

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

CORAM

THE HONOURABLE **Mr. JUSTICE K.KALYANASUNDARAM**

CRP.(NPD).No.620 of 2015

and

M.P.No.1 of 2015

1.Sri Bala & Company,
a partnership Firm,
rep.by its Partner Mr.Premkumar

2.P.Prem Kumar

3.M.Sudarsanam

..

Petitioners

/vs/

A.R.Brothers,
a partnership Firm
rep.by its Partner Bipin R.Shah
No.22, Raja Annamalai Road,
Chennai – 600 084.

..

Respondent

PRAYER: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 18 of 1960 as amended by Act 23 of 1973, against the judgment and decree dated 12.12.2014 made in R.C.A.No.382 of 2012 passed by the VIII Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority), confirming the judgment and order dated 28.06.2012 made in R.C.O.P.No.33 of 2008 passed by the XV Judge, Court of Small Causes (Rent Controller), Chennai.

For Petitioners : Mr.R.Thiagarajan

For Respondent : Mr.P.B.Ramanujam

ORDER

This civil revision petition is directed against the judgment and decree dated 12.12.2014 made in R.C.A.No.382 of 2012 by the VIII Judge, Court of Small Causes, Chennai (Rent Control Appellate Authority), confirming the judgment and order dated 28.06.2012 made in R.C.O.P.No.33 of 2008 passed by the XV Judge, Court of Small Causes (Rent Controller), Chennai.

2. The respondent had instituted eviction proceedings against the petitioners under Sections 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

3. The case of the respondent is that the respondent Firm is the landlord of the petition premises and the tenants were inducted on a contractual monthly rent of Rs.7,700/- per month. The petition property was settled in favour of Bipin.R.Shah, who is the partner of the landlord Firm. Even though, Bipin.R.Shah has become the absolute owner of the petition property, still the Firm continues to be the landlord and also collecting the rents from the tenants.

4. It is further averred in the eviction petition that the petition building is comprising of ground floor alone and the ceiling is made of asbestos sheet over the terrace and the construction was put up about 35 years ago. Being a temporary shed, the building has lost its life and is in a highly dilapidated condition. The building is situated in a highly commercial locality and in the heart of Choolai and it is situated just opposite to Nataraj Theater and near by Railway Salt Quarters. The landlord has decided to demolish the same and put up a multi storied complex, which will be beneficial to the landlord in all aspects. The petitioner has taken steps to obtain the necessary sanctioned plan for demolishing the building. The petitioner is in possession of sufficient means to carry out the work of demolition and reconstruction and undertook to commence the work of demolition within one month from the date of getting the vacant possession of the petition premises and to complete the same within a period of three months.

5. The tenants opposed the eviction petition stating that the petition filed under the Rent Control Act is not maintainable in law. The respondent/ landlord has no interest in the petition property and the Firm is not the owner of the petition property. The tenants have also disputed the bonafide requirement of the petition premises of the landlord for demolition and reconstruction.

6. Before the Rent Controller, the parties have adduced oral and documentary evidence. The Rent Controller found that the requirement of the landlord is bonafide and ordered eviction. The findings of the Rent Controller was confirmed by the Appellate Authority in R.C.A.No.382 of 2012. Aggrieved by the order, the present civil revision petition is filed.

7. Mr.R.Thiagarajan, learned counsel for the petitioners submitted that the landlord, who seeks eviction under Sections 14 (1) (b) of the Act, should satisfy three conditions; (i). bonafide intention, far from sole object to get rid of tenants (ii). the age and condition of the building and (iii). the financial position to demolish and reconstruction. Further contending that the petition property was owned by the respondent Firm and after the arrangement, the Firm ceased to be the owner of the property and Bipin R.Shah has become absolute owner of the property. The respondent Firm cannot give undertaking on behalf of an individual. It is further contended that the mere intention or desire is not sufficient to seek eviction on the ground of demolition and reconstruction. But, the landlord has to prove the bonafide requirement as per Sections 14 (1) (b) of the Act.

8. Per contra, Mr.P.B.Ramanujam, learned counsel for the respondent submitted that though Bipin R.Shah became the owner of the property as per the settlement, however, the firm filed the application only as landlord of the petition premises. The learned counsel submitted that as per the definition to Section 2 of the Rent Control Act, the Firm can maintain eviction petition against the tenants.

9. It is further submitted that the owner of the premises has filed the eviction petition on behalf of the Firm and also given evidence in this case. It is further submitted that the tenant himself has admitted in his evidence that he has changed the asbestos sheet on six occasions and changed the floor of the petition premises twice and he carried out the repair works in the year 2009. When the tenant himself admitted that he had changed the roof of the petition premises on six occasions, it is explicit that the building is in a dilapidated condition. The learned counsel further submitted that the landlord has proved his financial capacity through Ex.P6 sale deed and he has also applied for approval of building plan under Ex.P5 and that the Rent Controller as well as the Appellate Authority based on the evidence held that the requirement is bonafide, which need not be interfered in this revision.

10. It is an admitted fact that the petition premises was originally owned by A.R.Brothers, a partnership Firm, rep.by its Partner Bipin R.Shah. Ex.P7 Family Arrangement Deed reveals that the property was allotted to the share of Bipin R.Shah. The tenants themselves admitted that still the rent is paid in the name of the partnership Firm in the earlier RCOP filed by the landlord for fixation of fair rent in the year 1992. As rightly contended by the learned counsel for the respondent that in view of the definition to Section 2 of the Act, to maintain a petition for eviction, the person need not be the owner and it can be laid by an agent, power of attorney holder etc., Therefore, I do not find force in the contention of the counsel for the petitioner.

11. The tenants have contended that the age of the building was 40 years. R.W.1 has admitted in his evidence that the floor of the building is a cement flooring and the roof of the tenanted premises was changed on six occasions and he has also made repairs frequently in order to maintain the building. Under Ex.P6 - sale deed, the landlord has purchased another immovable property. The Rent Controller referring to the evidence of P.W.1 and Ex.P6 held that the petitioner has means to construct a new building. Ex.P5 shows that

the landlord had applied for sanction plan. The Rent Controller and the Appellate Authority, on proper appreciation of oral and documentary evidence, held that the requirement of the landlord is bonafide.

12. In **2008 (3) CTC 516 (Manharlal J.Parekh, Prop., Wall Paper Junction, No.572, Old No.535, Anna Salai, Teynampet, Chennai – 18 Vs. V.L.Narayanan)**, this Court has held as follows;

“Admittedly this Court while exercising the power of Revision cannot interfere with the concurrent findings of the Court below unless it is shown that the findings of the learned Rent Control Appellate Authority is perverse in nature and against the evidence already on record.”

13. In the light of the decision cited supra and in view of my finding, I do not find any reasons to overturn the findings of the Courts below. In fine, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2015

Index : Yes/No
Internet: Yes/No
sms

To

1. The VIII Judge, Court of Small Causes,
Chennai (Rent Control Appellate Authority).
2. The XV Judge, Court of Small Causes (Rent Controller),
Chennai.

K.KALYANASUNDARAM,J.

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This case is posted today under the caption "For Being Mentioned".

2. When the matter is taken up today, it is represented by the learned counsel for the petitioners as well as the learned counsel for the respondent that at the time of passing the order in civil revision petition on 23.02.2015, the petitioners/tenants sought for one year time to vacate and hand over the premises to the landlord, but the same was not incorporated in the order.

3. On 02.03.2015, the learned counsel for the petitioners has filed an affidavit of undertaking stating that the petitioners shall vacate and handover vacant possession of the premises on or before 28.02.2016.

4. In view of above, the following paragraph is inserted in the order of this court dated 23.02.2015.

" 14. The petitioners/tenants are directed to vacate and hand over the possession to the respondent/landlord on or before 28.02.2016 and the tenant shall pay the arrears of rent, if any, and also continue to pay the future rents regularly."

5. Registry is directed to issue fresh order copy after carry out the necessary insertion/addition in the order of this court dated

sms

20.11.2015

K.KALYANASUNDARAM,J.

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