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C.R.P.No.3295 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3295 of 2019
and CMP.No.21401 of 2019

1.G.Radhakrishnan (died)
2.G.R.Madhakrishnan
(sole petitioner died. Petitioner 2 is brought on record as Lrs
of the deceased sole petitioner viz., G.Radhakrishnan vide
Court order dated 04.01.2024 made in CMP.No.21340 of 2022
in CRP.No.3295 of 2019)

... Petitioners

vs.

M.Murugan (deceased)
M.Manohar

... Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Building Lease and Rent Control Act, 1960) praying to set aside the judgment and decree dated 13.08.2019 made in RCA.No.605 of 2016 by the learned Appellate VIII Judge, Small Causes Court, Chennai as confirmed in the judgment and decree dated 13.08.2019 passed by the learned VIII Judge Small Causes Court, Chennai, in RCA.No.605 of 2016 pending disposal of the above revision petition.



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For Petitioners : Mr.A.R.L.Sundaresan
Senior Advocate
for M.Kamalanathan.

For Respondent : No Appearance

ORDER

The Civil Revision Petition is filed by the tenant challenging the order of eviction passed against him on the ground of owner's occupation.

2. The respondent's father originally filed a Rent Control eviction petition against the petitioners on the ground of wilful default and owner's occupation. Pending original petition father of the respondent died and respondent was brought on record as his legal representative and proceeded with the eviction petition. The learned Rent Controller found that the requirements of the respondent on the ground of owner's occupation was bonafide one and ordered eviction on that ground. The claim of the respondent on the ground of wilful default was negated. Aggrieved by the eviction order, the petitioners preferred an appeal before the Rent Control Appellate Authority and the same was dismissed. Aggrieved by the concurrent findings against him, the tenant is before this Court.



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3. The learned Senior Counsel appearing for the petitioner/tenant vehemently contended that the respondent/landlord sought for eviction on the ground of owner's occupation on the averment that he intends to start steel business in the demised premises. However, he failed to lead any evidence to show that he had taken atleast one step towards starting the business. In such circumstances, the requirement of the respondent is not bonafide one. The learned counsel by taking this Court to the evidence of PW.1 submitted that he had clearly admitted that he failed to take any step towards start of the business and hence the eviction order is liable to be dismissed. He also submitted that though in the petition the respondent claimed that he intended to start steel business, in his chief examination, he deposed as if he wanted to start plastic and steel business. In view of contradictions in his stand the Courts below ought not to have ordered eviction. In support of his contention, the learned Senior Counsel relied on the following judgments:

(i) P.N.Raju Chettiar Vs. The State of Tamil Nadu represented by the Secretary, Home Department (Accommodation Controller) and others reported in 1970 (1) MLJ 249;



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(ii) Muniammal and others Vs. R.Sundara Mahalingam reported in 1990 (2) MLJ186;

(iii) Pooludaiyar Chettiar Vs. Gani reported in (2003) 2 MLJ 704;

(iv) R.Sudhandhira Devi and others Vs. K.Navanithakrishna reported in (2005) 4 MLJ 127.

4. Though respondent is served and his name appears in the cause list, there is no representation for respondent.

5. Heard the arguments of the learned Senior Counsel appearing for the petitioners and perused the typed set of papers.

6. The respondent herein sought for eviction on the ground of owner's occupation on a specific averment that he intends to start the stainless steel business in the petition mentioned premises. He had also averred that he was not in occupation of any other non residential building in the very same



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city. When respondent was examined as P.W.1, he deposed that demised premises was required for plastic and steel business. He further deposed due to his father's illness, he could not take any further steps.

7. The petitioner herein was examined as RW.1. During the course of his cross examination he deposed that the respondent was already married and he got children. He clearly admitted that demised premises is located in a business locality, wherein sale of steel and stainless steel articles and plastics were carried on. He deposed that to start steel business one has to get licence from Corporation and get registration from Sales tax Office. He specifically admitted that only if the business premises is vacant, Sales tax registration could be obtained. He also admitted that only if the business premises is vacant, Corporation would grant licence. Moreover, he had gone to the extent of admitting that the respondent could take steps towards start of business only if he vacates the premises and hand over vacant possession. The relevant portion of his evidence in vernacular is extracted below:

``மனோகரை எனக்கு தெரியும். அவர் தொழில் எதுவும் செய்யவில்லை.

மனோகர் என்பவருக்கு திருமணம் ஆகி மனைவி, குாந்தைகள் எல்லாம்



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இருக்கிறார்கள் என்றால் தெரியும். அவர் சொந்தமாக தொழில் ஆரம்பிக்க வேண்டும் என்று இடம் கேட்டு இருக்கிறார் என்றால் சரிதான். நான் வியாபாரம் செய்யும் பகுதியில் எவர் சில்வர் மற்றும் ஸ்டீல் பொருட்கள் பிளாஸ்டிக் விற்பனை செய்யும் கடைகள் இருப்பதாக சொன்னால் சரிதான். மனுதாரருக்கு எவர் சில்வர் மற்றும் ஸ்டீல் பொருட்கள் பிளாஸ்டிக் விற்பனை செய்வதற்கு பொருட்களும் பணமும் இருந்தால் போதுமானது என்றால் சரிதான். மாநகராட்சியில் உரிமம் வாங்க வேண்டும் என்றால் சரிதான். விற்பனை வரி அலுவலகத்தில் பதிவு செய்து சான்றுகள் பெறவேண்டும் என்றால் சரிதான். இடம் காலியாக இருக்கிறது என்று கூறினால் தான் விற்பனை வரி அலுவலகத்தில் அனுமதி கொடுப்பார் என்றால் சரிதான். சென்னை மாநகராட்சியிடம் உரிமம் பெறவேண்டும் என்றால் மனுதாரர் காலி இடம் மனுதாரரிடம் இருந்தால் தான் அனுமதி கொடுப்பார்கள் என்றால் சரிதான். நான் மனு கட்டிடத்தை காலி செய்து கொடுத்தால் மனுதாரர் தொழில் தொடங்க மற்ற முயற்சிகளில் ஈடுபட முடியும் என்றால் சரிதான்.

8. A reading of RW1's evidence would suggest that the respondent is already married and is having children, therefore, there is a bonafide requirement for him to earn some income by starting the business or otherwise. Originally the petition was filed by his father stating that demised premises was required for starting steel business for his son (respondent).



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Pending eviction proceedings, the respondent's father died and he was brought on record. In the light of the admission made by RW.1, the respondent is married and is having children, the requirement to start business appeared to be bonafide. Though, the learned Senior Counsel for the petitioners vehemently contended that unless landlord proves that he has taken atleast one step towards start of the business, the requirement cannot be treated as bonafide one by relying on above said cases, in the case on hand, admissions made by the petitioner/tenant as RW.1 goes otherwise. The petitioner as RW.1 clearly admitted that the respondent could not take any steps towards start of business unless he vacate the premises and hand over vacant possession. He clearly admitted that licence from Corporation and registration from Sales Tax Office could be obtained only after getting vacant possession of the demised premises. In such circumstances, the absence of concrete steps on the part of the respondent towards start of business may not be put against him, in the facts and circumstances of the case, especially in the light of above mentioned admissions by RW.1. The respondent in his evidence also deposed that he had expertise in steel business by joining Mahalakshmi Enterprises.



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9. It is settled law, in order to get eviction on the ground of owner's occupation, the landlord need not carry on business actually in the demised premises. If the intention to start business is bonafide, the same is sufficient. It would be appropriate to rely on the decision of this Court reported in **Manu/TN/0776/2003 in Pooludaiyar Chettiar Vs. Gani**, wherein, this Court held that while considering the eviction petition on the ground of owner's occupation what is required is the honest desire to do business in his own premises. If landlord failed to occupy the premises within one month from the date of obtaining possession, the tenant may also apply for restoration under Section 10 (5) (a) of the Act. The relevant observation reads as follows:

*“14. While interpreting this provision, S.S.Subramani,J. in **M/S.BOSTON v. AKBAR** 1998 (I) M.L.J.,270) held that the law does not say that the landlord should always continue to do business only in a rented premises even if he is entitled to get possession of his own building and nobody can doubt the claim of the landlord especially when he has no other building of his own.*



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What is required is the honest desire to do business in his own premises. In this context, I may also add here that if the landlord does not himself occupy the premises within one month of the date of obtaining possession or vacates it, then the tenant may apply for restoration, vide [Section 10\(v\)\(a\)](#) of the Act. The landlord would also be inviting action for penalty under [Section 33\(1-A\) of the Act](#). Therefore, there is no justification to presume that the object of the landlord was only to have the tenant evicted or to view his request with distrust and suspicion. If he does not act bona fide, the relief of restoration is always available to the tenant. The right of the tenant to squat over the property belonging to another person cannot be put above the right of the land owner to get possession of the property bona fide for his own use.”

10. The rent controller as well as Appellate Authority by proper appreciation of evidence available on record, especially the admissions of petitioner as RW.1, came to a factual conclusion that requirement of the respondent landlord was bonafide one. I do not see any perversity in the findings of fact recorded by the Courts below.



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11. In such circumstances, I do not see any reason to interfere with concurrent findings of the facts. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The VIII Judge Small Causes Court,
Chennai.



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S.SOUNTHAR, J.

After disposal of the civil revision petition, the learned counsel for the petitioner/tenant made a request seeking time for vacating the premises. The learned counsel submitted that petitioner is carrying on steel business in the demises premises and in order to find alternative accommodation, the time may be given for vacating the premises. He also submitted that as on today, he has been paying the rent at the rate of Rs.20,000/-per month.

2. In view of the fact that the petitioner is carrying on business in a non-residential building, time is granted till 31.08.2024 for vacating the premises and hand over vacant possession to the respondent without driving him to the execution proceedings on following conditions:-

a) The petitioner shall file an affidavit of undertaking that he would vacate and hand over vacant possession to the respondent on or before 31.08.2024 without driving the respondent to execution proceedings within a period of two weeks from today.



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b) The petitioner shall continue to pay the agreed rent at the rate of Rs.20,000/- per month starting from February 2024 till the date of vacating the premises on or before 10th of succeeding month.

S.SOUNTHAR, J.

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3. If the petitioner fails to comply with any one of the conditions mentioned above, the benefit of time will not enure to him. The respondent is at liberty to proceed with execution proceedings.

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