

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM;

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN

C.R.P. (NPD) . Nos.1472, 1487 and 1567 of 2015
& connected MPs

S. Ramesh ...Petitioner in CRP No.1472 of 2015
Gnanapragasam Chettiar ...Petitioner in CRP No.1487 of 2015
Thiru.Raj ...Petitioner in CRP No.1567 of 2015

-Vs.-

A. Ramakichenane ..Respondent in all CRPs.

Prayer in CRP (NPD) No.1472 of 2015: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 against the judgment and decree dated 23 December 2014 passed in R.C.A.No.155 of 2010 on the file of IX Judge, Court of Small Causes, Madras (Appellate Authority) confirming the order and decreetal order dated 27 January 2010 passed in R.C.O.P.No.1338 of 2008 on the file of the XIII Judge, Court of Small Causes (Rent Controller) Madras.

Prayer in CRP (NPD) No.1487 of 2015: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 against the order and decreetal order dated 23 December 2014 passed by IX Small Causes Judge, Rent Control Appellate Authority in R.C.A.No.322 of 2011 reversing the order and decreetal order dated 23 June 2010 passed in R.C.O.P.No.1340 of 2008 by the Rent Controller, XIII Judge, Small Causes Court, Chennai.

Prayer in CRP (NPD) No.1567 of 2015: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 against the Fair and decreetal order dated 23 December 2014 passed in R.C.A.No.201 of 2011 on the file of IX Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority) reversing the fair and decreetal order dated 22 July 2010 passed in R.C.O.P.No.1337 of 2008 on the file of the XIII Judge, Court of Small Causes (Rent Controller), Chennai.

Mr.S. Sadasharam : For Petitioner in CRP No.1472/2015
Mr. N. Nagu Sah : For Petitioner in CRP No.1487/2015
Mr. Ashok Menon : For Petitioner in CRP No.1567/2015
Mr. R. Viduthalai
Senior Counsel
for Mrs. R.Revathy :For Respondent in all CRPs.

COMMON ORDER

These three Civil Revision Petitions under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (hereinafter referred to as "The Act") are at the instance of the tenants and the challenge is to the eviction orders passed by the Appellate Authority directing surrender of respective premises primarily on the ground of demolition and reconstruction.

The facts in respect of individual revision petitions:

CRP (NPD) No.1472 of 2015:

2. (a) The property shown in the Schedule to the petition originally belonged to Smt.Ramamirtham, sister of the respondent. She executed a Will dated 20 January 2005 bequeathing the property to the respondent. The respondent obtained probate of the Will after the death of the testator.

(b) The building in question was taken on lease by the petitioner for running a Cycle Store on a monthly rent of Rs.1535/-.

(c) The respondent filed Eviction Petition in R.C.O.P.No.1338 of 2008 before the Rent Controller cum XIII Judge, Court of Small Causes at Chennai on the ground of wilful default and demolition and reconstruction. The petitioner pleaded that there was no arrears and the condition of the building does not warrant demolition.

(d) The Rent Controller allowed the Eviction Petition on both the grounds.

(e) The order dated 27 January, 2010 in R.C.O.P.No.1338 of 2008 was unsuccessfully challenged in R.C.A.No.155 of 2010. The judgment dated 23 December 2014 in R.C.A.No.155 of 2010 on the file of IX Court of Small Causes at Chennai is under challenge in this Civil Revision Petition.

CRP (NPD) No.1487 of 2015:

3 (a) The petitioner took the building involved in this revision petition on lease for residential purpose on a monthly rent of Rs.325/-.

(b) The respondent filed R.C.O.P.No.1340 of 2008 for eviction on the ground of arrears of rent and demolition and

reconstruction. The Rent Controller dismissed the Eviction Petition.

(c) The appellate authority allowed the appeal filed by the respondent with respect to demolition and reconstruction. The order passed by the Rent Controller in respect of wilful default under Section 10(2)(1) of the Act was upheld.

(d) The judgment dated 23 December 2014 in R.C.A.No.322 of 2011 is the subject matter of this revision petition.

CRP (NPD) No. 1567 of 2015:

4 (a) The non residential building owned by Mrs. Ramamirtham was taken on lease by the petitioner from her on a monthly rent of Rs.325/-.

(b) The respondent filed R.C.O.P.No.1337 of 2008 against the petitioner for eviction on the ground of wilful default and demolition and reconstruction.

(c) The Rent Controller negatived the contention taken by the respondent and dismissed the Eviction Petition.

(d) The order dated 22 July 2010 in R.C.O.P.No.1337 of 2008 was challenged in R.C.A.No.201 of 2011.

(e) The IX Court of Small Causes, Chennai allowed the appeal by judgment dated 23 December 2014 on the ground of demolition and reconstruction. The finding with respect to arrears of rent was upheld. In short, Eviction Petition on the ground of demolition and reconstruction was allowed. Feeling aggrieved, the unsuccessful tenant is before this Court.

Submissions:

5. The learned counsel for the petitioner in CRP (NPD) No.1472 of 2015 raised the following contentions.

(a) The respondent has withdrawn the application filed under Section 11(4) of the Act for the reason that the amount due have already been paid by the petitioner. Such being the factual position, the Rent Controller and Appellate Authority committed a concurrent mistake by allowing the Eviction Petition on the ground of wilful default.

(b) The respondent has not given the statutory undertaking to demolish the building as provided under the Act.

6. The following are the submissions on behalf of the petitioner in CRP (NPD) No.1487 of 2015.

(a) The landlord has not proved the age and condition of the building which is a pre-condition for eviction under Section 14(1)(b) of the Act.

(b) The appellate authority erred in assessing the condition of building by looking into the photographs, without examining the photographer.

(c) The landlord failed to prove his bona fides. The Eviction Petition was not accompanied by a sanctioned building plan.

(d) The respondent has not given an undertaking as provided under Section 14(2) (b) of the Act and as such he is not entitled for an order of eviction.

7. The learned counsel for the petitioner in CRP (NPD) No.1567 of 2015 made the following submissions:

(a) The landlord has not adduced any evidence to show the condition of the building.

(b) The petitioner examined an Engineer and marked his report to prove that there is no need for immediate demolition.

(c) Evidence was not let in even to show that application was filed for building plan.

(d) Mandatory undertaking was not given and as such petition under Section 14(2) (b) is not maintainable.

8. The learned Senior Counsel for the landlord took me through the pleadings and evidence in detail and made the following submissions:

(a) Even as per the lease agreement, the building is more than 40 years old and as such no further proof is necessary to prove the condition.

(b) The landlord made an application for building plan and permit. It was rejected on the ground of occupation of the building by tenants.

(c) The statutory undertaking was given by the landlord while he was examined as P.W.1. The Act does not contain a prescribed format for giving undertaking. So the undertaking given on oath is substantial compliance of the provision.

(d) The landlord has produced fixed receipts to show his means. It is not the requirement of law to produce liquid cash to prove the means.

(e) The finding with regard to arrears in CRP (NPD) 1472 of 2015 was given on the basis of admission by the tenant. Therefore, there is no ground made out to interfere in the concurrent finding with respect to wilful default.

Discussion:

Wilful default:

9 (a) The issue regarding wilful default is raised in CRP (NPD) No.1472 of 2015. Therefore the said issue is taken at the first instance.

(b) Before the Rent Controller the landlord contended that the rent from July 2004 has been kept in arrears wilfully. In order to prove discharge, the petitioner marked Ex.R.1. The receipts produced by the petitioner were all postal receipts. There was no document to prove the discharge of arrears. Even though while examined as R.W.1, the petitioner claimed that he

is in possession of receipts to prove payment of rent from 2005, not even a scrap of paper was produced in evidence. The respondent issued series of demand notices marked as Exs.P.5 to P.7. However there was no reply to those notices. The Rent Controller therefore arrived at a finding that the petitioner kept the rent in arrears from 2005. It was further held that the default was wilful. The said finding was upheld by the appellate authority with supportive reasons. There are no materials before this Court to take a different view. Therefore I confirm the finding with respect to arrears of rent in CRP (NPD) No.1472 of 2015.

Demolition and Reconstruction:

10 (a) Section 14(1)(b) of the Act enables the landlord to recover possession from tenants on the ground of demolition and reconstruction. There is a statutory requirement under Section 14(2)(b) that the landlord shall give an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month, and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the controller may allow, for reasons to be recorded in writing.

(b) The respondent produced material evidence before the Court below to prove the age of the building. Ex.P.1 was produced in R.C.O.P.No.1337 of 2008 to prove the age. The respondent by marking Ex.P.1 substantiated his contention that the building is more than 40 years old. Ex.P.2 series were produced to show the present condition of the building. The Appellate Authority on a perusal of photographs marked as Ex.P.2 arrived at a finding that the condition of the building is so bad that it requires immediate demolition and reconstruction. It is true that the witness examined on the side of the petitioner in CRP (NPD) No.1567 of 2015 deposed that the condition of the building is good. His evidence has to be seen in the light of Exs.P.1 and P.2 disclosing the bad condition of the building.

(c) The Rent Controller in R.C.O.P.No.1338 of 2008 found that plastering has fallen down, inner iron rods were exposed to light and on the basis of those relevant materials accepted the case of the respondent with regard to demolition and reconstruction. Ex.P.2 series marked in R.C.O.P.No.1338 of 2008 would disclose that the damage was not confined to the Wall alone. Even the structure was found in a bad shape.

(d) It is not the statutory requirement that the condition of the building should be such that it should require demolition

forthwith. The statute does not give an indication that the building must be in a highly dangerous condition and it would not survive any more. Section 14(1)(b) only provides that the building is required for the immediate purpose of demolition. The condition of the building is linked with the bonafide need. It gives an indication that the demolition must be for reconstruction and not a mala fide action to evict the tenant. It is only to ensure this, Section 14(2)(b) provides that the process of demolition should commence substantially by not later than one month.

(e) In case the condition of the building is so grave and its existence would be a threat to the public, there are provisions under the Panchayat/Municipality/Corporation Acts empowering the statutory authority to inspect the building and direct immediate demolition in public interest.

(f) The Act nowhere provided that the building should be in a highly dilapidated or dangerous condition. Some of the old buildings on account of the usage of superior quality materials and regular maintenance would survive longer. There is no law prohibiting the landlord from demolishing even such structures for the purpose of putting up ultra modern buildings taking into account the emergence of modern buildings in the locality and the changing outlook. It is therefore essentially a choice of the landlord to demolish the existing building to put up a new structure with better designs provided the need is bonafide and not a ruse for eviction of tenants.

(g) The petitioners have taken up a contention that the landlord is not in possession of a valid building permit and plan for construction of building after demolition. The proof regarding possession of approved plan is not a requirement of statute. The approved plan is one among the documents to be considered while deciding the bonafides of the landlord. In case valid building permit is a condition precedent, it would enable the tenants to resist eviction by approaching the local body or planning authority not to approve plan on the ground that tenants are still in occupation of the premises. Each case has to be decided on its own facts and circumstances. In the subject case the respondent has demonstrated the action taken by him to obtain building permit. There is nothing on record to suspect his bonafides. In fact the learned Senior Counsel for the respondent submitted that the landlord would be in a position to obtain planning permission immediately after the disposal of eviction proceedings.

(h) The respondent in his evidence clearly stated that he made an application for building permit. However, the

application was rejected on the ground that vacant possession is yet to be taken from tenants. There is no contra evidence to disprove this version. Therefore I reject the contention regarding non production of valid building plan and permit.

(i) The other requirement is to prove the possession of funds to defray the expenses for re-construction. It is not the requirement that the landlord must produce liquid cash before the Court to prove his means. There should be acceptable materials to indicate that the landlord is in possession of required funds.

(j) The respondent produced Fixed Deposit Receipts marked as Exs.P.1 and P.2 in R.C.O.P.No.1338 of 2008 to prove his means. The Fixed Deposits can be encashed at any time even before the period of maturity. The respondent therefore discharged the burden with regard to financial capacity.

(k) The petitioners have taken up a contention that statutory undertaking was not given as provided under Section 14 (2)(b) of the Act. It is true that the eviction petition does not contain a statement with regard to compliance of Section 14 (2)(b) of the Act. However, the respondent has given a statement on oath, while he was examined as P.W.1 that he would carry out the demolition and reconstruction work immediately after getting order from the Court. The statutory requirement is only to commence substantially the process of demolition within a month and its completion within three months. Here is a case wherein the landlord has undertaken to demolish and reconstruct the building immediately. There is no statutory format for giving such undertaking. The undertaking given by the landlord in his proof affidavit would substantially satisfy the statutory prescription.

(l) The Supreme Court in Harrington House School v. S.M.Ispahani¹ having found that the landlord has not obtained plan and permit and failed to give the undertaking regarding demolition, directed him to produce the plan and give an undertaking before the Executing Court. The Supreme Court made it clear that only on satisfaction of compliance of those two conditions, the Executing Court would execute the decree of eviction.

The legal position regarding condition of building for eviction:

11. The Supreme Court in Vijay Singh v. Vijayalakshmi Ammal²

1 (2002)2 CTC 549

2 (1996)6 SCC 475

considered Section 14(1)(b) along with Section 16 of Tamil Nadu Act XVIII of 1966 and observed that for eviction on the ground of demolition and reconstruction building need not be dilapidated or dangerous.

The Supreme Court said:

"10. On reading Section 14(1)(b) along with Section 16 it can be said that for eviction of a tenant on the ground of demolition of the building for erecting a new building, the building need not be dilapidated or dangerous for human habitation. If that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub-section (1) of Section 16 contemplates that permission has been granted by the Rent Controller under Section 14(1)(b) for demolition of the building, but if such demolition is not carried out in terms of the order and undertaking, then the Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and conditions. If the building is dangerous and dilapidated requiring immediate demolition for safety, then there is no question of the Rent Controller directing the landlord to put the tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord to commence the demolition within the period prescribed. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14

(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller."

Scope of revisional Jurisdiction:

12. The revisional jurisdiction under Section 25 of the Act is not for re-appreciation of evidence to arrive at a different conclusion. The revisional court is more concerned with fairness in procedure to ensure that the order impugned is not vitiated by illegality or irregularity. It is not open to the revisional court to transgress its limit and act like an Appellate Authority.

13. The Supreme Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh³ indicated the scope of revisional jurisdiction in the following words:

" 43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or

legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

Conclusion:

14. The designated authority under the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 considered the pleadings, evidence, both oral and documentary and arrived at a finding that the building is required by the landlord for the immediate purpose of demolition and reconstruction. The finding was given on the basis of materials produced by the respondent. Both the original as well as the appellate authority concurrently held that the petitioner in CRP (NPD) No.1472 of 2015 kept the rent in arrears wilfully. Since the findings were given with supporting reasons, there is no question of re-appreciating the materials for the purpose of taking a different view. I am therefore of the view that the Civil Revision Petitions are liable to be dismissed.

Disposition:

15. For these reasons, I would confirm the judgments under appeal. However, I make it clear that the respondent shall produce the approved building plan, permit and statutory undertaking as provided under Section 14(2)(b) of the Act before the Executing Court. There shall be a direction to the Executing Court to execute the Eviction Orders passed under Section 14(1)(b) of the Act only on compliance of the above conditions.

16. In the upshot, I dismiss the Civil Revision Petitions.
Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

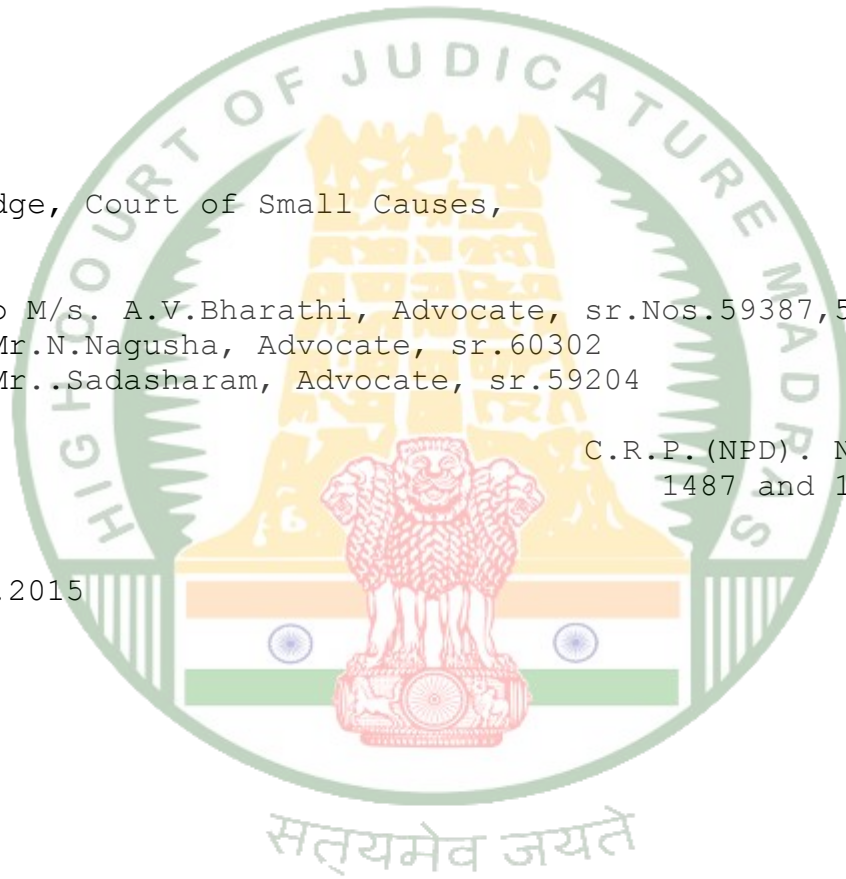
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To
The IX Judge, Court of Small Causes,
Chennai

+3 cc's to M/s. A.V.Bharathi, Advocate, sr.Nos.59387,59386,59388
+1 cc to Mr.N.Nagusha, Advocate, sr.60302
+1 cc to Mr..Sadasharam, Advocate, sr.59204

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