

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:**08.08.2016**

Coram:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2345 of 2016
and
C.M.P.No.12077 of 2016

Mahadeva Mudaliar

... Petitioner

vs.

Bavacharya Satriya Seva Samajam
Tirupattur rep.by its Secretary
No.2, Jinnah Road
Tirupattur.

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as against the judgment and decree dated 09.02.2016 passed by the learned Subordinate Judge, (Rent Control Appellate Authority), Tirupattur in R.C.A.No.1 of 2013 confirming the order and decree dated 03.08.2013 passed by the learned Principal District Munsif (Rent Controller), Tirupattur in RCOP No.13 of 2011.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondent : Mr.M.V.Venkataseshan

ORDER

Challenging the judgment and decree dated 09.02.2016 passed in RCA No.1 of 2013 on the file of the learned Subordinate Judge (Rent Control Appellate Authority), Tirupattur, confirming the order dated 03.08.2013

passed in RCOP No.13 of 2011 on the file of the Principal District Munsif Court (Rent Controller), Tirupattur, the tenant has filed the above Civil Revision Petition.

2. The respondent/landlord filed RCOP No.13 of 2011 under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control), Act (hereinafter referred to as an "Act"). The petitioner/tenant filed his counter and contested the original petition. Since the landlord required the premises for their own use and occupation, they sought for eviction on that ground.

3. Before the Rent Controller, on the side of the landlord, PW1 was examined and two documents, Exs.P1 and P2 were marked. On the side of the tenant, two witnesses were examined and 92 documents, Exs.R1 to R92 were marked.

4. The Rent Controller, while considering the case of both the parties, erroneously, ordered eviction on the ground of wilful default also, under Section 10(2)(i) of the Act, when the landlord has not sought for eviction on the ground of wilful default, by going beyond the scope of the original petition.

5. On a perusal of the original petition, it could be seen that the tenant has been paying a monthly rent of Rs.50/-. The Rent Controller

should have considered the case of the parties only based on the pleadings available before the Court and cannot go beyond the same and decide the case on a different ground. The findings of the Rent Controller in para No.11 of the order, cannot be appreciated. The findings with regard to wilful default given by the Rent Controller are liable to be set aside.

6. The Rent Control Appellate Authority, without applying its mind, simply confirmed the order of eviction passed by the Rent Controller under Section 10(3)(a)(iii) and Section 10(2)(i) of the Act. The Rent Controller, while giving a finding with regard to wilful default, observed that quoting of wrong provision would not affect the petitioner's case and that no prejudice would be caused to the tenant. Though the original petition was filed under Section 10(3)(a)(i) of the Act, when the landlord should have filed the petition only under Section 10(3)(a)(iii) of the Act, this must be stated as quoting of wrong provision and deciding the matter, which was not pleaded in the original petition, that is ordering eviction on the ground of wilful default under Section 10(2)(i) of the Act, cannot be termed as quoting of wrong provision. The Courts below should have considered and decided the case only under Section 10(3)(a)(iii) of the Act and not under Section 10(2)(i) of the Act. Ordering eviction under Section 10(2)(i) of the Act by the Courts below is erroneous and are liable to be set aside.

7. Accordingly, the orders passed by the Courts below are liable to be set aside and the matter is remitted back to the Rent Control Appellate Authority, viz., the Subordinate Judge, Tirupattur, Vellore District for fresh consideration. The Appellate Authority is directed to consider the case of both the parties and decide the same on merits and in accordance with law only under Section 10(3)(a)(iii) of the Act, within a period of three months from the date of receipt of a copy of this order.

8. With this observation, the Civil Revision Petition is allowed. No costs. Consequently, the connected C.M.P.No.12077 of 2016 is closed.

08.08.2016

vj2

Index : No
Internet: Yes

To

1. The Subordinate Judge
(Rent Control Appellate Authority)
Tirupattur, Vellore District.
2. The Principal District Munsif
(Rent Controller)
Tirupattur.

M.DURAISWAMY,J.,
vj2

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