

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM:

THE HON 'BLE **Dr. JUSTICE. S.VIMALA**

Civil Revision Petition (NPD) No.4253 of 2013
and M.P.No.1 of 2013

1. Karuppaiah
2. Suresh

... Petitioners / Tenants

Vs.

R.Palanivel

... Respondent / Landlord

Prayer :- Civil Revision Petition (NPD) filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set-aside the fair and decreetal order, dated 27.02.2013 in RCA No.1 of 2007 on the file of the learned Rent Control Appellate Authority (Subordinate Judge), Namakkal, confirming the order, dated 20.04.2007, in HRCOP No.9 of 2005 on the file of the Rent Controller (Principal District Munsif), Namakkal.

For Petitioners : Mr. S.Kalyanaraman

For Respondent : Mr. C.Jagadish

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ORDER

The tenants are the Revision Petitioners.

1.1. The landlord / respondent herein filed petition for eviction under Section 10 (3) (C) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"), i.e., for additional

accommodation, in H.R.C.O.P.No.9 of 2005 against the tenants / Revision Petitioners herein.

2. The said petition was allowed, directing the tenants to vacate the premises and to handover possession within one month. Challenging the same, the tenants filed R.C.A.No.1 of 2007 and the said R.C.A was dismissed, granting two months time for the tenants to vacate and handover the possession. As against which, the present Civil Revision Petition has been filed by the tenants.

3. The brief facts, leading to the filing of the petition, are as follows:-

The respondent became the owner of the property, by virtue of the sale deed, dated 11.02.2002. The building constructed by him consists of two floors, apart from the basement. The Revision Petitioners (both of whom are related to each other as son and father) became tenants of the property to an extent of 850 sq.ft., in the first floor on and from 15.12.2002. The tenants are running a business in the name of M/s. Balaji Colour Labs and they are doing photo processing and developing.

3.1. The tenancy between the parties is oral. To the north of the petition-mentioned property, the landlord is running a business in

the name of M/s.Velavan Traders and they are doing printing and sale of marriage invitations. The basement is used for the purpose of storing materials relating to the business. Because of the development in the trade, the landlord was in need of extra space for expanding his business. Therefore, the landlord wanted the premises of the tenants for additional accommodation. Since the tenants refused, the landlord filed the petition for eviction.

3.2. It is not in dispute that the tenants and the landlord are in occupation of adjacent shops, the tenants are occupying the southern side shop and the landlord is occupying the northern side shop. It is also not in dispute that, there is only a wall lying in-between, which if removed, will give more space for the landlord towards expanding his business. It is also not in dispute that: (a) the landlord is in the control and possession of various shops in the two floors; (b) after the filing of this petition in the year 2005, some of the shops were let out to the tenants in the upper floor and (c) some of the portion in ground floor were let out to one Sanjeevi for running the photo lamination and yet another shop for Tata Indicom Company.

3.3. The tenants are running a studio in the name of M/s.Saravana Studio, which is 100 feet away from the petition-mentioned property.

3.4. It is pertinent to note that the Commissioner's report-Ex.X-

2 indicates that it is not safe for the landlord to keep the stationery items in the basement, as there had been seepage of water.

4. Under (the above) such circumstances, the following questions emerge for consideration in this matter:-

(i) Whether the requirements of the landlord can be said to be bona fide?

(ii) What is the relative hardship of the landlord and the tenants or whether the hardship to the tenants would outweigh the advantages of the landlord?

5. The Courts below have considered the disadvantages of using the basement as a godown and the disadvantages of landlord having the shop in the upper floor and also have considered the advantage of having the extension of the existing shop and thus, have ordered the tenants to vacate the premises.

5.1. The justifiability of these findings are under challenge in this Revision Petition.

6. The main contention of the learned counsel for the tenants / Revision Petitioners is that the claim of the respondent / landlord for additional accommodation is not bonafide and that the conduct of the

landlord, seeking eviction would indicate that there is no bonafide. The learned counsel would point out that the tenants were compelled to file a suit, seeking the relief of injunction restraining the landlord from evicting them, except following the due process of law. It is contended that the landlord refused to receive the rent with an intention to vacate the tenants from the premises.

7. Whether the act complained of, would amount to malafide on the part of the landlord is the issue to be considered.

8. The fact remains that after the filing of the suit the landlord has chosen to file the petition for eviction. Therefore, the contention that the landlord wanted to vacate the tenants by using force and that it compelled the tenants to file the suit for injunction, cannot be appreciated.

8.1. Once the landlord has chosen to claim back the shop for additional accommodation, the landlord would not have been inclined to receive the rent, as he did not want the tenants to be in occupation of the premises. When there could be dual reasons for the landlord to have refused the rent, the contention that refusal to receive the rent was mala fide cannot be accepted, especially when the landlord did not seek eviction on the ground of delay / non-payment of rent.

9. The learned counsel for the respondent / landlord would submit that as against the concurrent finding of fact, which is not perverse, no Revision will lie and that even assuming that the Revision Petition is maintainable, the claim for additional accommodation, having been proved to be bona fide, the tenants have no case to contest. In support of the contention, the following decisions are relied upon by the learned counsel for the landlord / respondent:-

(i) 1998 (III) CTC 679 (Sarla Ahuja v. United India Insurance Company Limited):-

"7. Although, the work "revision" is not employed in the proviso to [Section 25B\(8\)](#) of the Act it is evident from the language used therein that the power conferred is revisional power. In legal parlance distinction between appellate and revisional jurisdiction is well understood. Ordinarily, appellate jurisdiction is wide enough to afford a re-hearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammelled by the conclusions reached in the order challenged before it. Of course, the statute which provides appeal provision can circumscribe or limit the width of such appellate powers. Revisional power on the contrary, is ordinarily a power of supervision keeping subordinate tribunals within the bounds of law. Expansion or constriction of such revisional

power would depend upon how the statute has couched such power therein. In some legislations revisional jurisdiction is meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate court. [In Sri Raj Lakshmi Dyeing Works vs. Rangaswamy](#) [1980 4 SCC 259] this Court considered the scope of the words ("the High Court may call for and examine the records to satisfy itself as to the regularity of such proceedings or the correctness, illegality or propriety of any decision or order...") by which power of revision has been conferred by a particular statute. Dealing with the contention that the above words indicated conferment of a very wide power on the revisional authority, this Court has observed thus in the said decision:

"The dominant idea conveyed by the incorporation of the words to satisfy 'itself' under the Section appears to be that the power conferred on the High Court under the Section is essentially a power of superintendence. Therefore, despite the wide language employed in the Section the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority."

In the very same decision, it has been pointed out that, it is unnecessary to make an endeavour to find out, how else the landlord could have adjusted himself and the observation reads as under:-

"14.When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

(ii) The principles to be followed in case of landlord, claiming additional accommodation have been highlighted, which once-again is based upon the principles laid down in the decisions of various Courts reported in **2006-3-L.W. 892 (H.Vasanthakumar v. S.Subash)** runs as under:-

".... (1) The proviso which finds place under clause (e) of Sec.10 (3) of the Act is mandatory;

(2) In a case of additional accommodation, there must be a finding as to whether the hardship of the tenant will outweigh the advantage of the landlord;

(3) Even though the courts below may not have

specifically referred to the point of relative hardship, if they had in their mind and satisfied that the hardship is in favour of the landlord, the High Court will not interfere in the revision petition;

(4) Inconvenience of a tenant will not deprive the landlord of his bona fide right to acquire additional accommodation under Sec.10(3)(c) of the Act;

(5) If the concurrent findings are based on evidence that the landlord requirement of additional accommodation was a bona fide one, the same could need not be interfered with by the High Court under Sec.25 of the Act;

(6) The pleadings in Rent Control proceedings need not be construed with strictness with which pleadings in civil suits are construed;

(7) Insistence of bills and vouchers in small business carried on by the landlord is not justified;

(8) It is not the object of the provisions of Sec.10(3)(c) of the Act to weigh the hardship of the tenant as against the advantage of the landlord on delicate scales, giving the benefit of slight tilt in favour of the tenant;

(9) when the tenant carries on business in three other places, if order of eviction is passed under Sec.10(3)(c) of the Act, it is not as though the life of the tenant would come to a grinding halt;

(10) when the Rent Controller has gone into the question of relative hardship under Sec.10(3)(c) of the Act and rendered a finding to that effect and when the same

is confirmed by the Appellate Authority without giving any specific finding with the regard to the comparative hardship, it does not mean that the judgment of the Appellate Authority is vitiated and bad;

(11) Though there is no pleading on the relative hardship, arising on the requirement of additional accommodation, the court can apply its mind to that effect when there is some evidence on that aspect;

(12) specific pleadings regarding comparative hardship are not mandatory requirement and

(13) the emphasis under Sec.10(3)(c) of the Act is more on the duty of the authorities to record the findings with regard to relative hardship than on the pleadings.”

8.2. In the decision, i.e., **H.Vasanthakumar's case**, it has been held that when both the authorities have rendered concurrent findings based on the evidence on record, this Court cannot interfere with the same.

8.3. It is pertinent to note that the facts of the reported case and the facts of the present case are similar / identical.

(iii) The extent of proof required on the side of the landlord on the aspect of bonafides have been highlighted in the decision reported in **2009 (5) CTC 607 (J.Josephine Christobell v. P.Subramanian)** and the relevant observation reads as under:-

".... It is the same view of the Honourable Supreme Court in the case of **Sarla Ahuja Vs. United India Insurance Company Ltd. [1998-III-CTC-679]**, wherein the Honourable Supreme Court has dealt with the bona fide requirement of the landlord in paragraph 14 of the judgement and has held thus:-

"14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, The Rent Controller shall not proceed on the presumption that the requirement is not bona fide. ***When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide.*** It is often said by courts that it is not for the tenant to dictate terms to the landlord as to who else he can adjust himself without getting possession of the tenants premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to who else the landlord could have adjusted himself."

(iv) Pointing out that it is not for the Court to exercise the discretion to the extent of saying that the landlord should shift his business to any other floor and that it is for the landlord himself to decide which place he wants to occupy, the decision reported in **2009 (5) CTC 782 (Uday Shankar Upadhyay and Others v. Naveen Maheshwari)** is relied upon and the relevant observation reads as under :-

“11. 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.”

8.4. From the dictum laid down in the above decisions, it is evident that the landlord, having proved his bona fide requirement, is entitled to have the tenants vacated. Rightly, the learned Rent Controller has considered the aspect of bonafide requirement, which

the appellate court failed to indicate separately. By confirming the order of the Rent Controller, the Appellate Authority has impliedly approved the finding on the bonafide requirement. However, this Court has considered the aspect of bonafide requirement and it is found as a matter of record that there is an overwhelming evidence to show that the requirement is bonafide. The order by the appellate authority does not suffer from any illegality / material irregularity or impropriety. Hence, the Revision Petition, challenging the order of the appellate authority, has to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. The orders of eviction passed by the Courts below are confirmed. Time for vacating the premises is two months from the date of receipt of a copy of this order. No costs. Consequently, the connected CMP is closed.

15.03.2016

Index : Yes / No
Web : Yes / No
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S.VIMALA, J.,

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To

1. The Subordinate Judge, Namakkal
2. The Principal District Munsif, Namakkal
3. The Section Officer, V.R.Section, Madras High Court,
Chennai – 104

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& M.P.No.1 of 2013

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