

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.4395 of 2015andM.P.No.1 of 2015

Date of Reserving the Judgment 08.12.2016	Date of Pronouncing the Judgment 15.12.2016
--	--

K.Abdul Rahman
S/o.K.Kader Moideen

.. Tenant/Respondent//Appellant/
Revision Petitioner

-Vs.-

1.S.S.Vijayakumar

2.S.V.Pradeep Kumar

.. Landlord/Petitioners//Respondents/
Respondents

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order dated 12.09.2015 passed in R.C.A.No.29 of 2015 on the file of the learned VIII Judge, Court of Small Causes, Chennai (Appellate Authority).

For Petitioner : Mr.A.M.Loganathan

For Respondents : Mr.M.Sekar,
for R1 and R2

ORDER

The present Civil Revision Petition has been filed challenging the order dated 12.09.2015 passed in R.C.A.No.29 of 2015 on the file of the learned VIII Judge, Court of Small Causes, Chennai (Appellate Authority), wherein the learned Rent Control Appellate Authority had confirmed the order passed by the learned Rent Controller and thereby ordered eviction on the ground of owners occupation.

2.The landlord had filed the RCOP.No.812/2012 for eviction on the ground of denial of title, additional accommodation and owners occupation. The learned Rent Controller did not accept the contention of the landlord for eviction on the ground of denial of title and additional accommodation, however, the learned Rent Controller ordered eviction on the ground of owners occupation. Against the said order of the learned Rent Controller, the tenant preferred R.C.A.No.29/2015 before the learned Rent Control Appellate Authority who dismissed the same by confirming the order passed by the learned Rent Controller, against which the present Civil Revision Petition has been preferred.

3.The learned counsel for the petitioner would submit that the finding of both the Courts below is perverse and without any material evidence, eviction has been ordered. He would further submit that the intention and the conduct of the landlord has to be taken into consideration before deciding whether the plea of owners occupation is bonafide. Further, since the landlord is already in occupation of the second and third floor of the premises in question, they are not entitled to file the petition under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as the 'Act']. Furthermore, the landlord had not filed any documents to prove that they are carrying on business in the said property. Hence, the learned counsel for the petitioner prayed for setting aside the order passed by the Rent Control Appellate Authority and allowing the revision.

4.Resisting the same, the learned counsel appearing for the respondents would submit that the property was originally owned by the father of the first respondent and they were doing business in explosive substances and fire works from the year 1976. The revision petitioner herein who was the tenant under the erstwhile owner of the premises in question, had entered into a rental agreement with the father of the first respondent in the year 1990 with an undertaking to vacate the ground floor premises thirty days prior to Deepavali and take back possession five days after the Deepavali, so as to

enable the respondents to carry out the fire works business, for which the respondents had obtained necessary license from the government. As per the said agreement, the petitioner promptly handed over the ground floor premises to the respondent till the year 2009. However, during the year 2010, when the respondents demanded the petitioner to hand over vacant possession of the ground floor premises, the petitioner did not deliver the ground floor and further, he denied the title of the respondents and also refused to pay the monthly rent. Hence, the respondents were forced to file the eviction petition.

5. The learned counsel for the respondents would further contend that there is no perversity in the orders passed by both the Courts below and the Trial courts had also rightly considered all the order passed by the Hon'ble First Bench of this Court in the Public Interest Litigation writ petition, wherein the respondents were granted permission to carry out their fireworks business at the place for which they had obtained the license for conducting the said business. The learned counsel would further contend that the tenant has no business to dictate terms to the landlord as to where the landlord has to conduct their business. For the said reason, the learned counsel relied upon the decisions reported in

1. (2010) 1 Supreme Court Cases 503, Uday Shankar Upadhyay and Others v. Naveen Maheswari.

2. 2011 (2) MWN (Civil) 465, R.Sakunthala v. K.Chockalingam.

and prayed for dismissal of the Civil Revision Petition.

6.Considered the rival submissions made by both sides and perused the material records and the typed set of papers. It is an admitted fact that there was a landlord tenant relationship between the revision petitioner and the respondents. Even though the respondent/landlord had filed RCOP.No.812/2012 for eviction on the ground of denial of title, additional accommodation and owners occupation, the learned Rent Controller had dismissed the petition in respect of denial of title and additional accommodation, however allowed the petition on the ground of own use and occupation. Against the said of the learned Rent Controller, the respondent/landlord had not preferred any appeal, however the revision petitioner/tenant preferred an appeal in R.C.A.No.29/2015, challenging the order of eviction on the ground of own use and occupation. The learned Rent Control Appellate Authority had dismissed the said appeal by confirming the order passed by the learned Rent Controller.

7.The first limb of argument put forth by the learned counsel for the

revision petitioner is that the conduct of the landlord had to taken into consideration to decide whether the premises is needed for personal occupation. The respondents/landlord had filed a suit in O.S.No.13197/2010 for permanent injunction restraining the defendant and his men from in any manner interfering with the peaceful possession and enjoyment of the suit property, as if he is in possession and enjoyment of the property. However, the said suit came to be dismissed for default. Thereafter, the respondents/landlord filed an application in I.A.No.13822/2011 in O.S.No.13197/2010 to restore the suit. However, the said application was dismissed on 17.11.2011, which would show the malafide intention of the respondents to evict the petitioner.

8.It is further contended on behalf of the petitioner that there was a rental agreement between both the parties on 05.11.2010, which was marked on Ex.P.6. However, it is stated by the respondents/landlord in the RCOP proceedings filed on 23.03.2012 that as soon as the respondents got the property, they issued a notice to the petitioner. However, the petitioner had denied the title of the respondents. Admittedly, there was an understanding that the petitioner has to vacate the ground floor premises thirty days prior to Deepavali and take back possession five days after the Deepavali, so as to enable the respondents to carry out the fire works business. As per the said

agreement, the petitioner promptly handed over the ground floor premises to the respondent till the year 2009. However, as soon as the respondents became the absolute owners of the property, the petitioner did not hand over the possession in the year 2010 during the Deepavali festival and hence, the litigation started. It is also true that the respondent/landlord had filed the suit in O.S.No.13197/2010 for injunction restraining the defendant and his men from interfering with their peaceful possession and enjoyment of the suit property, wherein the schedule of the property is as follows:

“All that piece and parcel of land, building, premises and free access comprised in respect of an extent of 555 sq.ft of the Ground floor in the three storied building in Old Door No.38, New No.60, Badrian Street in Zone II, Ward No.30 of the limits of the Corporation of Chennai, surrounded

North by : Shop in New Door No.58, Badrian Street belonging to Venkatapathy Chetty & Sons

South by : Shop in New Door No.61, Badrian Street belonging to K.A.Thangavelu Mudaliar & Sons

East by : R.S.No.11275

West by : R.S.No.11275 - Badrian Street”

9.In the plaint, it was stated that the respondent/landlord had

obtained lawful license from the year 1979 which is valid upto 2015 in the name of style of Rajkumar Traders showing the suit premises which satisfied the requirements for safe storage and sale of fire works under the explosive rules. It is also pertinent to note that after filing of the suit in O.S.No.13197/2010, the rental agreement between the parties came into effect on 05.11.2010, in which the condition no.8 reads as follows:

“The tenant shall vacate and handover the Ground floor tenancy portion to the landlords herein before 35 days from the date of Deepavali for landlords to carry on whole sale and retail business in crackers and fire works in the ground floor portion and continue to do so for a period of five days after Deepavali, incase the landlords fail to deliver the vacant possession of the ground floor portion to the tenant after expiry of five days from Deepavali, the tenant shall have right to enter into the portion and take the possession of the same and the landlords shall not object for the same.”

10.While this being so, the revision petitioner/tenant refused to vacate the ground floor tenancy portion and hand over vacant possession to the respondents/landlord in the year 2011 during the Deepavali season. However, he has now raised the contention that the rental agreement is not admissible

since one of the partners has not signed and it is an unregistered document. But the Trial Court has given the finding that the rental agreement is for 11 months and one of the partners has signed and so, it is admissible in evidence. Considering all these aspects, I am of the view that the argument advanced by the learned counsel for the petitioner that the rejection of the plea of additional accommodation and denial of title by the Trial Court would show the malafide intention of the landlord to evict the petitioner does not merit acceptance.

11. The second limb of argument is that the petitioner is barred by Section 10(3)(a)(iii) of the Act. It would be appropriate to incorporate the said provision:

“10. Eviction of tenants.- (3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i)

(ii)

(iii) In case it is any other non-residential building, if the landlord or [any member of his family] is not occupying for purposes of a business which he or [any member of his family] is carrying on, a non-residential building in the city, town or village concerned which is his own:”

12. It is an admitted fact that the respondent/landlord is in occupation of the second floor and third floor of the premises. So, it has to be seen whether the respondent/landlord can file an application for eviction in respect of other portion in the same premises. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the respondents reported in **(2010) 1 Supreme Court Cases 503, Uday Shankar Upadhyay and Others v. Naveen Maheswari**, wherein at paragraph 7, it was held as follows:

“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of plaintiff No. 1 are getting salary of Rs. 1500/- from the firm, in our opinion,

this is wholly irrelevant and was wrongly taken into consideration by the High Court.”

13.The above decision has been followed in the decision of this Court reported in 2011 (2) MWN (Civil) 465, R.Sakunthala v. K.Chockalingam, wherein paragraph 20 reads as follows:

“20.The Hon'ble Supreme Court in [Uday Shankar Upadhyay vs. Naveen Maheswari](#), reported in 2009 (5) CTC 782, has held that once it is not disputed that the landlord is in bonafide need of the premises, it is not for the Courts to say that "he" should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. Accordingly, the Court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide.”

14.Considering the facts of the present case in the light of the above decisions, I am of the view that the argument put forth by the learned counsel for the petitioner that the petitioner is barred under Section 10(3)(a)(iii) of the Act does not merit acceptance.

15.The third limb of argument is that there is no document to show that the respondents/landlord is carrying out business in the said premises. It is pertinent to note that Exs.P.1 to P.3 has proved that the respondents had obtained license from the Department of Explosives for carrying out business in the said premises and the license is last renewed on 28.08.2015 and it is valid upto 31.03.2020. Further, under Ex.P.2, a plan has been attached, wherein the ground floor premises has been shown. However, it is contended on behalf of the petitioner that though the respondent/landlord is not in occupation of the ground floor premises, he has obtained permission which would reveal his malafide intention. But the above argument does not hold good because the said plan has been attached when he sought for license in the year 1988 and the license has been subsequently renewed periodically. Further, at that point of time, the revision petitioner was not a tenant in the premises and the revision petitioner entered into a rental agreement only in the year 1990.

16.It is also pertinent to note that the first respondent/landlord is a licensed manufacturer and seller of Chinese crackers in the name and style of Rathnaa Fire Works Industries at Sivakasi. Apart from regular sale at the factory, the products manufactured are sold in whole sale and retail market in Chennai through Rajkumar Traders from the year 1977. In such circumstances, the

argument advanced by the learned counsel for the petitioner that there is no document to show that the petitioner is carrying on business in the said premises does not merit acceptance.

17.Further, it is also to be noted that when the first respondent applied for renewal of license to sell the fireworks, the same was rejected by the Joint Chief Controller of Explosives, Chennai by an order dated 08.12.2006, pursuant to which he filed W.P.No.33309/2007 and in the said writ petition in M.P.No.1/2007, this court had granted interim direction permitting M/s.Rajkumar Traders to sell the crackers and other explosive items in license number Ma.No.6339/E, pending disposal of the said writ petition.

18.Furthermore, in the Public Interest Litigation filed by one K.R.Ramasamy @ Traffic Ramasamy in W.P.22991/2010 and W.A.No.1977/2011, this court has issued certain direction in regulating the temporary license and erecting temporary sheds in selling the fire works. Even in the said order, there is no bar or prohibition to sell fire works in Badrian Street as alleged by the petitioner herein. So, the argument advanced by the learned counsel for the revision petitioner that the respondent/landlord has not proved that he has taken steps to carry out business in the said premises does not merit acceptance.

19. In view of the above stated position, the argument put forth by the learned counsel for the petitioner that order of eviction passed by the Courts below on the ground of own use and occupation is not bonafide does not merit acceptance. Both the Courts below have considered various aspects and after analysing the oral and documentary evidence has come to the correct conclusion and ordered eviction only on the ground of own use and occupation. Hence, I do not find any infirmity and illegality in the orders passed by the Courts below.

20. Accordingly, this Civil Revision Petition is dismissed. Consequently, the order and decretal order passed by the first appellate Court in R.C.A.No.29/2016 is hereby confirmed and the petitioner/tenant is granted two months time to evict the premises. Connected miscellaneous petition is closed. No costs.

15.12.2016

pgp

Index: Yes/No

R.MALA, J.

pgp

Pre-Delivery order made in
C.R.P.(NPD).No.4395 of 2015

Dated : 15.12.2016

<http://www.judis.nic.in>