way of a common order dated 06.12.2013, the writ petition as well as the revision petition were allowed and the matter was remitted back to the Special Tribunal for Co-operative, Tuticorin, for fresh consideration by applying the Tamil Nadu Co-operative Societies Act, 1961. The order of the learned single judge was put to challenge by the Industrial Estate in W.A.No. 1035 of 2014. M/s.Krishna and Co. had also filed another writ appeal in W.A.No.1036 of 2014. The Hon'ble Division Bench by way of the common order dated 21.08.2014 had dismissed both the appeals and upheld the order of the learned single judge and remanded the matter back to the Special Tribunal.

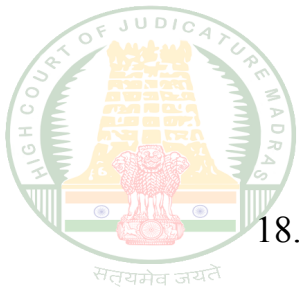


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The order of the Hon'ble Division Bench was put to challenge before the Hon'ble Supreme Court by M/s.Krishna and Co. in S.L.P(C) Nos.29985-29986 of 2014. The Hon'ble Supreme Court was pleased to dismiss the Special Leave Petition but directed the Tribunal to decide the matter as directed by the single judge within a period of three months and granted liberty to the parties to raise all the points in support of the stand before the Tribunal.

16. After remand, the Co-operative Tribunal chose to pass orders on 22.11.2018 closing in C.M.A.(CS).No.6 of 1995 filed by M/s.Chemmeens on the ground that the order of remand passed in C.M.A.(CS).No.6 of 1995 was not to put to challenge by M/s.Chemmeens. Therefore, the Tribunal cannot proceed C.M.A.(C.S).No.6 of 1995. Thus, the Tribunal restored its order dated 24.02.1997 passed in C.M.A.(CS).No.6 of 1995.

17. This order of closing C.M.A.(CS)No.6 of 1995 is put to challenge by M/s.Chemmeens in C.R.P.(MD)No.968 of 2019.



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18. After closing C.M.A.(C.S).No.6 of 1995, the Special Tribunal proceeded to hear C.M.A.(CS).No.5 of 1995 filed by the Industrial Estate and C.M.A.(C.S).No.7 of 1995 filed by M/s.Krishna and Co. A common order came to be passed on 14.02.2019. The learned District Judge was pleased to dismiss C.M.A.(CS)No.5 of 1995 filed by the Industrial Estate thereby confirming the award of the Arbitrator. As far as appeal filed by M/s.Krishna and Co. in C.M.A.(CS)No.7 of 1995 is concerned, it was partly allowed wherein the award of the Arbitrator rejecting the request for damages was set aside and it was remitted back to the Arbitrator for deciding the compensation. The respondent Society was directed to re-allot DB-17 to M/s.Krishna and Co. without insisting for any further payment. It further found out that M/s.Krishna and Co. is entitled for damages and Arbitrator has to decide the quantum of damages after conducting an enquiry. The Tribunal further found that M/s.Krishna and Co. is also entitled for mesne profits. However, it has not quantified the said mesne profits. It was further found that M/s.Krishna and Co. was entitled to a sum of Rs.4,00,000/- towards litigation cost and Rs.2,00,000/- each from the Industrial Estate and M/s.Chemmeens.

19. While C.M.A.(CS).Nos.5 & 7 of 1995 were pending, three I.A.s. were filed. I.A.No.5 of 1985 was filed to implead the legal heirs of the Proprietor of



M/s.Krishna and Co. and the same was allowed. I.A.27 of 2018 was filed by

M/s.Krishna and Co. to receive supplementary affidavit for incorporation of four boundaries in the appeal memorandum to describe the property namely, unit DB-17. This application was also allowed. However, another application filed by M/s.Krishna and Co. in I.A.No.32 of 2018 to receive allotment schedule, bank cheque, written registered cover, acknowledgment, postal tracking and subsequent correspondent as additional evidence were dismissed.

20. Aggrieved by the order of dismissal in C.M.A.(C.S).No.6 of 1995, as well as the dismissal of C.M.A.(CS).No.5 of 1995 and allowing of C.M.A. (CS).No.7 of 1995, C.R.P.(MD)Nos.968 to 970 of 2019 have been preferred by the M/s.Chemmeens. The Industrial Estate has preferred C.R.P.(MD)Nos.1423 and 1424 of 2019 challenging the order passed in C.M.A.(CS)Nos.5 and 7 of 1995. M/s.Krishna and Co. has filed C.R.P.(MD)No.11 of 2021 challenging the order passed in C.M.A.(C.S).No.7 of 1995 wherein the request for determination of damages and mesne profits have been rejected.

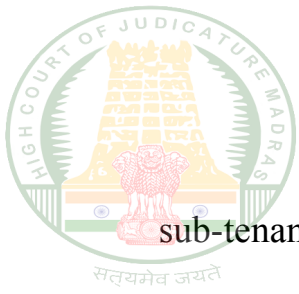
21. Thus, totally 6 cases, namely, C.R.P.(MD)Nos.968 to 970 of 2019 of M/s.Chemmeens, C.R.P.(MD)Nos.1423 and 1424 of 2019 filed by the Industrial Estate and C.R.P.(MD)No.11 of 2021 filed by M/s.Krishna and Co. have been



tagged together for passing common order. Since the facts in all the 6 cases are interconnected, they are tagged together for passing a common order.

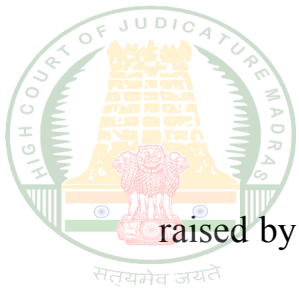
(B)Contentions of the counsels are as follows:-

22. According to the learned counsel appearing for the petitioners in C.R.P.(MD)Nos.968 to 970 of 2019(M/s.Chemmeens), only M/s.Sundar and Chandar is the original allottee of industrial plot by Tuticorin Industrial Estate Co-operative Society. The industrial plot was allotted in favour of the M/s.Sundar and Chandar and no point of time, the industrial plot was allotted in favour of M/s.Krishna and Co. After payment of first two instalments belatedly, the other 28 instalments were not paid by the M/s.Sundar and Chandar. When a demand notice was issued to M/s.Sundar and Chandar, they contended that M/s.Krishna and Co. was in possession of the industrial plot and therefore, only M/s.Krishna and Co. has to pay the dues. According to him, there are no records to prove the legal transfer of the unit from M/s.Sundar and Chandar to M/s.Krishna and Co. He further submits that there is no provision under by-laws of the Society for transfer of membership. By mistake, the Industrial Estate had started communicating with the occupier of the industrial plot to collect the dues. Merely because some communications were addressed by the Industrial Estate to M/s.Krishna and Co. to collect the dues, it will never confer upon membership rights over M/s.Krishna and Co. They can either be



sub-tenants or permissive occupants of M/s.Sundar and Chandar and that will not enable them to directly communicate with the Industrial Estate.

23. The learned counsel appearing for M/s.Chemmeens further contended that M/s.Sundar and Chandar, is the original allottee. Admittedly, they were not in possession of the property. They have either sub-let or permitted M/s.Krishna and co. to occupy the industrial plot. M/s.Sundar and Chandar had admittedly not paid the lease amount or dues in time. In such circumstances, by way of resolution, the Industrial Estate has proceed to take possession from M/s.Krishna and Co. When M/s.Krishna and Co. is not the legal allottee, they have no right whatsoever to initiate any proceedings as against the estate. They cannot raise a counter claim. He further contended that being a non-member of the Industrial Estate Society, M/s.Krishna and Co. cannot raise an arbitration claim or a counter claim in the arbitration proceedings initiated by the Industrial Estate. According to him, the counter claim filed by M/s.Krishna and co. ought not to have been entertained at the first instance by the Arbitrator. He further contended, in the alleged counter claim that there were no pleadings or prayer for re-possession, damages or mesne profits. M/s.Krishna and co. had sent a communication to the Registrar of Industrial Co-operative Society raising 28 questions. The same was referred to the Arbitrator. Therefore, the questions

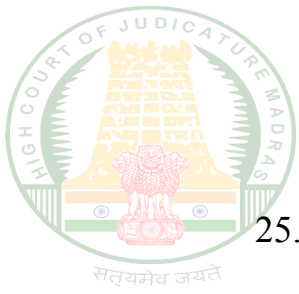


raised by M/s.Krishna and Co. could never be considered to be a counter claim.

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The Arbitration authority as well as the learned District Judge, have not properly appreciated the legal right of the M/s.Krishna and Co. to initiate so called counter claim proceedings. Hence, he submits that the entire counter claim is illegal and therefore, liable to be rejected.

24. The learned counsel appearing for M/s.Chemmeens further contends that M/s.Sundar and Chandar was dispossessed due to default in payment of dues. When there are no legally acceptable documents to establish transfer from M/s.Sundar and Chandar to M/s.Krishna and Co., M/s.Krishna and co. cannot have any legal right whatsoever to challenge the re-possession, especially when they have not proved their right to be in possession of the industrial plot allotted to M/s.Sundar and Chandar. He further submits that only a member of the industrial estate could have any right whatsoever to defend the proceedings initiated by the industrial estate or participate in the arbitration proceedings. M/s.Krishna and Co. being a non-member, can never initiate any arbitration proceedings or file a counter claim in the arbitration proceedings initiated by the industrial estate.



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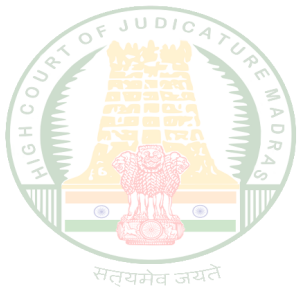
25. The learned Counsel appearing for M/s.Chemmeens further submits that due to default in payment by a member of the Society, an unauthorised occupier of the property has been dispossessed. Thereafter, based upon the membership of M/s.Chemmeens, the said plot has been allotted to them and they are carrying on the business for more than 20 years. In such circumstances, the allotment in favour of M/s.Chemmeens is perfectly legal and the same can never be questioned by M/s.Krishna and Co. who have no legal right whatsoever to be in occupation of an industrial plot.

26. The learned counsel appearing for M/s.Chemmeens further submits that the Special Tribunal by its common order dated 24.02.1997 had dismissed C.M.A.(C.S).Nos.5, 6 and 7 of 1995. Challenging this common order, the writ appeals were preferred by the Industrial Estate in W.P.No.13889 of 1997 and CRP.No.1173 of 1998 was preferred by M/s.Krishna and Co. Both the writ petition and the civil revision petition were heard together and the common order came to be passed by the learned Single Judge on 06.12.2013 setting aside the common order dated 24.02.1997 and remanded the matter back to the Co-operative Tribunal for fresh consideration of the entire matter applying the Tamil Nadu Co-operative Act, 1961. The writ appeals and the Special Leave Petition preferred as against the order of remand of the learned single Judge



were not successful. When the common order passed in C.M.A.(CS)Nos.5, 6 and 7 of 1995 by the Co-operative Tribunal was set aside by the learned single judge of the High Court, it would only mean that the order passed in C.M.A. (CS)No.6 of 1995(filed by M/s.Chemmeens) was also set aside. Merely because M/s.Chemmeens has not challenged the order passed in C.M.A.(CS)No.6 of 1995 that would not mean that the order dated 24.02.1997 has attained finality. On a legal issue, the High Court has set aside the common order of the Tribunal. Therefore, the Special Tribunal was not right in closing C.M.A.(C.S).No.6 of 1995, after remand by way of proceedings dated 22.11.2018. Considering the fact that all the appeals before the Co-operative Tribunal are interconnected, the order passed in C.M.A.(C.S).No.6 of 1995 alone cannot be closed on the ground that the order dismissing the said appeal was not put to challenge by M/s.Chemmeens. Hence, he prayed for allowing C.R.P(MD)No.968 of 2019.

27. The learned counsel appearing for M/s.Chemmeens further submits that there is no prayer for damages or mesne profits in the alleged counter claim filed by the M/s.Krishna and Co. In such circumstances, the Co-operative Tribunal ought not to have arrived at a finding that M/s.Krishna and Co. is entitled to damages and mesne profits and for quantifying the same, it should not have been remitted back to the Arbitrator.



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28. The learned counsel appearing for M/s.Chemmeens further submits that when M/s.Sundar and Chandar has committed default, after following due process of law, possession was taken by the industrial estate. Thereafter, it has been allotted to M/s.Chemmeens. In such circumstances, the Tribunal ought not to have directed the industrial estate to dispossess M/s.Chemmeens and re-allot the said plot to M/s.Krishna and Co. especially in the light of the fact that M.s.Krishana and Co. has never become a member of the industrial estate. When the dispossession of M/s.Krishna and Co. is legal and allotment of plot in favour of M/s.Chemmeens is pursuant to the membership resolution and allotment order and they are continuing their business for more than 20 years, it would not be appropriate to dispossess M/s.Chemmeens and re-allot the same in favour of the M/s.Krishna and Co. He further submits that only due to default in payment of rental arrears, the order of eviction has been passed. In such circumstances, the Tribunal ought not to have ordered re-possession to M/s.Krishna and Co. even without insisting for any payment. The Tribunal could not have awarded the litigation expenses or cost in favour of M/s.Krishna and Co. Hence, he prayed for allowing C.R.P.(MD)Nos.968 to 970 of 1995 and to dismiss C.R.P.(MD)No.11 of 2021 filed by M/s.Krishna and Co.



29. The learned counsel for the Industrial Estate who is the petitioner in C.R.P.(MD)Nos.1423 and 1424 of 2019 submits that a perusal of alleged counter claim would clearly indicate that there is no pleadings or prayer. Since M/s.Krishna and Co. was never a member, they cannot raise any counter claim or participate in the arbitration proceedings. He also relied upon Ex.R1 which is the Admission Register to indicate that only M/s.Sundar and Chandar was admitted as a member. He further contended that the second arbitration was initiated as against M/s.Krishna and Co. was only to recover the water charges from them in view of the fact that there were occupying the industrial plot allotted to M/s.Sundar and Chandar. He further contends that an occupier cannot become a member. Therefore, the counter claim ought not to have been entertained by the arbitrator.

30. The learned counsel appearing for the Industrial Estate further submits that M/s.Krishna and Co. is only an occupier or he can be considered as sub- lessee and in such circumstances, the rights of the original allottee cannot be usurped by the sub-lessee or an occupier.

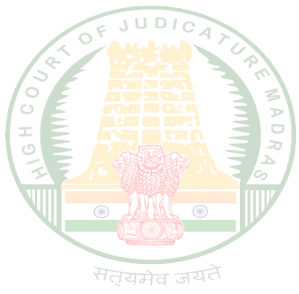
31. The learned counsel appearing for the Industrial Estate further submits that there is no pleading whatsoever with regard to membership or



allotment. M/s.Krishna and Co. had not produced any documents whatsoever to establish their allotment of the industrial plot. In fact under Ex.R2, a request was made on 07.12.1972 for transfer of membership from M/s.Sundar and Chandar to M/s.Krishna and Co. However, the same was not accepted and therefore, M/s.Krishna and Co. has no legal status whatsoever.

32. The third Arbitrator though had framed issues about the membership of M/s.Krishna and Co, it has proceeded to hold that M/s.Krishna and Co. had acquired membership by estoppel. According to him, the membership cannot be acquired by estoppel unless M/s.Krishna and Co. had made an application and the same is accepted by the Society, M/s.Krishna and Co. cannot become a member by way of estoppel. When there is no plea of forcible eviction by M/s.Krishna and Co., the claim for re-possession and the acceptance of the said claim is not legally sustainable.

33. The learned counsel appearing for the Industrial Estate further submits that there is no lease-cum-sale-agreement in favour of the M/s.Krishna and Co. and the instalments were paid only by M/s.Sundar and Chandar. When the default on the part of M/s.Sundar and Chandar is admitted, the dispossession of some third party cannot be considered to be illegal.



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34. The learned counsel appearing for the Industrial Estate further submits that the alleged dispossession is dated 19.04.1977. However, the counter claim has been made after a period of 7 years only after the arbitration claim was initiated by the industrial estate. Therefore, it is clear that M/s.Sundar and Chandar as well as M/s.Krishna and Co. have accepted the legality of dispossession and kept quiet. Only when amount was demanded from M/s.Krishna and Co. in the second arbitration proceedings, the alleged counter claim has been raised. Therefore, they would not be entitled to seek any damages or mesne profits from the industrial estate.

35. The learned counsel appearing for the Industrial Estate further submits that after the membership to M/s.Sundar and Chandar was cancelled and the possession was taken from M/s.Krishna, M/s.Chemmeens was made as a member and later, the industrial plot DB-17 was allotted to them. Therefore, the dispossession of M/s.Krishna and Co. and allotment of the said plot to M/s.Chemmeens is legal.

36. The learned counsel appearing for the Industrial Estate further submits that the additional documents which were sought to be marked by



M/s.Krishna and Co. have been accepted by the Co-operative Tribunal without giving any proper opportunity to Industrial Estate or M/s.Chemmeens. Hence, he prayed for allowing C.R.P.(MD)Nos.1423 and 1424 of 2019.

37. The learned counsel appearing for the petitioner in C.R.P.No.11 of 1995 (M/s.Krishna and Co.) submits that a complaint was lodged by M/s.Krishna and Co. to the Registrar complaining about the forcible eviction. In the said complaint, 28 questions were raised wherein the questions relating to illegal dispossession, damages and mesne profits have also been raised. These questions were forwarded by the Registrar to the Arbitrator. When there is no specific statutory format for a counter claim under the Co-operative Societies Act, the Arbitrator has treated these questions as a counter claim. Therefore, the entertainment of the counter claim by the Arbitrator cannot be found fault with.

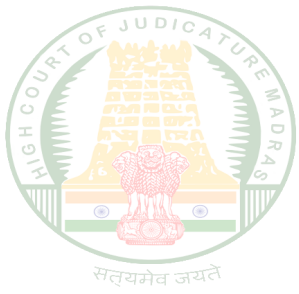
38. The learned counsel appearing for M/s.Krishan and Co. submits that the membership of M/s.Krishna and Co. was never in dispute. It was raised for the first time before the second Arbitrator. In fact the first arbitration proceedings were dismissed only on the ground that M/s.Krishna is the member. The Industrial Estate having initiated the second arbitration proceedings as against M/s.Krishna and Co., cannot turn around and contend that M/s.Krishna



and Co. would not be a member at all. He further points out that dismissal of the first arbitration proceedings have not been put to challenge by the Industrial Estate.

39. The learned counsel appearing for M/s.Krishna and Co. after pointing out the relevant by-laws of the Society submits that the Society does not have any power to forcibly evict a member, even assuming that he has committed default in payment. They have to approach only the arbitrator seeking re-possession of the property. In such circumstances, merely by passing a resolution, they cannot evict the members. In the present case, the forcible eviction has been carried out by the Society without referring the said issue to the Arbitrator. Therefore, the authorities have rightly arrived at a finding that the dispossession of M/s.Krishna and Co. is illegal.

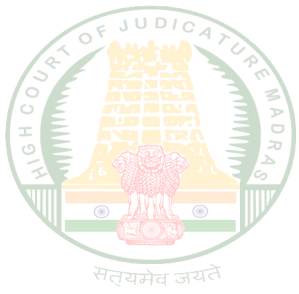
40. The learned counsel appearing for M/s.Krishna and Co. relied upon the various communications issued by the industrial estate demanding the documents and issuance of arbitration proceedings and a letter of forfeiture which would clearly establish the fact that M/s.Krishna and Co. is a member. He also relied upon Ex.A44 and Ex.A45 wherein the membership of M/s.Krishna and Co. has admitted and dividend has been paid.



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41. The learned counsel appearing for M/s.Krishna and Co. relied upon Section 73 of the Co-operative Societies Act, 1961, to contend that the possession can be taken only through Arbitration. He submits that even for cancellation of the allotment, arbitration proceedings have to be initiated. In such circumstances, locking the premises unilaterally or cancelling the allotment order are clearly illegal, they are not by due process of law. He further submits that after taking forcible possession, for the sake of these revision petitions, it is contended that as if M/s.Krishna and Co. has voluntarily surrendered his possession. However, there are no records whatsoever to prove that there was a voluntarily surrender of industrial plot.

42. The learned counsel appearing for M/s.Krishna and Co. further submits that Rs.4,20,000/- lakhs has been awarded by the second Arbitrator for damages. He further submits that pending proceedings, the entire dues to the industrial estate have been paid and therefore, the order of the learned Tribunal to hand over the possession without insisting for payment is valid. He further submits that M/s.Krishna and Co. having lost possession, they are also entitled to seek mesne profits.



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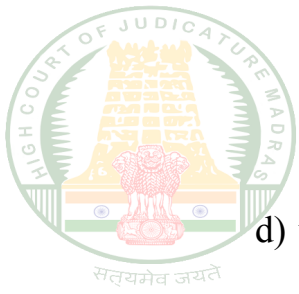
43. The learned counsel appearing for M/s.Krishna and Co. further submits that as far as the additional evidence application in I.A.No.135 of 2017 is concerned, the respondents have filed their counter and thereafter, it was allowed on 12.12.2018 and Exs.A43 to A.57 were marked. In such circumstances, the contention that additional documents were marked without giving opportunity to the Industrial Estate or M/s.Chemmeens is not factually correct. Hence, he prayed for dismissal of C.R.P.(MD)Nos.968, 1423 and 1424 of 2019 and to allow C.R.P.(MD)No.11 of 2021.

44. I have carefully considered the submissions made on either side and perused the materials available on record.

(C) Analysis

45. The following issues arise for consideration in the present revision petitions:-

- a) whether M/s.Sundar and Chandar or M/s.Krishna and Co. is the member of industrial estate?
- b) whether the dispossession of M/s.Krishna and Co. is illegal?
- c) whether M/s.Krishna and Co. is entitled to get re-possession of the property and that too without payment of any further amount?



d) whether M/s.Krishna and Co. is entitled to claim damages and mesne profits?

(i) Membership:

46. It is not in dispute that the initial allotment of industrial plot of DB-17 was made in favour of M/s.Sundar and Chandar on 04.09.1961. A perusal of Ex.R1 reveals that the address of M/s.Sundar and Chandar is shown as C/o. M/s.Krishna and Co. On 28.04.1973, a communication has been addressed by the industrial estate to M/s.Krishna and Co. under Ex.A10 requesting them to remit the entire arrears. It further points out that M/s.Krishna and Co. is the member of industrial estate. Ex.A11 is the arbitration notice issued to M/s.Krishna and Co. on 04.09.1975. It is pertinent to point out that this arbitration notice has been issued to M/s.Krishna and Co. even before initiating the first arbitration proceedings as against M/s.Sundar and Chandar in the year 1977.

45. A communication has been addressed by the industrial estate to M/s.Krishna and Co. on 04.05.1977 calling upon them to pay a sum of Rs.1,36,249.29/-. On 04.02.1983 under Ex.A28, a communication has been addressed by the estate to M/s.Krishna and Co. calling upon them to pay principal, interest and water charges to a tune of about Rs.31,888.48/-. This



communication would clearly establish that the industrial estate has recognised M/s.Krishna and Co. as a member of their Society. At no point of time, any communication has been addressed to M/s.Krishna and Co. pointing out that they are mere occupier and not a member of the Society.

46. The first arbitration proceedings was initiated by the industrial estate as against M/s.Sundar and Chandar in the year 1977 in A.R.C.No.3/1977-1978. This arbitration proceeding was dismissed on 29.11.1977 with a finding that all the transactions are in the name of M/s.Krishna and Co. and therefore, the claim made against M/s.Sundar and Chandar is not binding on them. With the above observations, the arbitration proceedings were dismissed. It is to be noted that the industrial estate has not chosen to challenge the arbitration award which has categorically held that M/s.Krishna and Co. alone is the member and not M/s.Sundar and Chandar.

47. Admitting M/s.Krishna and Co. is the member of the Society, the industrial estate has initiated the second arbitration proceedings in A.R.C.No. 9/1983-84 for recovery of Rs.31,900.98/- from them towards overdue principal, interest and water charges for the default of hire purchase instalments. The initiation of the said arbitration proceedings as against M/s.Krishna and Co.



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would clearly indicate that the industrial estate has accepted the order of the first arbitrator dated 29.11.1977 and M/s.Krishna and Co. alone is the member of the Society.

48. In view of the above said discussion, it is clear that the industrial estate had right from the beginning treated only M/s.Krishna and Co. as the member of the Society and have also issued arbitration notice and initiated arbitration proceedings as against M/s.Krishna and Co. In such circumstances, there cannot be any dispute whatsoever that M/s.Krishna and Co. is the member of the industrial estate.

ii) Dispossession:-

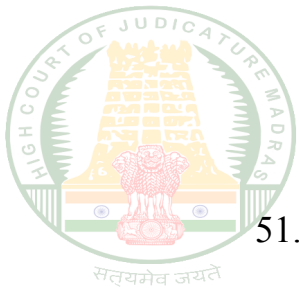
49. A perusal of the by-laws of the Tuticorin Co-operative Industrial Estate reveals that as per clause 61, any dispute touching upon the business of the estate, the Registrar of Industrial Co-operatives has to refer it for disposal of the Arbitrator or Arbitrators. As per Section 73 of the Madras Co-operative Societies Act, 1961, the claim by the registered Society for any demand from a member would fall within the dispute touching upon the business of the registered Society. Therefore, it is clear that for recovering any dues or re-possession of the property, the Society has to approach only the Arbitrator. A



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perusal of Ex.A17, dated 04.05.1977, reveals that a communication has been addressed by the estate to M/s.Krishna and Co. that they have resolved to initiate arbitration. Further in the said notice, it is pointed out that the plot allotted to M/s.Krishna and Co. has already been forfeited. A perusal of Ex.A11 arbitration notice addressed by the estate to M/s.Krishna and Co. on 04.09.1975 reveals that the arbitration proceedings would be initiated for recovery of the arrears and for cancellation of the amount. In case if the amount is not remitted within a period of 30 days.

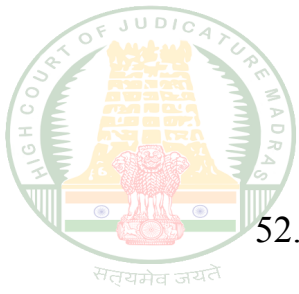
50. In the light of the Section 73 of the Madras Co-operative Societies Act, 1981 and by-laws it is clear that even for cancellation of the allotment or for the recovery of the dues, arbitration proceedings have to be initiated. However, there are no records to show how possession was taken from M/s.Krishna and Co. even without following the arbitration proceedings. In such circumstances, the contention of the industrial estate that M/s.Krishna and Co. had voluntarily surrendered the possession is unbelievable. That apart, no records have been produced to show that they have voluntarily surrendered the possession.



51. In such view of the matter, it is clear that the cancellation of allotment as well as the dispossession of M/s.Krishna and Co. are without following due process of law and therefore, they are illegal.

iii) Re-possession and payment: -

When the dispossession of M/s.Krishna and Co. is held to be illegal, it is nothing but consequential that they are entitled to get re-possession of the property. As far as recovery of dues under lease-cum-sale-agreement is concerned, the second arbitration proceedings initiated by the industrial estate as against M/s.Krishna and Co. in A.R.C.No.9 of 1983 has been dismissed as time barred and the counter claim filed by M/s.Krishna and Co. was also dismissed. Challenging the dismissal of counter claim, M/s.Krishna and Co. had preferred C.M.A.No.117 of 1985 before the Co-operative Tribunal/Principal District Court, Madurai. The industrial estate has not chosen to prefer any appeal as against the dismissal of their arbitration claim in A.R.C.No. 9/1983-1984. Therefore, it is clear that the claim of industrial estate as against M/s.Krishna and Co. for the principal and interest amount, though it was dismissed as time barred by the Arbitrator, they have not chosen to challenge the same.



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52. Only the dismissal of the counter was challenged by M/s.Krishna and Co. and it was remanded by the Co-operative Tribunal for appointment of the third Arbitrator in ARC.No.1/1988-1989. The third Arbitrator had partly allowed the counter claim and directed re-delivery of the possession to M/s.Krishna and Co. but rejected the request of M/s.Krishna and Co. for damages. Only this order was put to challenge in C.M.A.(C.S).Nos.5, 6 and 7 of 1995 before the Co-operative Tribunal, Tuticorin, by the parties. Therefore, it is clear that the industrial estate has chosen not to challenge the dismissal of their arbitration claim. The award of the second Arbitrator dated 11.09.1985 is only with regard to the counter claim of M/s.Krishna and Co. seeking re-possession, damages and mesne profits.

53. M/s.Krishna and Co. has addressed a communication to the industrial estate remitting a sum of Rs.13,914/- towards full and final settlement and they have demanded execution of the sale deed thereafter, no further communication has emanated from the industrial estate.

54. The learned Counsel appearing for M/s.Krishna and co. contended that the entire amount has been paid when the issue was pending before the Hon'ble Supreme Court. However, there are no records to indicate that the



payment made by the M/s.Krishna and Co. was accepted as full and final settlement on behalf of the industrial estate. In such circumstances, it may not be appropriate to confirm the order of the Co-operative Tribunal that the possession shall be handed over to M/s.Krishna and Co. without insisting for any further payment.

iv) Damages and mesne profits:-

55. A perusal of the counter claim of M/s.Krishna and Co. reveals that there are no pleadings or prayer. However, only 28 questions have been raised. In clause No.22, the complainant claimed that they are entitled to claim a sum of Rs.2,00,000/- from the Society and M/s.Chemmeens in terms of the market value. It is not known whether Rs.2,00,000/- represents damages or mesne profits. There is no pleading whatsoever with regard to the mesne profits. M/s.Krishna and Co. has not calculated monthly rental value of the industrial plot which they have lost possession. Admittedly, M/s.Krishna and Co. had lost possession of the property on 19.04.1977. The counter claim had been raised during the second arbitration proceedings in A.R.C.No.9/1983-1984 after a period of 7 years. When there is no proper pleading or evidence for the claim of damages and mesne profits, the Co-operative Tribunal was not right in arriving at a finding that M/s.Krishna and Co. would be entitled to claim damages and

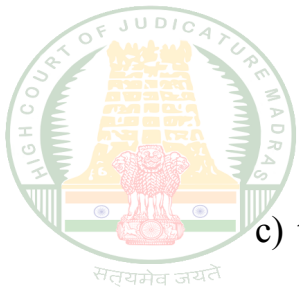


therefore, remitting the matter to Arbitrator for arriving at quantum of damages, is not legally sustainable. It is equally true that there is no pleading with regard to mesne profits. In such circumstances, the finding to the said effect that M/s.Krishna and Co. is entitled to mesne profits has to be set aside.

56. When the cost memo has not been filed by the appellant, the Co-operative Tribunal ought not to have awarded litigation cost of Rs.4,00,000/- and therefore, the same is also liable to be set aside. It is to be noted that the learned District Judge is only a statutory authority under Section 95 of the Madras Co-operative Societies Act, 1961. In such circumstances, he could not have invoked Rule 96 of the Civil Rules of Practice for awarding litigation expenses. Therefore, the award of litigation expense of Rs.4,00,000/- is also set aside.

57. In view of the above said deliberations, this Court is inclined to pass the following orders:-

- a) C.R.P.(MD)No.11 of 2021 stands dismissed;
- b) the order of Co-operative Tribunal with regard to re-allotment of the plot DB-17 to M/s.Krishna and Co. within a period of one month hereby stands confirmed;



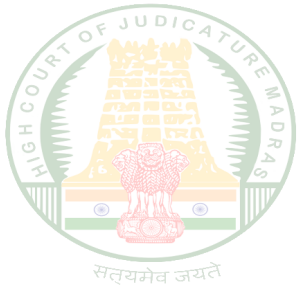
c) the re-allotment in favour of M/s.Krishna and Co. shall be subject to the payment of principal and interest, to be determined by the Industrial Estate after giving due notice to M/s.Krishna and Co.;

d) the order of the Co-operative Tribunal with regard to the damages, mesne profits and litigation cost are hereby set aside; and

e) C.R.P.(MD)Nos.968 to 970 of 2019 and C.R.P.(MD)Nos.1423 and 1424 of 2019 are partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are also closed.

08.01.2026

NCC : Yes/No
Index : Yes/No
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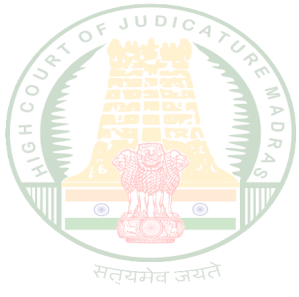


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To

The (Principal District Judge),
The Special Tribunal for Co-operative Cases,
Thoothukudi.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

Pre-delivery order made
in
**C.R.P.(MD)Nos.968 to 970, 1423,
1424 of 2019 and 11 of 2021**

08.01.2026