

Reserved on : 19.09.2016

Delivered on : 29.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

**C.R.P.(NPD).Nos.4291 & 4292 of 2015
and M.P.Nos.1 & 1 of 2015**

M/s.Frauln,
Partnership Firm,
rep by its Partner J.Sumitha
No.AH-31, Shanthi Colony Main Road,
Anna Nagar,
Chennai - 600 040.

... Petitioner in both C.R.Ps

Vs.

S.Thilagavathy

... Respondent in both C.R.Ps

Civil Revision Petitions filed under Section 25 of the Tamil nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 09.09.2015 passed in R.C.A.Nos.41 of 2014 and 456 of 2014 on the file of the VII Small Causes Court, Chennai confirming/reversing the fair and decreetal order passed in R.C.O.P.No.1581 of 2012 on the file of the XVI Small Causes Court, Chennai.

For Petitioner : Mr.G.Rm.Palaniappan
(in both C.R.Ps)

For Respondent : Mr.T.Velumany
(in both C.R.Ps) for Mr.K.Suthan

COMMON ORDER

C.R.P(NPD).No.4291 of 2015 arises against the judgment and decree passed in R.C.A.No.41 of 2014 on the file of the VII Judge, Court of Small Causes, Chennai confirming the order of eviction passed in R.C.O.P.No.1581 of 2012 on the file of the XVI Judge, Court of Small Causes, Chennai in respect of the property, which is a residential portion.

2.Challenging the order of eviction passed in R.C.A.No.456 of 2014 on the file of the VII Judge, Court of Small Causes, Chennai, reversing the order passed in R.C.O.P.No.1581 of 2012 on the file of the XVI Judge, Court of Small Causes, Chennai, the tenant has filed the Civil Revision Petition in C.R.P.(NPD).No.4292 of 2015. The Rent Control Appellate Authority ordered eviction in respect of non-residential portion also on the ground of own use and occupation.

3.Both the Civil Revision Petitions are filed by the tenant. R.C.O.P.No.1581 of 2012 was filed by the landlady for eviction on the ground of own use and occupation in respect of two items of the properties, the 1st item being residential and 2nd item being non-residential.

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

(i)According to the landlady, she is the absolute owner of the building bearing No.AH-31, Shanthi Colony Main Road, Anna Nagar, Chennai-600 040 and the landlady's mother entered into a Lease Agreement dated 31.05.2004 with one L.Jayachandran, husband of one of the partner of the tenant Company. At the time of entering into the Lease Agreement, the monthly rent was fixed at Rs.11,000/- and a sum of Rs.1,00,000/- was paid towards Caution Deposit. Subsequently, when the lease period was extended for another five years from 2007 to 2012, the monthly rent was enhanced to Rs.15,000/- and the tenant also paid a further sum of Rs.4,00,000/- as Caution Deposit. The Lease Agreement was entered into between the landlady and the tenant in respect of both items of properties. Subsequently, on 28.10.2009, the landlady's mother executed a registered Deed of Settlement in her favour. Thereafter, the tenant has been paying the monthly rent to the landlady.

(ii)In the month of January 2010, the landlady approached the tenant to vacate the residential portion for her personal occupation, narrating her position, because her aged mother and the entire family are now living in her brother's house. Further, she has stated that since her brother

Padmanabhan is returning from UK in the 3rd week of March 2010, she requested the tenant to vacate the premises for owner's occupation.

(iii) The tenant filed a suit in O.S.No.625 of 2010 on the file of the 1st Additional Judge, City Civil Court, Chennai for permanent injunction and after contest, the trial Court dismissed the suit, against which the tenant preferred an appeal in A.S.No.163 of 2011 on the file of the III Additional Judge, City Civil Court, Chennai. On 21.10.2010, the landlady sent a notice to the tenant to deliver vacant possession of the premises within two months, but the tenant refused to vacate the premises and continue to remain in possession till date. On 28.04.2012, the landlady went to the tenant's portion and asked them to vacate the premises after the expiration of lease period (i.e.) 30.04.2012, since it was required for owner's occupation. However, the tenant refused to vacate the premises even after the expiration of the lease period. In these circumstances, the landlady filed the Rent Control Original Petition for eviction on the ground of own use and occupation.

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

According to the tenant, there is no *bona fide* on the part of the landlady to seek for eviction on the ground of owner's occupation. The

tenant disputed the averments stated in the petition with regard to the reasons given by the landlady for maintaining the Original Petition for eviction. There is no *bona fides* on the part of the landlady in filing a petition for eviction on the ground of owner's occupation. The tenant has not violated any of the terms and conditions contained in the Lease Agreement. In these circumstances, the tenant prayed for dismissal of the petition.

6.Before the Rent Controller, on the side of the landlady, she was examined as P.W.1 and 11 documents, Exs.P1 to P11 were marked and on the side of the tenant, R.W.1 was examined and Ex.R1 was marked.

7.The Rent Controller, taking into consideration the oral and documentary evidences let in by the parties, ordered eviction in respect of the residential portion and dismissed the petition in respect of non-residential portion.

8.Aggrieved over the dismissal of the petition in respect of the non-residential portion, the landlady filed an appeal in R.C.A.No.456 of 2014 and as against the order of eviction passed by the Rent Controller in respect

of the residential portion, the tenant preferred an appeal in R.C.A.No.41 of 2014 on the file of the XVI Judge, Court of Small Causes, Chennai.

9.The Rent Control Appellate Authority, taking into consideration the case of both parties, dismissed the appeal filed by the tenant and allowed the appeal filed by the landlady, thus ordering eviction in respect of both the portions. Against the common judgment and decree passed by the Rent Control Appellate Authority, the tenant has filed the above Civil Revision Petitions.

10.Heard Mr.G.Rm.Palaniappan, learned counsel appearing for the petitioner/tenant and Mr.T.Velumany, learned counsel appearing for the respondent/landlady.

11.Mr.G.Rm.Palaniappan, learned counsel appearing for the petitioner/tenant submitted that the judgment and decree passed by the Rent Control Appellate Authority in both the appeals are liable to be set aside on the ground that under Section 10(3)(d) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the Rent Control Original Petition is liable to be rejected for the reason that the landlady had issued a legal notice dated 21.10.2010, much prior to the expiry of the lease period (i.e.) 30.04.2012.

Further, the learned counsel submitted that the judgment and decree of the Rent Control Appellate Authority are liable to be set aside for the reason that the landlady has not proved the *bona fides* for evicting the tenant on the ground of own use and occupation.

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

(i) 2002-2-L.W. 629 [M.Navamani Vs. A.S.A.Arumugham] wherein this Court held as follows:

“ ...

6. The learned counsel for the revision petitioner would contend that the petition under S. 10(3)(a)(iii) of the Act, is not maintainable and the respondent herein may have to file a petition only under S. 10(3)(c) of the Act for evicting the revision petitioner from the demised premises for additional accommodation and not for his own use and occupation. As already pointed out, it is admitted case of the respondent even in the pleadings in the petition that he is in occupation of the rear portion of the building and he requires the demised premises which forms part of the front portion, to carry on his own business. It will mean that he requires the demised premises to carry on his business by way of additional accommodation.”

(ii) 1982 ILR Madras 69 [Messrs Gillanders Arbuthanot & Co., Limited Vs. Mrs. V.S. Badhrunnissa] wherein this Court held that when there is no evidence to show that the landlady's husband is carrying on business or has made any preparations for starting any business and failure to occupy the premises that fell vacant and in that case requirement of the landlady cannot be bona fide and further held that the petition for eviction cannot be filed before the expiry of the lease period agreed to between the parties under Section 10(3)(d) of the Act.

(iii) 2001 (2) CTC 200 [Sowkath Ali and 2 others Vs. Pappu and 3 others] wherein this Court held as follows:

“ ...

7. With reference to the owners' occupation the ground on which the landlord had required the premises is that sons of the petitioner were studying in a village at Kulathur and that therefore, he required the premises for shifting his children to Tiruchirapalli for better education. In this context, both the Courts below have concurrently found that after the filing of the eviction petition, the adjacent property of the same description fell vacant and the said property had been let out for lease on higher rent. It is true that the said property fell vacant only subsequent to the filing of the petition and that the choice of the premises is no doubt within the discretion of

the landlord. But considering that all the houses are of the same description and situate adjacently, if the landlord had really required the premises for shifting his family, he could have made use of the premises which fell vacant subsequently. Therefore, I do not find any reason to interfere with the finding relating to the owner's occupation also.”

(iv)2004 (3) CTC 246 [K.Dhanabalan Vs. Parvathi Ammal] wherein this Court held as follows:

“...

9.As rightly pointed out by the learned Rent Control Appellate Authority that though the Rent Control Original Petition has been filed to the effect that the petition premises is sought for own use and occupation for the purpose of the business carried on by him and also for the purpose of carrying on business by his two sons, the petition is not filed under Section 10(3)(a)(iii) of the Act but it is filed only under Section 14(1)(b) of the Act for which no averments have been made with regard to such bona fide requirement. In the evidence also, the landlord as P.W.1 has stated that the petition premises is required for the purpose of carrying on business by his son Ravi, who was carrying on business in the rental premises as organizer of Peerless Insurance Company at 18, Gurusamy Pillai Lane. Though Ex. A.6 has been filed to show that Ravi, who is the son of the landlord, is carrying on business as organizer in Peerless Insurance Company, it is not proved that he is carrying on such business in the rented

premises. Therefore, the eviction sought for on that ground has been rightly refused by the learned Rent Controller and confirmed by the learned Rent Control Appellate Authority.”

(v)2004 (1) CTC 94 [Bata India Limited, rep. By its Manager Vs.

M.R.Manickam] wherein this Court held as follows:

“...

7.In the petition for eviction, the respondent has stated that he is carrying on the hotel business as a partner along with other partners in a rented building in Pudukottai Town. The petitioner has also stated that he has planned and made preparations to start of hotel business in the suit premises, which is more suitable for business and that he does not own a non-residential building similar to that of the suit premises and that the requirement is *bona fide*. In the cross examination, as P.W.1 the respondent has admitted that the premises in which the partnership building is carrying on is his own premises.

“புது பேருந்து நிலையத்திற்கு எதிரில் உள்ள என் சொந்தமான கட்டிடத்தில் கூட்டாக ஒட்டல் வியாபாரம் நடைபெறுகிறது, நான் அதில் பங்குதாரர்”

Therefore, the statement made in the petition that the partnership business is being carried on in a rented building is not correct. The orders of the Rent Controller and Appellate Authority do not indicate that the authorities have focused on the main ingredients to justify an application for eviction on the ground of owner's occupation. They are as follows:

1) the building should be non-residential in character;

- 2) the landlord should be carrying on the business on the date of application for eviction;
- 3) he should not be occupying any building belonging to him; and
- 4) the claim should be bonafide and not found to be an indirect or false attempt to evict the tenant to obtain more rent or to harass the tenant.”

(vi)2004 (1) CTC 668 [Kathan Vs. Scaw Manak Chand Shohaji]

wherein this Court held that in the absence of pleading that the landlord is not in occupation of residential building of his own in the same city, town or village, eviction cannot be granted.

13. Countering the submissions made by the learned counsel for the petitioner/tenant, Mr.T.Velumany, learned counsel for the respondent/landlady submitted that since the Rent Control Original Petition was filed only after the expiry of the lease period, the contention of the learned counsel for the petitioner cannot be accepted and the provisions of Section 10(3)(d) of the Act has no application. Further, the learned counsel submitted that the landlady has established the *bona fides*, therefore, the Courts below have rightly ordered eviction on the ground of own use and occupation.

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

(i) 2008 (5) CTC 404 [M.Vedapuri Vs. O.M.Raj and another]

wherein this Court held as follows:

“... ”

14. Merely because the landlords are having some other building, their *bona fide* requirement cannot be disputed on that ground. It is a settled proposition of law that the landlord on *bona fide* reason can seek a non-residential building for residential use. The Court has to consider whether the reason, as stated by the landlord is *bona fide* or not. In the instant case, it is not in dispute that the second respondent is suffering from leprosy and she is in need of treatment and the hospital is nearby the premises that was let out to the revision petitioner.”

(ii) 2009 (2) CTC 705 [Batco Roadways, rep by its Partner, Mr.M.H.Patni, No.21, Muthu Mari Street, Chennai - 600 001 Vs. A.Radhammal] wherein this Court held that it will be unjustified to throw out the petition for eviction on the ground that Section 10(3)(a)(iii) and not Section 10(3)(c) ought to have been quoted. Further, this Court held that on account of misquoting a provision of law, a party is not dis-entitled to the relief sought for, if he is otherwise entitled to the same on the facts and

the evidence. When the landlady has satisfied the requirements of Section 10(3)(a)(iii) also in addition to satisfying the requirements of Section 10(3)(c), she is entitled to get the tenant vacated.

(iii)Laws (DLH)-1998-5-102 [Dau Dayal Aggarwal Vs. Akhil Rohtagi] wherein the Delhi High Court held as follows:

“ ...

Let us first consider the submission of the petitioner that the petition is not maintainable since the premises were let out for residential-cum-commercial purpose. The premises in question are allotted by the Delhi Development Authority to the respondent under the Self Financing Scheme. The nature of the premises is, admittedly, residential. There is no written agreement. It has not been disputed that the petitioner, i.e. the entire family, comprising three married sons, is residing in the suit premises. No evidence with regard to commercial user in terms of Certificate Shops and Establishments Act, Income Tax Registration or other evidence of commercial user has been produced, except the bald statement of the petitioner. Having regard to the nature of the premises, locality and the available accommodation, the dominant user would be residential. Rather, the constraint of space would obviate any other user. Accordingly, no fault can be found with the reasoning given in the impugned order holding the letting purpose to be residential'.”

(iv)Laws (Kar)-2000-12-24 [Managing Director, M/s.Lakanpal National Ltd., Vs. K.M.Kondappa] wherein the Karnataka High Court held as follows:

“ ...

23.As stated, the description of the building stated in the eviction petition clearly indicates that the building was constructed for residential use and is adaptable or suitable for the said use. Landlord seeks eviction on the ground of self occupation for residential use only. And even the tenant has been using part of it for residential purposes. And in the absence of any plea and evidence that the building has now become unfit for residential use, the nature of the building and its adaptability continues to be what it was. Therefore, there is no merit in this contention also.”

(v)Laws (P & H)-1997-11-46 [Shiv Shankar House Pvt Ltd., Vs. Anant Pal Singh Grewal] wherein the Punjab and Haryana High Court held as follows:

“ ...

It was observed by the Hon'ble Supreme Court that the distinction between non-residential and residential building with regard to the ejectment of a tenant on the ground of personal necessity had no nexus with the. object sought to be achieved and that the classification caused serious hardship to

the landlord and was, therefore, constitutionally invalid. Following this judgment, this court in Ved Parkash Gupta's case (1997-2) 116 P.L.R 775 struck down Section 13(3-A) of the Act where Under the ground of personal necessity was available to the landlord only in regard to residential premises, it was held that a landlord could seek ejectment of his tenant on the ground of personal necessity even from non residential buildings. This beingso, the landlord in the instant case is entitled to seek ejectment of the petitioner on " the ground of personal necessity".

...

Having gone through the judgments of the courts below and after hearing counsel. for the parties, I am of the view that the landlord in the circumstances of the present case *bona fide* requires the premises for his own use and occupation. He is a heart patient suffering from hyper tension and is presently living in Delhi in a rented premises on the first floor. He has been advised by the doctors to live on the ground floor. No fault can thus be found with the findings recorded by the courts below in this regard."

15.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it could be seen that there is no dispute with regard to the tenancy entered into between the petitioner and the respondent. The issue that arises for

consideration in these Civil Revision Petitions are whether the Rent Control Original Petition filed by the landlady is liable to be rejected in toto for the reason that the landlady had issued Ex.P7 notice dated 21.10.2010 to the tenant for vacating the premises prior to the expiry of the lease period (i.e.) 30.04.2012. The next question that arises for consideration is with regard to the *bona fide* of the landlady in filing the Original Petition for eviction on the ground of own use and occupation.

16.It is not in dispute that the landlady issued Ex.P7 notice dated 21.10.2010 to the tenant for vacating and handing over vacant possession of the property within two months time. As per Section 10(3)(d) of the Tamil Nadu Buildings (Lease and Rent Control) Act where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period. As per Section 10(3)(d) of the Act, the landlord shall not be entitled to apply under the said sub-section before the expiry of the lease period. In the case on hand, though Ex.P7 notice was issued on 21.10.2010 when the tenancy was to expire only on 30.04.2012, the actual date of application (i.e.) the date of filing of the Rent Control Original Petition is relevant for invoking the provisions of the said sub-section. The Rent Control Original Petition was filed on 18.07.2012 (i.e.) only after the

expiry of the lease period. When Section 10(3)(d) of the Act says that “landlord shall not be entitled to apply”, the issuance of notice on 21.10.2010 has no relevance for maintaining the Original Petition. Since the Rent Control Original Petition was filed on 18.07.2012 (i.e.) only after the expiry of the lease period, the contention raised by the learned counsel for the petitioner cannot be accepted. Therefore, the provisions of Section 10(3)(d) of the Act shall not bar the filing of the Rent Control Original Petition by the respondent/landlady.

17.The next point that arises for consideration is with regard to the *bona fides* of the landlady in seeking for eviction on the ground of own use and occupation. In the petition, the landlady has averred that her aged mother is finding it difficult to climb the staircase, therefore, she require the premises for her own use and occupation. Further, she has averred that now her mother is occupying the house belonging to her brother, who is in UK and that her brother is coming over to Chennai, therefore, he requested the landlady and her mother to vacate and move to their house, which is two buildings away from her brother's house. In support of her contention, she had deposed that she require the petition premises for her own use and occupation and that she does not own any other property in Chennai. Even in Ex.P4 notice dated 10.02.2010, the landlady has stated that she is not

owning any other property in Chennai, which was also admitted by R.W.1 in his evidence. In the evidence of P.W.1 the landlady has established the *bona fide* in seeking for eviction on the ground of own use and occupation.

18.It is also brought to the notice of this Court that the appeal filed by the tenant in A.S.No.163 of 2011 as against the dismissal of the suit in O.S.No.625 of 2010, which was filed for permanent injunction was also dismissed by the Lower Appellate Court on 10.10.2012. The copy of the judgment and decree was marked as Ex.P6 before the Rent Controller.

19.Though the petition was filed under Section 10(3)(a)(iii) of the Act, which is meant for non-residential buildings, eviction was ordered both in respect of non-residential as well as in respect of residential building. If a building is required for residential purpose for own use and occupation of the landlady, the petition should have been filed under Section 10(3)(a)(i) of the Act. No doubt, the petition has been filed under Section 10(3)(a)(iii) of the Act without quoting Section 10(3)(a)(i) of the Act.

20.The ratio laid down in the judgment reported in **2009 (2) CTC 705 [Batco Roadways, rep by its Partner, Mr.M.H.Patni, No.21, Muthu Mari Street, Chennai - 600 001 Vs. A.Radhammal]** squarely applies to the

facts and circumstances of the present case. The litigants cannot plead ignorance of law, but at the same time, they cannot be expected to know the nuances of specific provisions and the Court cannot expect a litigant to assimilate and understand the fine aspects of law and error in quoting wrong provisions of law should not become fatal. The Court should have a duty to find out the ingredients of the correct provisions of law as applicable to the case, stands satisfied or not.

21. In the case on hand, though the landlady has filed the petition under Section 10(3)(a)(iii) of the Act, she has, in the pleadings as well as in the evidence, satisfied the provisions of Section 10(3)(a)(i) of the Act. Therefore, non-quoting of Section 10(3)(a)(i) in the petition is not fatal to the case of the petitioner. Following the ratio laid down in the judgment reported in **2009 (2) CTC 705 [Batco Roadways, rep by its Partner, Mr.M.H.Patni, No.21, Muthu Mari Street, Chennai - 600 001 Vs. A.Radhammal]**, I do not find any error in the judgment and decree passed by the Lower Appellate Court.

22. In these circumstances, I do not find any ground to interfere with the judgment and decree passed by the Rent Control Appellate Authority. The Civil Revision Petitions are liable to be dismissed. Accordingly, the Civil

Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

29.09.2016

To

1.The VII Judge,
Court of Small Causes,
Chennai.

2.The XVI Judge,
Court of Small Causes,
Chennai.

M.DURAIWAMY,J.
va

Order made in
C.R.P.(NPD).Nos.4291 & 4292 of 2015
and M.P.Nos.1 & 1 of 2015

29.09.2016