

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2016

CORAM
THE HON'BLE MR. JUSTICE T. MATHIVANAN

C.R.P. NPD. Nos. 125 & 126 of 2012

Against

R.C.A. No. 335 of 2007 &
M.P. No. 513 of 2011(on the file of the Rent Controller Appellant Authority,
VIII Court of Small Causes), Chennai

Against

RCOP NO. 1066/2006

on the file of Learned Rent Controller (X Court of Small Causes) Chennai

Bayan Bai's Wakf, Bangalore

Rep. by its Muthavalli:

M. Fuaad Musvee

S/o. Late Ibrahim Musvee,

129, Greams Road,

Thousand Lights, Chennai-6.

...
Vs.

Petitioner

1. Mrs. Kalyani

2. V. Sivakumar

....

Respondents

Prayer: Civil Revision Petitions are filed under Section 25 of Tamil Nadu Buildings, (Lease & Rent Control) Act 18/1960 as amended by Act 23/73 & Act 1 of 1980) against the Judgement and Decree dated 23.08.2011 and made in R.C.A. No. 335 of 2007 and M.P. No. 513 of 2011 on the file of Learned Rent Controller Appellant Authority (VIII Court of Small Causes), Chennai reversing the order and decree dated 27.3.2007 and made in RCOP NO. 1066/2006 on the file of Learned Rent Controller (X Court of Small Causes) Chennai

For Petitioner : Mr. Asif Ali, Learned Counsel for the Petitioner

For Respondents: Mr. A. Saravanan, Learned Counsel for the
Respondents**ORDER**

Both the revision petitions have been directed against the Judgment and Decree dated 23.8.2011 and made in the Rent Control Appeal in R.C.A. No. 335 / 2007 and M.P. No. 513 of 2011 on the file of Learned

Rent Controller Appellant Authority (VIII Court of Small Causes), Chennai.

2. The revision petitioner herein is the landlord, whereas the respondents are the tenants.

3. The revision petitioner viz. Bayan Bai's Wakf, Bangalore represented by its Muthavalli M. Fuaad Musvee had filed a Rent Control Proceedings in R.C.O.P. No. 1066 of 2006 as against the respondents herein / tenants under Section 14(i)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, (in short herein after it may be referred to as 'Act' wherever the context so required) for eviction on the ground of demolition and reconstruction.

4. This petition was resisted by the respondents. On appreciation of the evidences both oral and documentary, the Learned Rent Controller had proceeded to allow the petition granting two months time to quit, vacate and deliver vacant possession of the demised premises.

5. Having been aggrieved by the above said impugned order, the respondents had preferred an appeal in R.C.A. No. 335/2007. During the pendency of the appeal, the respondents/ tenants had filed two petitions in M.P. No. 513/2011 and 514 of 2011 under Sections 11 and 12 of the Act to direct the revision petitioner / landlord to prove title over the schedule mentioned property and to receive certain documents so as to enable them to prove their case. The Learned Rent Control Appellate Authority, after hearing both sides had allowed the appeal as well as the petitions in M.P. Nos. 513 and 514 of 2011 after setting aside the order of eviction passed by the learned Rent Controller.

6. Challenging the correctness as well as the legality of the judgment of the appellate authority, the petitioner / landlord has filed two revision petitions.

i) C.R.P. NPD. No. 125 / 2012: This petition is filed challenging the decree and judgment passed in R.C.A. No. 335 of 2011 and

ii) C.R.P.NPD. No. 126 / 2012: This petition is filed challenging the fair and decreetal order passed in R.C.A. No. 513 of 2011

7. The revision petitioner / landlord has not chosen to file any revision as against the order passed in M.P. No. 514 of 2011.

8. Heard Mr. Asif Ali, learned counsel appearing for the revision petitioner and Mr. A. Saravanan, learned counsel appearing for the respondents 1 and 2/ tenants.

9. The revision petitioner is a wakf called Bayan Bai's Wakf, represented by its Muthavalli M. Fuaad Musvee. The petitioner's wakf is located at Bangalore. As per the averments of the petition in RCOP No. 1066 of 2006, the petitioner wakf is the owner of the premises bearing no. 7, Thayar Market Lane, Mount Road, Chennai- 2 and the respondents herein are the tenants in respect of the ground floor portion bearing no. 9, Thayar Market Lane, Mount Road, Chennai 2 on a monthly rent of Rs. 750/-. According to the petitioner, the above mentioned property is part of larger extent of the property belonging to the said Bayan Bai's Wakf at Bangalore.

10. Since the rent paid by the respondents is very low, the petitioner had decided to demolish the building for the development of the property and also for the purpose of improving and augmenting the income of the wakf. Moreover, the building is aged about 80 years and therefore, it requires demolition and reconstruction.

11. For the above said purpose, the petitioner had requested the respondents several times to vacate the premises as the building was required to be demolished, but the respondents had refused to vacate the same. Since the petitioner is having sufficient means and funds to put up a multi-storied building, they were constrained to file the above said petition as against the respondents to quit, vacate and deliver the vacant possession.

12. On the other hand, while denying the allegations made in the petition the respondents have contended that the petition itself is only a ruse to vacate them from the petition mentioned building and that there is no bonafide reason for demolition and reconstruction. It is also their contention that the building is in a good condition and does not require demolition and re-construction as alleged by the petitioner. The petitioner does not have any intention to demolish the demised premises and it is equally false to state that they are paying a very low rent to the rented premises.

13. In order to substantiate their case, Muthavalli of the petitioner Wakf M. Fuaad Musvee was examined as PW1 and another Civil Engineer was examined as PW2. During the course of their examination, Exs. P1 to P10 were marked. Though the 2nd respondent herein was examined as RW1, no documentary evidence was adduced on their behalf.

14. On appreciation of the evidences both oral and documentary, at the first instance the Rent Controller had found that there was no dispute with regard to the relationship of landlord and tenants and even there was no dispute regarding monthly rent of the demised property.

15. The Learned Rent Controller had also found that the bonafide intention of the landlord, his financial position of landlord and the age and condition of the building which is sought to be demolished for the purpose of reconstruction, were relevant factors. The Learned Rent Controller had also sought support of the decision reported in 2000 (4) CTC p.585 for strengthening his conclusion. Ultimately, after satisfying himself that the claim of the petitioner was bonafide, he had proceeded to pass an order of eviction as against the respondent /tenants.

16. It is significant to note here that the petition in M.P. No. 513/2011 was filed by the respondent/ tenant before the Learned Rent Control Appellate Authority and thereby sought the relief of a direction as against the petitioner/ landlord to prove his title over the petition mentioned property.

17. Unfortunately this petition was allowed by the Rent Control Appellate Authority despite sternous contest was made by the petitioner / landlord projecting his main contention that the respondents in their evidence have admitted that they have been in occupation of the tenanted premises for more than 50 years. It is also relevant to note here that the revision petitioner had filed the rent control original petition under section 14 (i) (b) of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 for eviction of the respondents as early as on 19.6.2006. In their counter statement the respondents / tenants had never disputed the title of the revision petitioners / landlord. As afore stated the Learned Rent Controller while granting the order of eviction had also found that there was no dispute with regard to the relationship of landlord and tenants. The order

of revision was passed on 27.3.2007 against which the respondents / tenants had filed the appeal in RCA 335/2007 in the month of April 2007. As argued by Mr. Asif Ali, Learned Counsel for the petitioner, the petition in M.P. No. 513/2011 was filed after passing of 4 years from the date of appeal and 5 years from date of filing of Rent Control Original Petition. The plea taken by the respondent's tenants denying the title of landlord is not sustainable either on law or on facts, because apparently this plea was taken belatedly. The respondents/ tenants had never chosen to dispute the ownership of the petitioners over the tenanted premises. Under this circumstance they are estopped under Section 116 of the Evidence Act from denying the title of the landlord after passing of 5 years. When they omitted to take such a plea before the Learned Rent Controller it is not open for them to introduce a new plea before the Appellant Authority which is totally inconsistent to their counter statement filed before the Learned Rent Controller. In this connection this court would like to have reference to the decision of this court and made in M/s. Yasodha Raju Vs. A. Kuselan 2004 (1) L.W 172. In this case the Learned Judge in paragraph no. 6, 8 & 13 has observed as follows:-

"6. It is evident from the definition of Landlord in Section 2(6) that the Landlord is defined under the Act and it is comprehensive enough to take in persons who are not strictly landlord under the general law. As far as the Rent Control Application is concerned, it is not the ownership of the property that entitles a person to file petition for eviction but when a person comes under the definition of landlord mentioned in section 2(6) of Rent Control Act, he is entitled to maintain a petition for eviction. Hence the leave sought for by the petitioner herein (Respondent in CROP) for filing additional counter to say that the respondent herein is not the owner of the premises despite the fact that the petitioner has been paying the rent only to him all along and filed several proceedings referring and recognizing him as landlord was rightly rejected by the courts below after consideration.

8. Section 116 of the Indian Evidence Act sets out in

clear term that during the continuance of tenancy, a tenant cannot be permitted to deny the title of the landlord. The decision of the Constitution Bench of the Hon'ble Supreme Court reported in (Atyam Veeraraju and others vs. Pechetti Venkanna and others) AIR 1996 SC 629 held in para 13 as follows:-

13. Having regard to the Section 116 of Indian Evidence Act 1872, during continuance of tenancy, a tenant will not be permitted to deny the title of the diety at the beginning of the tenancy. In Bilas Kanwar vs. Desraj Ranjith Singh, ILR 37 Alahabad 557 at p.567 (AIR 1915 PC 96 at p.98) the privy counsel observed :-

"a tenant who has been let into possession cannot deny his landlord's title however defective it may be so, so long as he has not openly restored possession by surrender to his landlord"

The ratio laid down in the above judgment by the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the case on hand.

18. On coming to the instant case on hand, as already adumbrated supra, it is clear from the averments of the counter statement of the respondents that they had/ have been in possession of the tenanted premises without denial of the ownership of the petitioner in respect of the tenanted premises. Having been accepted so far, the ownership of the petitioner, all of a sudden, they cannot come forward with a petition seeking the prayer of permission to deny the title of the ownership of the petitioner. It is to be reiterated that the respondents had never taken such a stand before the Learned Rent Controller. Hence the petition filed by the respondents before the Rent Control Appellate Authority in MP No. 513 of 2011 under section 11 and 12 of the Act ought to have been dismissed but unfortunately the appellant authority had allowed the same which is liable to be set-aside as the order itself is erroneous.

19. Secondly as submitted by Mr. Asif Ali, Learned counsel appearing for the petitioner, Ex. P1 wakf deed relates to the formation of

the work and the property specified in the petition was purchased long after the formation of the wakf and hence the property cannot be found place in the wakf deed. This court on considering the oral and documentary evidences adduced by the petitioner / landlord is fully satisfied that he has clearly established his bonafide intention for demolition and reconstruction of the building. Learned Rent Controller Appellant authority in the opening of his judgement has fairly admitted that the building itself was aged about 79-80 years by physical observation. The engineer in his report had also stated that the entire super structure had out lived its age, stability and strength till now and therefore he had recommended for the immediate demolition of the entire super structure at once. It is established that the petitioner / landlord had also given an undertaking as contemplated under section 14(2) of the Act. The Learned Rent Control Appellate Authority had also observed that the non-production of sanction plan or lack of preparatory work for demolition and reconstruction itself could not be a ground to negativity claim of the landlord.

20. In Dr. P.S. Salahuddin vs. C. Shameemunnissa 2000 3 L.W. 400, this court has observed that mere non-production of plan and permit from the municipality cannot be put up against the landlady if she can otherwise make out a case for demolition. In this decision Learned Judge of this court has made reference to **M.R.M. Duraiappa Nadar vs. P. Thirupura Sundariammal** (1989 1 MLJ 89: 1989 1 L.W. 46 S.N.) In this case it was observed that :

'The rejection by the Appellate Authority of the additional evidence can be canvassed in the Civil Revision Petition filed by either of the parties who had suffered an adverse to reject the additional evidence on the ground that the additional evidence was sought to be introduced to fill up the lacuna in the case. In my view, this is not correct. No doubt, before the Rent Controller what was produced was only the necessary things to make out a case for 14(1) (a) and it is now settled law that mere nonproduction of the plan and permit from the Municipality concerned cannot be put against the case of the landlady if she

otherwise makes out a case for demolition and reconstruction. In the instant case, by applying for sanction for a plan for demolition and reconstruction the landlady has only shown her bonafides. May be, such application was made after the disposal of the eviction petition against her, but when the obtaining of the plan itself is not a condition precedent for invoking Section 14(1) (b), the mere fact that the landlady applied for and obtained the plan and permit for demolition and reconstruction and sought to produce them before the Appellate Authority would not by itself show that she was lacking in bonafides.

The Act also does not say anywhere that a petition for demolition and reconstruction should be made only after getting the sanction from the authorities concerned. This is a case of the landlady not merely replacing roof, but also reconstructing the whole structure. It is also now settled law that the building need not be in a dilapidated condition or in a dangerous stage to become eligible for demolition and reconstruction. The condition of the building is only a factor to be taken into consideration when it comes to decide about bonafides of the requirement. It is also now settled law that motive for demolition and reconstruction is irrelevant. It is always open to the landlady to demolish an admittedly old building and put up new construction with a view to augment her income."

21. Mr. Asif Ali while advancing his arguments has also made reference to the provisions of Section 85 of The Wakf Act, 1995 wherein it is envisaged that no suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

22. He has also placed reliance upon the decision of this court in N.A.S. Ansari vs. M. Sarangan 1996 2 L.W. 315 wherein it is held that 'so far as this case is concerned, the revision petitioner has come to the court on the allegation that the respondent herein is a tenant. The only question that has to be considered is what is the relationship between the

parties. The question of title deeds completely alien to this proceedings, especially, when it is a summary proceedings under the Rent Control Act. For deciding the question whether there is landlord and tenant relationship under the Act between the parties, title need not be considered.

23. It is also observed that once it is held that landlord tenant relationship is created under Ex.A7, the principle of estoppel under section 116 of the Evidence Act applies, and consequently, the respondent is barred from disputing the title of the revision petitioner.

24. On coming to present case on hand, the denial of title by the respondents is not bonafide. The reason why is, that once the respondents have admitted the title of the landlord before the Learned Rent Controller, they are estopped from repudiating it at the subsequent stage.

25. Having regard to the relevant facts and circumstances and on considering the submissions made on behalf of both sides, this court is of considered view that the revision petitions viz. CRP 125 of 2012 & 126 of 2012 are deserved to be allowed and the impugned judgment and decree of the Learned Rent Control Appellate Authority and made in RCA 335/2007 and the fair and decreetal order and made in M.P. No.513/2011 in R.C.A. 335/2007 are liable to be set aside.

In the result

C.R.P. No. 125/2015:-

The Revision Petition is allowed and the Judgement and Decree dated 23.8.2011 and made in R.C.A. 335/2007 on the file of Learned Rent Control Appellate Authority (VIII court of Small causes) are set aside and the order of eviction dated 27.3.20047 and made in RCOP No. 1066/2006 on the file of Learned Rent Controller (X Court of Small Causes) are confirmed. Time for vacating and surrendering the vacant possession of the tenanted premises to the petitioner / landlords: 2 months.

C.R.P. No. 126/2015:-

The fair and decreetal order dt. 23.8.2011 and made in M.P. No. 513/2011 in R.C. A. No. 335/2007 on the file of Learned Rent Control Appellate Authority (VIII Court of Small Causes) are set aside and the petition in M.P. No. 513 of 2011 is dismissed.

There shall be no order as to costs.

16.12.2016

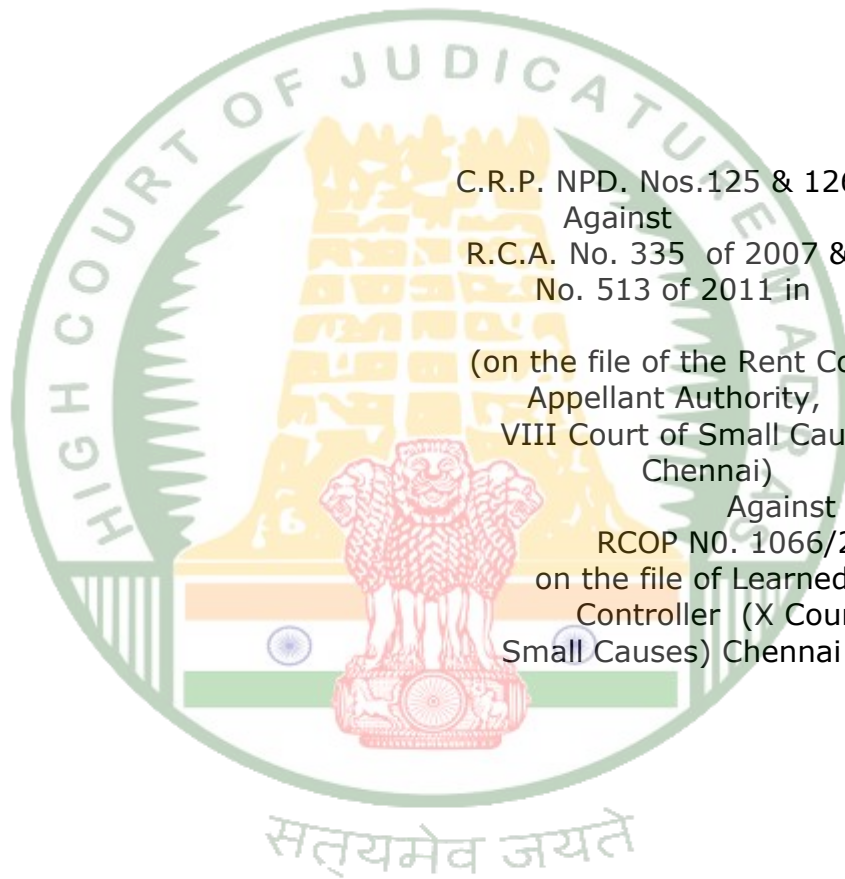
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T. MATHIVANAN, J



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