

TAMIL NADU REGULATION OF RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND TENANTS ACT, 2017

-A LANDLORD CENTRIC LEGISLATION

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Abstract

The main aim and purpose of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 as stated in the preamble is to regulate the rent, to balance the Rights and Responsibilities of Landlord and Tenants, and to provide fast adjudication process for resolution of disputes, between the landlord and tenant. Before this enactment, we have followed the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Now the authors want to analyse the reason for enactment of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, and whether this Act had compensated or filled the place of the old repealed Act of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 apart from this, the authors also want to eagerly research the areas of lacunaes in the present Act of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 and to analyse whether it effectively serves as a piece of social Legislation.

The authors frame the following areas of concern or issues for consideration.

- *Whether the Act, is a self-contained one which addresses the grievances of both the parties?*

- *If we need modifications, what are they?*
- *What are the consequences which the practicing advocates face as a result of the enactment of this Act?*

Based on the above issues the authors are going to the research the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017

Keywords: Land lords, Tenants, Rent court, Rent payable, Tenancy, Eviction, Rent Authorities, Appeals etc.

1. Introduction

“The Land lord operate a certain kind of monopoly against the tenants”¹ –

KARL MARX

The above quoted words of Karl Marx have now become a reality through the passing of the enactment of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. One might even argue that our country is marching towards rapid urbanisation and the standard of living, the quality of purchasing power of the people have gone up to the remarkable extent, the concept of ‘landlord’ and ‘tenants’ would still forever. As it is a well-known reality-based fact, that the rich becoming richer and the poor becoming poorer, landlord would always be dominating the tenants. The legislations passed also paves way for the above said scenarios.

Other aspects, salient features and suggestions for implementations are discussed as follows. The preamble of the TNRRLT Act, 2017 states that it is an Act which was passed to streamline the entire process of regulation of rent, balancing the rights, responsibilities of land lords and tenants and to provide for the faster adjudication of disputes. It is also pertinent to note that the said legislation has come into force repealing the erstwhile sexagenarian old Tamil Nadu Lease and Rent control Act, 1960, as it has failed to cater to the needs of the dynamic society. Thus, in this article, the authors have endeavoured to pin point the lacunae which the present legislation suffers from and the provisions which are to be implemented for the beneficial interest of the society at large.

¹ Economic and philosophic manuscripts of 1844 – Karl Marx

2. Act in a nut shell:

- 1) The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 Act consists of 47 Sections and three Schedules. The Rules of the said Act was passed on 22nd February, 2019.
- 2) **Sec 2(o)** of this Act, defines '*urban area*', as per that definition, the extent of urban area is defined as any area that falls under Municipal Corporation, Town Panchayat, or the Cantonment jurisdiction. The state of Tamil Nadu has 37 districts, 15 municipal corporations, 561 town panchayats². The urban population of Tamil Nadu is about 3.5 crores which is 48.44 percentage of 7.2crores as per 2011 census. This definition fixes the exact jurisdiction and areas of operations of the said Act.
- 3) The Act has defined a term called '*property manager*'³ which includes any person or even a company, who is being employed by the landlord to manage the premises and he also does acts on behalf of the landlord.
- 4) It has completely abolished the concept of '*fair rent*'.
- 5) The period of tenancy is being fixed in such a term that Sec 5(3)⁴ says that if the tenancy of a fixed period comes to an end but has not been renewed, then it shall be deemed to have been renewed on month to month basis following the same terms and conditions in the original agreement and would remain in force for the maximum period of 10 months.
- 6) The said Act, came into operation on 22nd day of February 2017. The Act has a retroactive operation which includes in its operation, those tenancy agreements executed even before the enactment of this law.
- 7) Sec 4(4) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, says that all agreements under the said Act has to be mandatorily registered with the authority. According to this provision, the tenancies has to be given effect by way of an agreement in writing. When it comes to the oral tenancies created even before the commencement of the Act, the concerned parties shall reduce the terms of the agreement in writing within 90 days from the date of notification of the Act. Furthermore, the tenancy agreement has to be registered with the Rent Authority within 90 days from the date of such execution.
8. The said Act has also provided that the landlord, tenant or property manager are the persons competent to file the application under this Act.

² <https://tn.gov.in/dtp/townpanchayats>

³ Sec .2(h) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017

⁴. If a tenancy, for a fixed term ends and has not been renewed or the premises have not been vacated by the tenant 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,

9. Registration under this new Act is independent of registration required under the Indian Registration Act. The parties are liable to register the agreements as per the Indian Registration Act in addition to registering the agreement with the Rent Authority under this Act.
10. The Act prescribes that the renewal is treated as a fresh tenancy and it requires a fresh registration. The process of registration has been made online under the said Act and it requires no expensive charges of registration.
11. **Sec. 8** of the said Act, sets forth the criteria to pay rent. It says that the rent payable is the rent that is agreed upon between the landlord and the tenant during the period of the commencement of the tenancy and the provision says that if there is any revision in the rent payable between the landlord and the tenant, the landlord has to give a notice in writing three months before the rent becomes due. Further, if the tenant fails to give the notice of termination of tenancy, the Act says that the tenant shall be deemed to have accepted the increase in rent as proposed by the landlord.
12. Other aspects which are laid down in **Sec.9** is that if the landlord has incurred any expenditure by reason of improvement or any modifications to the building let out, he may increase the rent of the building to the one agreed by both the landlord and the tenant and it shall be payable from one month after the completion of work.
13. **Sec 14** of the Act says that if the landlord declines to accept rent or fails to give the receipt the rent or the other charges shall be paid by the tenant, by the postal money order or other modes for the period consecutively for two months. If the landlord does not accept even the said rent the tenant can deposit the rent with the Rent Authority.
14. The ouster of civil court's jurisdiction discussed under Sec 33 of the Act, gives jurisdiction to the Rent court and the Rent Authority having the competence to hear the matters between landlord and the tenant has been provided with⁵.
15. The Act, through Schedule III ⁶gives special importance, to certain category of landlords who enjoy the privilege of eviction of their tenants. They are mentioned in the list as the persons who allotted premises to their employees, retired government staffs, armed force employees, widowed woman, divorcee or single woman, disabled person and senior citizens.

3. Comparison of the Act with the Tamil Nadu Buildings Lease and Rent Control Act, 1960

- The old legislation of The Tamil Nadu Buildings Lease and Rent Control Act, 1960 was a self-contained one. When it comes to the registration of the lease and the rental agreements, it made the registration optional for the parties. The agreements exceeding the term 11 months and the amount exceeding Rs.50,000/- alone were made to be registered.

The new rent control Act of 2017, made it compulsory on the part of the parties to the agreement to register it irrespective of the duration and amount of the agreement. It is also independent of the registration made under

⁵ The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017

⁶ ibid

the Indian Registration Act, 1908.

- The concept of 'fair rent' was clearly defined under Sec. 4(2) and it was worked out with the specific formula and derivations under Schedule I and II the old Act, 1960.

The new Act has completely omitted the term 'fair rent' and enacted that rent and all other allied matters are one mentioned in the agreement between the two parties alone as stated in Sec.8 of the Act.

- The old Act 1960 vide Sec 2(3), had the jurisdiction of civil court in its ambit to adjudicate the disputes that arose between the parties. In short the judicial authority vested with the judicial powers were alone conferred the powers under this Act.

The new Act, has enacted vide Sec 33, that the Rent court alone has jurisdiction and no civil courts would be authorised to adjudicate the disputes arising between the landlord and the tenant. In short, the jurisdiction of civil courts is completely ousted by way of this legislation.

- The old Act, 1960 had elaborately discussed eleven grounds of eviction⁷ of tenants by the landlord through Sec.10 and 14 of the said Act.

The new Act, has not clearly mentioned the grounds of eviction of landlords by the tenant when compared to the old legislation.

Further, the proviso to Sec 22 (1) describes about the special category of landlords as mentioned in Schedule III of the Act.⁸

- The old Act provided remedy to both the landlords and tenants even without a registered agreement. Mere production of rent receipts and proof of possession alone would suffice for adjudicating the dispute.

The new Act vide Sec 2(a),⁹ clearly states that written agreement executed by both the party is mandatory.

- The old Act,1960 discusses list of several amenities under Schedule I, rates of depreciation under Schedule II¹⁰.

⁷ Refer The T.N. Buildings (Lease and Rent Control) Act, 1960,

⁸ Refer The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017

⁹ ibid

¹⁰ Refer The T.N. Buildings (Lease and Rent Control) Act, 1960,

The new Act has incorporated three Schedules, I Schedule mentions the form for information of tenancy Schedule II about the division of maintenance responsibility between the landlord and the tenants, III schedule¹¹ about the special category of landlords.

4. Critical analysis of the Act:

Though the provisions of the said The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 has repealed the much self-contained elaborate Tamil Nadu Buildings Lease and Rent control Act, 1960 the new Act has many lacunae in it, which makes it ultimately a deficient one. The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 could rightly be called as an Act which is a Land lord centric one, that does not cater to the needs of the poor tenants, who would usually be in an economically unfavourable situation.

Non-inclusion of term ‘fair rent’ – an unfair one:

The concept of “*fair rent*”¹² is completely abolished in the present Act, whereas, it was very clear and obvious concept in the old legislation, The Tamil Nadu Buildings Lease and Rent control Act, 1960. This Act had the calculations for fixing the fair rents for residential and non-residential buildings which would be nine per cent gross return per annum on the total building cost for residential buildings and twelve percent gross return per annum on non-residential building. These provisions undoubtedly made the old Act more specific and a beneficial piece of legislation. The current Act is devoid of such provisions which would make the landlords exploit the poor tenants, by claiming that the rent was the outcome of the mutual agreement between him and the tenant, thereby it might even tempt him to fix sky rocketing rent taking advantage of the plight of the tenants, who does not have any landed property of his own.

¹¹ The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017

¹² Sec 4(2) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960.

The ouster of civil court's jurisdiction is a major drawback, as the evidences might not be properly appreciated by the quasi-judicial authorities or the administrative authorities, by reason of their lacking of the much-needed legal expertise in this area.

From the practicing advocate's point of view, as the civil court's jurisdiction is barred, it would have an adverse impact on the legal profession as a whole. Furthermore, the RCOP proceedings were once the advocate's paradise, where the efficient advocates would handle the cases according to the well-established principles of law. But the present situation is very much unfavourable for the legal fraternity as a whole.

5. Suggestions for effective implementation of the Act:

Any legislation enacted has to be one which benefits the society at large and should even balance the rights and liabilities of both the parties concerned. In order to brand a legislation as a beneficial piece of legislation, or a social welfare legislation, the interests of the poor and weaker sections of the society has to be considered.

The authors opine that The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 has few shortcomings which has to be addressed to immediately, for the betterment of the society and the interests of the tenants.

- Sec. 8 of the Act, which mentions about the Rent payable by the tenant, indicates that the agreement between the landlord and the tenant is the only criteria and the base with which the rent has to be fixed. The concept of '*fair rent*', should be calculated by adopting the formula or by fixing the percentage for residential and non-residential buildings.
- Sec 21 and 22 of the said Act which provides for the recovery of possession for occupation of the *land lord is very arbitrary and favouring the land lord alone*. The recovery of premises for the personal occupation of the landlord is very much unqualified and might even prove detrimental to the interests of the tenants, who would wish to remain in peace for some period of time in the premises. Hence, certain restrictions in the said provisions has to be imposed. Furthermore, the wordings of the provision should be crystal clear in order to prevent the landlords from exploiting the poor tenants.
- Sec. 31(2) of the said Act provides that for two or more rent courts constituted for any urban area, the government may by the general or special order regulate the distribution of any business among them. Here, in this provision, the term '*business*'¹³ which is being mentioned lacks the needed clarity in this context. It should have pin pointed or unambiguously stated the scope of functions, powers or duties of the concerned officials to be discharged. The plain word 'business' is not sufficient to explain this section where two or more courts are involved in the same urban area.

¹³ Sec 31(2). Where two or more rent courts are constituted for any urban area, the government may, by general or special order, regulate the distribution of business among them.

- The said Act vide **Sec. 33** says that the jurisdiction of a civil court is completely ousted. This provision needs to be modified so that it grants the powers to the civil courts. The Rent courts might not be the proper forum to adjudicate these issues which are predominantly legal and which decides the rights and liabilities of parties.
- **Sec. 34 (1)** of the said Act, says that the provisions of the C.P.C. does not apply to this proceeding, but in **Sec. 34(2)** in the interests of justice, it says that it can call a witness for examination, cross examination etc. for examining such person. This provision, may lead the authority to act arbitrarily as it is vague in operation.
- Further, **Sec 38** of the said Act empowers the Collector to appoint officer in the rank of Deputy Collector to be the rent authority. This process of appointment of this quasi-judicial authority might not be competent to decide the legal matters which are arising before

6. Conclusion:

India being a welfare state, the ultimate aim of the nation should be one that promotes social equality and communal harmony. It could not be denied that any product or commodity can easily be manufactured and given to the people according to their demands, but the lands are the only creation of the nature that cannot be recreated again to cater to the growing needs of the society. Thus, the concept of landlords and tenants would remain in existence forever. The laws in this 21st century has to be one that maintains the social equilibrium in the nation. Further, the poor tenants should not be made to suffer at the mercy of the landlords. Thus, The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, is not a beneficial piece of social legislation which aims at achieving the concept of social welfare. The present Act without taking any element of responsibility, monopolised the powers in the hands of the landlords relying only on the agreement between both the parties, which would again favour the landlord who is in the position to dominate the poor tenants. Thus, this Act made the tenants, a doll in the hands of the unscrupulous landlord. The arbitrary, draconian provisions which gives complete autonomy in deciding the fixation of rent, grounds of eviction, ouster of civil court's jurisdiction has to be revisited to make the necessary amendments in order to term it as a balancing piece of 'Social welfare legislation'.