

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (NPD) No.992 of 2015
and M.P.No.1 of 2015

Dhanasekarapandian

... Petitioner / Tenant

Vs

Aminammal

... Respondent / Landlord

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree dated 15.09.2014 passed in RCA No.1 of 2013 on the file of the Rent Control Appellate Authority /Subordinate Judge, Mannargudi confirming the judgment and decree dated 22.03.2012 made in RCOP No.18 of 2009 on the file of Rent Controller/District Munsif, Mannargudi.

For Petitioner : Mr.M.V.Venkataseshan

ORDER

This revision arises out of the order passed by the Rent Control Appellate Authority (Sub Court, Mannargudi) in RCA No.1 of 2013 confirming the order of the Rent Controller (District Munsif, Mannargudi).

2. The unsuccessful tenant in the eviction proceedings is the revision petitioner. The respondent initiated eviction proceedings against the petitioner under Section 14 (1) (b) of Tamil Nadu Buildings (Lease and Rent Control) Act. The case of the landlady is that she purchased the petition premises by virtue of a registered sale deed dated 15.06.1988 from one Pakkir Mohideen and at the time of purchase, there was a thatched structure with walls constructed by bricks and sands were in existence. Subsequently, the landlady removed the thatched roof and put up a cement sheet; that the tenant was inducted by her vendor on a monthly rent of Rs.350/- and after her purchase, the rent was enhanced to Rs.750/- and after a period of three years, it was enhanced to Rs.1000/-.

3. The landlady has further averred that the building is situated in the main busy locality of Mannargudi Town and if a new building is constructed with modern facilities, the value of the property and its income would be more, that the landlady has already obtained approved plan and permission from the local body for construction of a new building. Since the tenant owns adjacent building bearing Door No.35, no prejudice would be caused to him if he is evicted.

4. The eviction petition was opposed by the tenant stating that he does not know the purchase made by the landlady from Mr.Pakkir Mohideen on 15.06.1988, that he was in possession of the property and doing business for more than 35 years without any rental agreement and without paying any rent. One Mr.Abdul Rahim received Rs.65,000/- from the tenant on 14.09.1979 agreeing to execute sale deed in his favour, however due to illness, he could not execute the sale deed. The tenant further denied the title of the landlady and stated that the eviction petition is not maintainable.

5. To fortify their rival contentions, parties have examined themselves as PW1 & RW1 and marked Exs.P1 to P11 and R1 to R3. The Rent Controller ordered eviction on the ground of demolition and reconstruction, which was confirmed by the Appellate Authority in RCA No.1 of 2013. Questioning the concurrent finding, the present revision is filed.

6. Mr.M.V.Venkataseshan, learned counsel for the petitioner submitted that the landlady has not examined the engineer to prove the age and stability of the building; that the landlady had not proved her financial position for demolishing and reconstructing the building; that the landlady has not established the relationship of the parties and therefore the eviction petition has to fail.

7. It is seen that the landlady has purchased the petition premises by virtue of a registered sale deed dated 15.06.1988 under Ex.P2. After purchase, mutation of revenue record was effected and the property tax was transferred in the name of the landlady under Ex.P3 dated 17.11.2009. Ex.P8 is the lease agreement entered into between the original owner Pakkir Mohideen and the respondent/tenant. Ex.P9 is the lease agreement entered into between the landlady and the tenant. Ex.P10 is the rental receipts for payment of rent by the tenant to the landlady. RW1, the tenant in his evidence has admitted that his father became the tenant of the petition premises in the year 1954.

8. Though the tenant has contended that he has been in possession in pursuance of the oral agreement of sale on payment of advance amount of Rs.65,000/- to the original land owner Abdul Rahman, however the tenant has not produced any material to establish his case. Further, the tenant has not instituted a suit to get the sale deed executed in his favour. In the absence of evidence on the side of the tenant to prove that he was in possession of the petition premises in pursuance of the original agreement of sale, the Rent Controller, relying on the evidence of PW1 and Exs.P8 & P9, lease agreements and Ex.P10, rental receipts, has rightly ordered eviction. It is to be noted that RW1 himself has admitted that his father was inducted as a

tenant in the year 1954 which reveals that the petition premises was in existence even prior to 1954. The Rent Controller, on the basis of evidence of RW1 held that the building is aged 60 years. The specific case of the landlady is that the property is situated in the prime area of Mannargudi Town and if a new building is constructed with modern facilities, it will augment revenue to the landlady.

9. It is settled law that for demolition and reconstruction, the building need not be in a dilapidated condition. The issue is no longer *res integra* as Constitutional Bench of the Hon'ble Supreme Court in the case of ***Vijay Singh and others v. Vijayalakshmiammal reported in 1996 (6) SCC 475*** has held thus -

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. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restrictive provisions of the Act for a period of five years from the date on which the construction of such new building is completed and notified to the local authorities concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission under Section 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under Section 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. 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.

10. In **2007 (1) CTC 617 [Parasmal v. R.Mohan]** this Court, following the decision of the Apex Court in the case of **Vijay Singh cited supra**, has held as follows -

12. Age and condition of the building:-

While the age and condition of the buildings are relevant factors to be taken into account, it is not possible to insist that the condition of the building must be such that there is imminent threat of the building collapsing in the near future and only in such contingency, the Landlord could resort to the process under Section 14(1)(b) of the Act. It has been held in numerous decisions that the building need not be very old and dilapidated. Some of the decisions of this Court on this point are:- Lakshmanan and Others ..Vs.. Kanniammal alias Pattammal (1995 II M.L.J. 178), Sultan Sheriff alias Basha ..Vs.. Hassan Mohideen and others (1984 (97) L.W. 166), Narayanaswami Iyer ..Vs.. Ramakrishna Iyer (1965 (I) M.L.J. 78), Daniel Parthasarathy ..Vs.. Manickavasagam (1965 (78) L.W. 24), Bharath Trading Co., ..Vs.. Shanmugasundaram (1982 (I) M.L.J. 94) and Ammal Pillai and others ..Vs.. M/s.Varadarajulu Complex Etc., (1997 (1) L.W. 364).

11. In *R.V.E.Venkatachala Gounder v. Venkatesha Gupta and others reported in 2002 (4) SCC 437*, the Hon'ble Supreme Court has held as follows -

11. We may refer to two decisions of the Madras High Court. In *S. Raju v. K. Nathamani* the Constitution Bench decision has been followed and it has been held that when new buildings with modern amenities have come up in that locality, naturally the building in question may become unsuitable to the surroundings and a liability, in its present condition, to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden forever. Tenants may be satisfied with the present state of the building since they have to pay only

a nominal rent but the rent control legislation, beneficial to the landlord and the tenant both, should be interpreted in that way. For the purpose of proving his bona fides the landlord need only show that he has got the capacity to raise the necessary funds. In A.N. Srinivasa Thevar v. Sundarambal even before the decision by the Constitution Bench in Vijay Singh case was available, it was held in the light of the decision in P. Orr & Sons that the availability of the following factors was sufficient to make out a case of bona fide requirement under Section 14(1)(b):

“(a) Capacity of the landlord to demolish and to reconstruct is undisputed and also proved satisfactorily; (b) The size of the existing building occupies only one-third of the site, leaving two-thirds behind vacant and unutilized; (c) Demand for additional space: The demised premises is situated in a busy locality. Therefore, there is a great demand for additional space in the locality which could be met by demolishing the existing small building and putting up a larger building providing for future development, vertically also by building pucca terraced buildings; (d) The economic advantage: A modern construction of a larger building shall certainly yield better revenue and also appreciate in value, when compared to the asbestos-sheet roofed old building.”

In that case, it was observed that the existing building was an old, outmoded asbestos sheet building proposed to be replaced with a better and modern building which would provide for better quality accommodation to the needs of the present day as the preservation of such building in a busy locality of a town shall not only be an eyesore but also against the soaring public demand for additional space. Viewed from the angle of general interest of the public which, according to the decision in P. Orr & Sons is one of the considerations, it was observed that a big site should yield to a larger modern building with an increased and enlarged accommodation having better facilities to solve the ever-increasing demand for more space. Stalling growth and development for the sake of one tenant who is in occupation of an old model building constructed with mud and mortar and asbestos sheets occupying only one-third of the site was held to be not conducive to public interest. We approve the statement of law and the

approach adopted by the Madras High Court in both the abovesaid decisions. The structural and physical features and the nature of the construction of the building cannot be ignored. Even in P. Orr & Sons this Court was of the opinion that various circumstances, such as the capacity of the landlord, size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors, justifying investment of capital on reconstruction may be taken into account by the authorities concerned, while considering the requirement for reconstruction of the building as the essential and overriding consideration in the general interest of the public and for the protection of the tenant from unreasonable eviction.

12. Reverting back to the case at hand, we find that the six tenants are not in full occupation of the entire space available. The landlord proposes to construct a new and modern building in a busy commercial locality of a rising city. The landlord requires a part of the newly constructed building for his own personal use and such part of the newly constructed building as would be in excess of his own requirement he is willing to let out at current rate of rent to his tenants, which would obviously augment his earnings. The newly constructed double-storeyed building, would certainly provide much more total accommodation than what is available. In such circumstances the offer of the tenant that they are prepared to pay the rent at the current rate, the one which the landlord expects on reconstruction, becomes irrelevant and should not have prevailed with the High Court.

12. The landlady has produced Ex.P4 building approval from the local municipal authority and Ex.P6 approved plan. The Rent Controller referring to the evidence of PW1 and Exs.P4 & P6 held that the requirement of the landlady is bonafide. The Appellate Authority, after elaborately considering the evidence, confirmed the finding of the Rent Controller. In the light of the principles laid down in the decisions cited supra, I do not find any

reasons to interfere with the orders impugned in this revision.

In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

18.03.2015

Index : Yes
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To
1. The Subordinate Judge, Mannargudi
2. The District Munsif, Mannargudi.

K.KALYANASUNDARAM,J
rgr

Order in
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