

Reserved on : 17.12.2015

Delivered on : 05.01.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2112 of 2015
and M.P.No.1 of 2015

1.S.Rajasekar

2.K.Venkatesh

... Petitioners

Vs.

1.Sartaj Begum

2.Sofia Shireen

3.Ali Akthar

4.Fathima Tabrez

5.Zubeda Bergs

... Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 against the order made in R.C.A.No.35 of 2011 on the file of the Subordinate Court, Tambaram dated 24.01.2014 and reversing the order dated 31.10.2011 in R.C.O.P.No.87 of 2008 on the file of the Principal District Munsif, Alandur and to set aside the same.

For Petitioners : Mr.V.P.Rajendran

For Respondents : Mr.P.Valliappan for Mr.B.Vijay

ORDER

The above Civil Revision Petition arises against the judgment and decree passed in R.C.A.No.35 of 2011 on the file of the Subordinate Court, Tambaram, reversing the order passed in R.C.O.P.No.87 of 2008 on the file of the Rent Controller, Principal District Munsif Court, Alandur. The tenants are the petitioners and the respondents are the landlords in the above Civil Revision Petition.

2.The landlords filed R.C.O.P.No.87 of 2008 for eviction on the grounds of own use and occupation, different use and act of waste. The landlords also filed R.C.O.P.No.90 of 2008 for eviction on the ground of willful default.

3.The Rent Controller dismissed R.C.O.P.No.87 of 2008 and R.C.O.P.No.90 of 2008 by a common order. Aggrieved over the same, the landlords preferred appeals in R.C.A.Nos.34 & 35 of 2011 before the Rent Control Appellate Authority/Subordinate Court, Tambaram and the Appellate Authority reversed both the orders and allowed both the appeals. Aggrieved over the judgment and decree passed in R.C.A.No.34 of 2011 reversing the order passed in R.C.O.P.No.90 of 2008, the tenants preferred

a Civil Revision Petition in C.R.P.(NPD).No.4526 of 2014 and this Court, by order dated 09.03.2015, dismissed the Civil Revision Petition, against which the tenants preferred an appeal before the Hon'ble Supreme Court of India in S.L.P.(Civil).No.16199 of 2015, which is pending.

4.The brief case of the landlords is as follows:

(i)According to the landlords, they are the owners of the petition property and rented out the same to the tenants for the purpose of leather dry processing on a monthly rent of Rs.16,000/-. The tenants paid a sum of Rs.1,60,000/- as security deposit to the landlords.

(ii)According to the landlords, since the 2nd landlord's husband viz., S.Mohammed Gayaz and P.N.Basha, who is the husband of the 1st landlord and father of the other petitioners require the premises to run a business on dry processing of leather shoe lining materials and industrial chemicals, they informed the same to the tenants in the month of September 2007 and also gave a letter to them in the month of December 2007. The tenants promised to vacate and informed that they are seeking for a suitable accommodation and as soon as they get, they would vacate before June 2008. The tenants also requested the landlords to adjust the monthly rent

from the security deposit sum of Rs.1,60,000/-. The landlords also agreed for the same and were deducting the monthly rent from the said amount.

(iii) In the month of July 2008, the tenants informed the husband of the 1st petitioner that they could not vacate the premises and they have filed a suit against the landlords. On verification, the landlords came to know that the tenants have filed a suit in the month of December 2007 and obtained an order of interim injunction. The tenants also filed R.C.O.P.No.23 of 2008 for deposit of rent. Though the petition premises was specifically rented out only for leather dry processing, the tenants, in violation of the terms of the agreement, installed fire wood boiler within the petition premises. Further, the tenants, to install the said boiler, have removed the roof top and thereby, caused damage to the property, thereby committed act of waste. The heat generated during the process will cause damage to the building. Further, during the said process hazardous effluents allowed to be flowed in the open drain, which is getting stagnated nearby the building and thereby polluting the environment. In these circumstances, the landlords have filed the R.C.O.P. for eviction on the ground of own use and occupation, putting the premises for different use and on the ground of act of waste.

5.The brief case of the tenants is as follows:

According to the tenants, the landlords suppressed the filing of R.C.O.P.No.90 of 2008 by them on the ground of willful default. The tenants denied the averments stated in the petition as false. They also denied that they did not agree to vacate the premises in the month of June 2008. Since the landlords made all sorts of mischief to evict the tenants by sending rowdies, they filed a suit in O.S.No.936 of 2007 and obtained an order of injunction. The landlords did not require the premises for their own use and occupation. The alleged requirement is created only with a view to evict the tenants. The tenants have not used the premises except for leather drying process. In these circumstances, the tenants prayed for dismissal of the petition.

6.Before the Rent Controller, on the side of the landlords, P.W.1 was examined and 13 documents, Exs.P1 to P13 were marked. On the side of the tenants, two witnesses were examined and 13 documents, Exs.R1 to R13 were marked. The document produced by R.W.2 was marked as Ex.X1.

7.The Rent Controller, taking into consideration the oral and documentary evidences, dismissed the Original Petition. Aggrieved over the same, the landlords preferred an appeal in R.C.A.No.35 of 2011 on the file

of the Rent Control Appellate Authority/Subordinate Court, Tambaram. The Rent Control Appellate Authority, taking into consideration the case of both parties, set aside the order passed by the Rent Controller and allowed the appeal. Aggrieved over the judgment and decree passed by the Rent Control Appellate Authority, the tenants have filed the above Civil Revision Petition.

8.Heard Mr.V.P.Rajendran, learned counsel appearing for the petitioners and Mr.P.Valliappan, learned counsel appearing for the respondents.

9.Mr.V.P.Rajendran, learned counsel appearing for the petitioners submitted that the landlords have not proved their case by oral and documentary evidences, therefore, the Rent Control Appellate Authority was wrong in reversing the order passed by the Rent Controller. Further, the learned counsel submitted that since the landlords have not pleaded or proved that they are carrying on business in a rented premises on the date of petition, the Rent Control Appellate Authority should not have ordered eviction. That apart, the learned counsel also submitted that so far as the act of waste and different use is concerned, in the absence of any evidence to that effect, the Appellate Authority ought not to have ordered eviction.

10. In support of his contention, the learned counsel relied upon the following judgments:

(i) 1995 (2) MLJ 67 [N. Mohambaram Vs. M/s. C.K.C.M. Kader Shah and brother represented by its Partner Sri C.K.C.M. Khader Shah] wherein this Court held that the landlord must show that he is carrying on his business in a rented premises on the date of filing of the petition and he must further show that he is not having or in occupation of any other non-residential premises of his own in the City of Madras. Apart from that, the landlord must also prove the element of bona fide as contemplated under Section 10 (3) of the Act.

(ii) 1969 (1) MLJ 19 [G. Natarajan Vs. P. Thandavarayan] wherein this Court held that while considering the content of Section 10 (2) (iii) of the Act, it is necessary that certain objective standards have to be set, before a Tribunal or Court engaged in the adjudication of rights of parties decisively concluded that the acts complained of is or has to be characterised as one impairing materially the value or utility of the building. Unless there is clinching evidence to satisfy the conscience of the Court that the acts complained to have caused damage to the building or its utility, it would be in the region of wild speculation to conclude that the

necessary ingredients or the sine quo non of the Section have been satisfied.

(iii)1982 (1) MLJ 130 [K.Rengaswamy Naidu Vs. The Tamil Nadu Handloom Weavers Co-operative Society Limited, through the Marketing Officer, 30-A and 31, Navabthakana Street, Madurai] wherein this Court held that the allegation of requirement of landlord for running a hotel business in another rental building had vacated the same and in that case since the landlord was not carrying on business on the date of filing of petition for eviction, the petition is not maintainable. Further, this Court held that the landlord should be actually carrying on business on the date of filing of the petition.

11.Countering the submissions made by the learned counsel for the petitioners, Mr.P.Valliappan, learned counsel for the respondents/landlords submitted that the Appellate Authority has rightly ordered eviction for the reason that the landlords have taken steps to start the business in the petition premises and since the landlords have already taken steps for starting the business, the order of eviction by the Rent Control Appellate Authority is proper.

12. In support of his contentions, the learned counsel relied upon the following judgments:

(i) 1998 (III) CTC 108 [V. Radhakrishnan Vs. S.N. Loganatha Mudaliar] wherein the Hon'ble Supreme Court held that a landlord can seek eviction of the tenant for benefit of member of his family notwithstanding that such landlord is himself occupying building of his own for carrying on business so long as such member of family for whose benefit eviction is sought does not occupy any premises of his own in City or Town.

(ii) 2011 (2) MWN (Civil) 465 [1. R. Sakunthala, 2. Senthil Coffee Works rep. by its Proprietrix R. Sakunthala, W/o. V. Pichai, No. 78, 8th Street, 2nd Section, K.K. Nagar, Chennai- 78 Vs. K. Chockalingam] wherein this Court held that a tenant cannot dictate that the tenanted premises would not be sufficient to the landlord and the hardship to the landlord is more compared to that of the tenant.

(iii) 2004 (5) CTC 675 [T. Sivakumar Vs. K. Prabhakaran] wherein this Court held that though the landlord or the person for whom the eviction sought for, is not already carrying on business, the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business.

(iv)2010 (6) CTC 454 [The Regional Manager, Tamil Nadu Handloom Weavers' Cooperative Society Ltd., Thanjavur and another Vs. V.Natarajan] wherein this Court held that it is not necessary for the landlord to carry on business for filing Eviction Application under Section 10(3)(a)(iii) and it is sufficient if he has the bona fide intention to start the business.

13. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petition premises was leased out to the tenants on a monthly rent of Rs.16,000/-. Now, a petition has been filed for evicting the tenants on the ground of own use and occupation, putting the premises on different use and on the ground of act of waste. There is no dispute with regard to the jural relationship of the parties. It is the case of the landlords that the 1st landlord's husband had started leather business in 1977 at Bangalore under the name and style of M/s.Mysore Leather Corporation. The Registration Certificate was marked as Ex.P3. The business was closed by the State of Karnataka under Ex.P4 dated 05.01.2008. In order to start their own business in the petition property, the landlords have filed the R.C.O.P for evicting the tenants. Under Ex.P6 documents, the landlords also

registered with the Government of Tamil Nadu for setting up a manufacturing unit. P.W.1 also deposed that they are having all the machineries for running the said business. However, the tenants contended that the landlords do not require the premises for their own use and occupation for the reason that they are not running the business in some other rental premises.

14. In the judgment reported in **1998 (III) CTC 108**, the Hon'ble Supreme Court held that a landlord can seek eviction of the tenant for benefit of member of his family notwithstanding that such landlord is himself occupying building of his own for carrying on business so long as such member of family for whose benefit eviction is sought does not occupy any premises of his own in City or Town. In the judgment reported in **2004 (5) CTC 675**, this Court held that a tenant cannot dictate to the landlord the portion or premises landlord should choose. Further, this Court held that though the landlord or the person for whom the eviction sought for, is not already carrying on business, the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business. In **2010 (6) CTC 454**, this Court held that it is not necessary for the landlord to carry on business for filing Eviction Application under Section 10(3)(a)(iii) and it is sufficient if he has the bona

fide intention to start the business. In the case on hand, the landlords have already registered with the Government of Tamil Nadu for setting up a manufacturing unit under the name and style of M/s.Sofia Exports for manufacturing of leather shoe lining material. Under Ex.P6 document dated 23.07.2008, the Government of Tamil Nadu represented by the General Manager, District Industries Centre, Kanchipuram had issued acknowledgment for registering the memorandum expressing its intent to set up the unit. Under Ex.P3, the business carried on by the landlords in the State of Karnataka was closed. Therefore, it is evident that the landlords have established their intention to start the business in the petition premises. Therefore, the judgments relied upon by the learned counsel for the respondents landlords squarely applies to the facts and circumstances of the present case.

15.It is not the case of the tenants/petitioners that the landlords/respondents are owning some other property for running the business. That being the case, when the respondents/landlords established their intention to start the business in the petition premises under Ex.P6 document, the order of eviction on the ground of own use and occupation by the Rent Control Appellate Authority is just and proper.

16. So far as eviction on the ground of putting the premises for different use and on the ground of act of waste are concerned, the landlords have not established those contentions by oral and documentary evidence. In the judgment reported in **1969 (1) MLJ 19** this Court held that unless there is clinching evidence to satisfy the conscience of the Court that the acts complained to have caused damage to the building or its utility, it would be in the region of wild speculation to conclude that the necessary ingredients or the sine quo non of the Section have been satisfied. In the case on hand, mere installation of boiler in the premises cannot be construed as an act of waste. Therefore, eviction on the ground of act of waste is liable to be set aside.

17. So far as eviction on the ground of putting the premises for different use is concerned, the tenants are carrying on only the dry leather processing work and the landlords have not established that the tenants are carrying on any other business other than the leather processing work. In the absence of any evidence to that effect, the Rent Control Appellate Authority should not have ordered eviction on the ground of different use. When there is absolutely no evidence with regard to different use and act of waste, the Lower Appellate Court should not have ordered eviction on those grounds.

18. In these circumstances, the order of eviction on the ground of different use and act of waste are set aside. So far as eviction on the ground of own use and occupation is concerned, the same is confirmed.

19. The Civil Revision Petition is partly allowed by confirming the order of eviction on the ground of own use and occupation and setting aside the order of eviction on the ground of different use and act of waste. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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05.01.2016

To

- 1.The Subordinate Court,
Tambaram.
- 2.The Principal District Munsif,
Alandur.

M.DURAISWAMY,J.
va

Order made in
C.R.P.(NPD).No.2112 of 2015
and M.P.No.1 of 2015

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