

**The Senior Superintendent of Post Offices Vs. K.R.M.S. Chockalingam Chettiar**

**LegalCrystal Citation :** [legalcrystal.com/822100](http://legalcrystal.com/822100)

**Court :** Chennai

**Decided On :** Mar-24-1967

**Reported in :** (1967)2MLJ412

**Appellant :** The Senior Superintendent of Post Offices

**Respondent :** K.R.M.S. Chockalingam Chettiar

**Judgement :**

ORDER

T. Ramaprasada Rao, J.

1. The District Judge of West Thanjavur, in C.M.P. No. 39 of 1965 remitted the application filed by the landlord for fixing of fair rent to the Rent Controller for final disposal on the ground that he was not satisfied with two of the findings rendered earlier. The main question that is canvassed before me by the petitioner in this Civil Revision Petition who is the Senior Superintendent of Post Offices, East Thanjavur, is that the learned District Judge who exercised the powers under Section 25(1)(b) of the Madras Act (XVIII of 1960), has no powers of such remand and that, therefore, the order remitting the case for further trial and disposal by the Rent Controller, is unwarranted.

2. There is a volume of literature on this subject whether an appellate Court, under Madras Buildings (Lease and Rent Control) Act, or a revisional Court, exercising power under the Madras Act XVIII of 1960 has powers of remand, enabling them to remit the subject-matter for fresh enquiry by the Rent Controller. The earliest case is one decided by Rajamannar, C.J., and Raghava Rao, J., in Rangaswami Naidu v. Second Judge, Small Causes Court, Madras (1949) 62 L.W. 35. Their Lordships considered the scope of Section 12(3) of the Act XV of 1946 and held that the appellate authority under the Madras Buildings (Lease and Rent Control) Act did not having the power of remand. In Narayanaswami Reddiar v. Dhanraj Sowcar : (1958)1MLJ77 . Ramaswami, J., having held that there was no power of remand in the case which he considered, did not, however, delve deep into the question whether there was an inherent power of remand in the appellate authority or not. In Dhanakoti Chettiar and another v. M.M. Duraiswami Chettiar I.L.R. : (1962)2MLJ82 , Ramachandra Iyer, C.J., without reference to the Division Bench (Rangaswami Naidu v. Second Judge, Small Causes Court, Madras (1949) 62 L.W. 35, held that there is an inherent power of remand in the revisional authority as well and he equated the revisional authority to an appellate authority. This aspect was again considered by Ganapathia Pillai, J., in Babu Mudaliar v. Bhaktavatsalu Chetti : (1963)1MLJ9 . There the learned Judge makes a distinction that if the one and only ground on which the

trial Court rested its conclusion is not acceptable either to the appellate or to the revisional Court then the learned Judge says that such appellate or revisional Court could remand. But, if the appellate or a revisional authority differs from the trial Court in some out of many aspects of the case and finds that it would be necessary that, particular aspect or aspects should be reconsidered by the trial Court it should rather call for a finding from the trial Court instead of remanding or remitting the entire case for re-hearing and retrial. The apparent controversy has been set at rest by the decision of Anantanarayanan, C.J., in C.R.P. No. 1872 of 1964. The learned Chief Justice observed as follows:

The appellate authority has made the remand purely for purpose of evidence being taken in regard to certain relevant factors. In effect, the appellate authority is really calling upon the trial Court to make an enquiry and to submit a finding. In those circumstances, I think, that the proper course for the appellate authority under Section 23(3) is to retain the appeal on its file and to dispose of it after the Rent Controller makes a further enquiry and submit his findings.

3. As already stated by me, whether it is the appellate authority exercising jurisdiction under Section 23(3) or the revisional authority exercising jurisdiction under Section 25(3), the question is whether they have power to remand, if they differ only on certain aspects or certain matters from the findings of the lower tribunals. While respectfully adopting the formula laid down by Ganapathia Pillai, J., and Ananthanarayanan, C.J., in the cases referred to above, I find that in the instant case, the learned District Judge ought not to have remitted the entirety of the matter for disposal by the Rent Controller. It is seen that the learned District Judge is in accord with the conclusion of the Rent Controller in the matter of the value of the land as fixed by him. He also finds that he cannot take any exception to the rate of allowance fixed by the Rent Controller for the amenities. But, he would not agree with the constructional costs as reckoned by the Rent Controller and also the quantum of depreciation allowed by him. Thus, in fact, he differs from the Rent Controller in two out of the four findings rendered by him.

4. In these circumstances, it would be proper that instead of remitting the totality of the case for fresh disposal, the learned District Judge, as revisional authority, ought to have called for a finding on these matters, in which he could not concur with the Rent Controller. He ought to have, therefore, kept the Revision Petition on record on his own file and called for findings from the Rent Controller and ought to have disposed of the same after obtaining the findings.

5. The order of the learned District Judge is, therefore, modified to the extent stated above and the Civil Revision Petition is allowed in part. The case is remitted to the file to the District Judge, West Thanjavur for disposal of the case in the light of my observations as above.