



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 22.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS
C.R.P(MD)No.1862 of 2015
and
M.P(MD)No.1 of 2015

Jayasilan

.. Petitioner/Appellant/
Respondent (Tenant)

-vs-

1.Shanmugam Chettiar
2.Parvatham
3.Sukuna
4.Rajalakshmi

.. Respondents/Respondents/
Petitioners (Landlords)

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act dated 24.06.2015 made in R.C.A.No.4 of 2014 on the file of the Rent Controller Appellate Authority (Principal Sub Court), Kumbakonam, confirming the order and decree dated 07.12.2013 made in R.C.O.P.No.10 of 2011 on the file of the Rent Controller (Principal District Munsif), Kumbakonam.

For Petitioner : Mr.G.Gomathi Sankar
For Respondents : Mr.N.Balakrishnan

ORDER

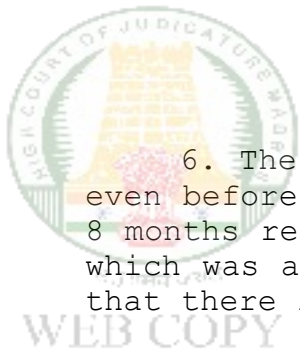
With the consent of both sides, the Civil Revision Petition is taken up for disposal at the admission stage.

2. This revision is by tenant as against the concurrent findings recorded by the learned Rent Controller and the learned Rent Control Appellate Authority.

3. The revision petitioner was inducted in the property of the respondents on rental basis. The respondents sought for their eviction in R.C.O.P.No.10 of 2011 before the learned Rent Controller (Principal District Munsif), Kumbakonam on the ground of willful default, demolition and re-construction and for owners occupation.

4. Appreciating the oral and documentary evidence, the learned Rent Controller recorded the finding that although subsequently 8 months rent has been paid in toto, it will not wipe out the willful default committed by the tenant in paying the rent, demolition and re-construction and owners occupation have to be approached independently and the requirement is bonafide, thus, ordered eviction on all these grounds.

5. The tenant went to the Rent Control Appellate Authority (Principal Sub-Judge), Kumbakonam in R.C.A.No.4 of 2014. The Appellate Authority re-appreciated the evidence and analysed the legal issues and approved the findings recorded by the Rent Controller and dismissed the R.C.A. Thus, the revision by tenant.



6. The learned counsel for the revision petitioner would submit that even before filing R.C.O.P, after receipt of the notice of the landlords, 8 months rent at the rate of Rs.1,500/- has been paid by way of cheques, which was accepted by the landlords. Thereafter, the landlords cannot say that there is willful default in paying the rent.

7. The learned counsel for the revision petitioner would also submit that the landlords are blowing hot and cold, at the same time, they say that they want to demolish the building, as it is 90 years old and the very same landlords say that they need the building for their occupation, when especially, they have other building in other part of Kumbakonam city. It exhibits lack of bonafide. These aspects have been overlooked by both the learned Rent Controller as well as the learned Rent Control Appellate Authority.

8. Repelling the contentions, the learned counsel for the respondents/landlords would submit that when the default in paying the rent is supine, indifferent utter callousness subsequent payment of the rent in one lumpsum will not efface the willful default committed by the tenant.

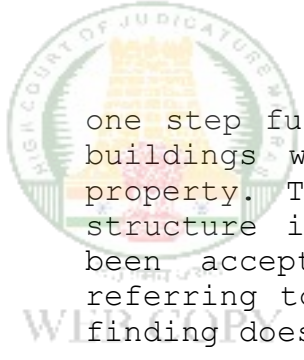
9. The learned counsel for the respondents further contended that the grounds of demolition and re-construction and owners occupation has to be approached on its intrinsic value independently. It is a fact that the building is 90 years old containing of old iron has been accepted by the Rent Controller as well as the Rent Control Appellate Authority. In such circumstances, this ground was accepted. The ground of owners occupation though opposite to the earlier ground, raising of such a ground is not impermissible. Each has to be approached and both the authorities below pointed out that after demolition and re-construction the landlords wish to use it for their occupation.

10. I have anxiously considered the rival submissions, materials on record and the impugned orders of the learned Rent Controller and the learned Rent Control Appellate Authority.

11. Every default will not amount to willful default. The prefix 'willful' has been affixed to the word 'default'. Willful also exhibits a mental element. It can be decided by circumstances. Now, it is a fact that the tenant had fell into arrears at the rate of Rs.1,500/- for 8 months. He did not pay. He was silent. Unmoved. The tenant had paid the said arrears only after notice from the landlords. Allowing the rent amount to accrue and paying the same after 8 months, that too, after notice from the landlords, will exhibit supine indifference on the part of the tenant in paying the rent. In the circumstances, the learned Rent Controller as well as the learned Rent Control Appellate Authority rightly recorded the adverse finding as against the tenant.

12. The building is 90 years old and the present condition of the building is such that it requires demolition has been recorded both by the learned Rent Controller and the learned Rent Control Appellate Authority appreciating the materials on record.

13. In this regard, the learned counsel for the respondents had gone



one step further. He referred to the mushroom growth of flats, high rise buildings which gives much scope for augmentation of income from the property. That apart, the building being 90 years old and the present structure is such that it requires demolition and re-construction, has been accepted by the authorities under the Rent Control Act also referring to Advocate/Commissioner's report. It need no interference. The finding does not suffer from any perversity.

14. The ground of owners occupation has been attacked by the revision petitioner that it is mutually contradictory ground of demolition and re-construction. As regards this aspect, the learned Rent Controller and the learned Rent Control Appellate Authority went in detail and also referred to various decisions on the point. They are of the view that of course, the landlords might be having another building in the City, but a tenant cannot mandate or direct the landlords to go and live in a particular building. It is not the choice of the tenant, but it is the choice of the landlords. Both have also recorded a finding that in the re-constructed building, the landlords wished to live.

15. In view of the foregoings, we do not find any explicable reason that the finding of the authorities under the Rent Control Act suffers from any perversity. We have no need to interfere with the concurrent findings recorded by both the authorities under the Rent Control Act.

16. In fine, this Civil Revision Petition fails and it is dismissed. The submission of the learned counsel for the revision petitioner seeking 8 months time to vacate the premises is recorded. Accordingly, the revision petitioner is given 8 months time from today to vacate and hand over possession to the respondents. No costs. Consequently, connected Miscellaneous Petition is also closed.

sd/-

Assistant Registrar

/True copy/

sub Assistant Registrar

ps
To

- 1.The Principal District Judge, Thanjavur.
- 2.The Rent Controller Appellate Authority
(Principal Sub Judge), Kumbakonam.
- 3.The Rent Controller, (Principal District Munsif), Kumbakonam.

+one cc to M/s.G.Gomathi Sankar, Advocate in SR.No.55845/15

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