



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 9/2/2015

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) Nos.81 and 94 of 2015

C.R.P.PD (MD) No.81 of 2015

R.Gopinathan

...Petitioner/Appellant/Respondent

Vs

G.A.Hema

...Respondent/Respondent/Petitioner

Petition filed under Section 25 of Tamil Nadu Buildings (Lease Rent Control) Act 1960 against the order and decreetal order passed in R.C.A.No.18 of 2012 on the file of the Principal Sub-Court, Madurai dated 1/11/2014 confirming the order and decreetal order passed in R.C.O.P.No.11 of 2010 on the file of the District Munsif Court (Rent Controller), Madurai Taluk, Madurai dated 21/2/2012.

For petitioner ... Mr.C.Vakeeswaran

For respondent ... Mr.T.R.Subramanian

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C.R.P.PD (MD) No.94 of 2015

G.A.Hema

... Petitioner/Appellant/
Petitioner land lady

Vs

R.Gopinathan

... Respondent/Respondent/Respondent

Petition filed under Section 25 of Tamil Nadu Buildings (Lease Rent Control) Act 1960 against the judgment and decree passed in R.C.A.No.19 of 2012 on the file of the Principal Subordinate Judge (Rent Control Appellate Authority), Madurai dated 1/11/2014, confirming the order and decree passed in R.C.O.P.No.11 of 2010 on the file of the District Munsif Court (Rent Controller), Madurai Taluk at Madurai dated 21/2/2012.

For petitioner ... Mr.T.R.Subramanian

<https://hcservices.courts.gov.in/hcservices/>

... Mr.C.Vakeeswaran

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Orders reserved on 21/1/2015



COMMON ORDER

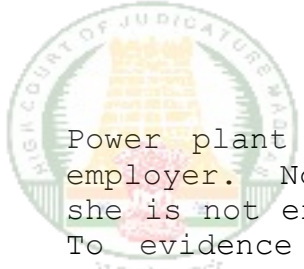
These revisions arise from the Rent Control proceedings. R.C.O.P.No.11 of 2010 on the file of the District Munsif Court (Rent Controller), Madurai Taluk, Madurai was filed by the petitioner in C.R.P.NPD (MD) No.94 of 2015 for eviction of the petitioner in C.R.P.NPD (MD) No.81 of 2015 on the ground of willful default and owner's occupation. The Rent Controller, Madurai allowed the same on the ground of own use and occupation and dismissed the ground of willful default. Aggrieved by the said order, R.C.A.No.18 of 2012 on the file of the Principal Sub-Court, Madurai was preferred by the petitioner herein and R.C.A.No.19 of 2012 on the file of the Principal Subordinate Judge (Rent Control Appellate Authority), Madurai was filed by the landlady. Both appeals were dismissed by a common order on 1/11/2014. Aggrieved, the revisions have been filed by the landlady in C.R.P.(MD) No.94 of 2015 and the tenant in C.R.P.(MD) No.81 of 2015.

2. The landlady {petitioner in C.R.P.NPD (MD) No.94 of 2015 and respondent in C.R.P.NPD (MD) No.81 of 2015}, is the owner of the property had filed R.C.O.P.No.11 of 2010 on the file of the District Munsif (Rent Controller), Madurai. The landlady had sought for eviction on the ground of willful default and owner's occupation. According to the landlady, the tenant had defaulted payment from June 2006. The landlady also had sought possession on the ground of own use and occupation. The landlady was living in Neyveli with her family and every time, when they travelled to Madurai, they had to find accommodation elsewhere which they were finding it very difficult. Therefore, the petition mentioned premises was required for the own use of the landlady. According to her, she has got no other building of her own or in the name of any of the members of the family in Madurai Town.

3. The petition was resisted by the tenant contending that there was no willful default and the requirement for owners occupation was not bonafide.

4. The Rent Controller dismissed the R.C.O.P on the ground of willful default whereas eviction was ordered on the ground of owner's occupation. Aggrieved by the order of the Rent Controller, the landlady as well as the tenant preferred appeals before the Appellate authority. The Rent Control Appellate Authority dismissed the appeal in R.C.A.No.19 of 2012 preferred by the landlady on the ground of willful default. The appeal filed by the tenant challenging the order of eviction on the ground of owner's occupation was also dismissed by the Appellate authority, confirming the order of eviction. Aggrieved by the said order, the Civil Revision Petition NPD (MD) No.81 of 2015 has been filed.

5. The husband of the landlady had deposed as P.W.1. In his evidence, he has stated that he has got no other house of his own in Madurai, except the demised premises in the name of the landlady. He has further deposed that he was working in Neyveli and residing with his family in the official quarters allotted to him by the employer. Subsequent to the eviction order passed by the Rent Controller and during the pendency of the appeal, P.W.1 died. P.W.1 was employed in Neyveli



Power plant and he was living in the official residence given by the employer. Now, the wife of P.W.1 had to vacate the premises in Neyveli as she is not entitled to live in the said premises after the death of P.W.1. To evidence the same, the landlady also had filed two documents in I.A.No.165 of 2014. The said documents are marked as Exs.P.6 and P.7 which are the Death Certificate of the land lady's husband and the eviction notice issued by the employer of P.W.1. The above said documents were filed by the landlady to take note of the subsequent events pending proceedings. As the above said documents did not require any oral examination, the appellate authority had received the same.

6. The petitioner in C.R.P.NPD (MD) No.81 of 2015, who is the tenant contended that there was no bonafide claim in the petition filed by the landlady as already she had entered into an agreement for the sale of the said property. But the said aspect has not been pleaded in the counter filed to the R.C.O.P. Hence the appellate authority had rightly rejected the said contention. In fact, P.W.1 had clarified even before the Rent Controller that no such sale agreements entered as alleged by the tenant.

7. A perusal of the documents Exs.P.6 and P.7 *ipso facto* speak about the requirement of the landlady.

8. The two conditions required for evicting the tenant on the ground of owner's occupation are that the landlady should have a requirement of own occupation which would be bona fide and secondly, the landlady or any member of the family should not have any building of their own in the same locality and occupying the same.

9. In the case on hand, admittedly, the landlady was residing in Neyveli in the official quarters furnished by the employer of her husband. However, pending proceedings, her husband also died and she was slapped with an eviction notice by the employer. Therefore, the requirement of landlady cannot be denied by the tenant and the requirement is also found to be bona fide.

9a. So far as the question of willful default is concerned, admittedly, the tenant has been depositing the rent into Court by filing R.C.O.P.No.212 of 2006. To evidence the same, Exs.P.4 and P.5 and R.1 have been marked. Admittedly, there is no appeal preferred by the landlady against the order passed in R.C.O.P.No.212 of 2006. Besides the husband of the landlady, who deposed as P.W.1 was not able to say about the default in payment. There is no evidence to show also the specific period of default by the tenant. As the tenant has been depositing the rent in R.C.O.P.No.212 of 2006. The allegation that the tenant had been paying rent only in lumpsum is unacceptable.

10. In fine, the Civil Revision Petition filed against the dismissal of appeal by the landlady on the ground of willful default is rejected.

11. In the above said circumstances, there is no reason to interfere with the order of eviction passed by the Rent Control Appellate Authority and the same is hereby confirmed.



12. In the result, these Civil Revision Petitions are dismissed and the tenant is granted three months time to vacate the premises in question and handover the possession to the landlady. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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After pronouncing the orders, the learned counsel appearing for the tenant requested six months time to vacate and handover the possession to the landlady. Hence six months time is granted, subject to the condition that the tenant files an affidavit of undertaking before this Court on or before 18/2/2015.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1. The Principal Subordinate Judge
(Rent Control Appellate Authority), Madurai

2. The District Munsif,
(Rent Controller), Madurai Taluk, Madurai

+1cc to M/S.C.Vakeeswaran, Advocate in SR.No. 5222

+1cc to M/S.T.R.Subramanian, Advocate in SR.No. 5734

Copy to

The Section officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

TS/10.03.2015/4P-6C

Common order in
C.R.P. PD(MD) Nos.81 and 94 of 2015

9/2/2015