

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.1790 of 2017 and  
CMP.No.8393 of 2017

T.R.Anwar

..Petitioner

Vs.

N. Kamalanathan

..Respondent

**PRAYER:**

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the Order and Decreetal Order made in R.C.A.No.2 of 2014 on the file of the Rent Control Appellate Tribunal(Sub Court), Gudiyattam, Vellore District, dated 09.02.2017 confirming the Order of Eviction made in R.C.O.P.No.6 of 2012 on the file of the Rent Controller(District Munsif), Gudiyattam, Vellore District, dated 11.10.2013.

For petitioner :Mr.K.A.Ravindran

For Respondent :Mr.T.DhanyaKumar

**ORDER:**

The petitioner / tenant had filed a petition in H.R.C.O.P.No.6 of 2012 before the Rent Controller(District Munsif Court), Gudiyattam under

Section 8 (5) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 praying to permit him to deposit the monthly rent of Rs.2,750/- for the schedule mentioned property in court deposit. The Rent Controller did not accept the respondent's / landlord's contention that there is wilful default on the part of the petitioner. However, in the light of the order of eviction passed in RCOP No.3 of 2012 filed by the respondent / landlord, the petition filed by the tenant in HRCOP No.6 of 2012 seeking permission to deposit the rent was dismissed.

2. Aggrieved by the said order of dismissal of HRCOP.No.6 of 2012, the petitioner / tenant preferred an appeal in RCA No.2 of 2014 before the Rent Control Appellate Authority (Sub Court), Gudiyattam. The said appeal was dismissed by the Appellate Authority and thereby, the order passed by the Rent Controller (District Munsif), Gudiyattam in HRCOP No.6 of 2012 has been confirmed. Against the dismissal order passed in RCA, the petitioner / tenant has filed the Civil Revision Petition before this Court, on the ground that the schedule mentioned property is not required by the respondent for his personal use, and the daughter in law of the respondent cannot be considered as a family member of the respondent and also there is no wilful default in payment of rent by the petitioner.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The Trial Court upon hearing the arguments advanced by both sides, and on considering the oral and documentary evidence and relied upon the judgments of the Hon'ble Supreme Court and came to the conclusion that there is no wilful default on the part of the petitioner. However, the other ground raised by the landlord is that the premises occupied by the petitioner / tenant is required for landlord for demolition, reconstruction and for personal occupation. The Appellate Authority also confirmed the dismissal order passed by the Rent Controller / District Munsif, Gudiyattam, Vellore District in HRCOP No.6 of 2012 filed by the tenant, seeking to deposit rent in Court. As the Appellate authority considered the contentions raised on either side, and the ground raised by the revision petitioner herein, dismissed the appeal and confirmed the order of eviction passed by the Rent Controller and granted time to the petitioner / tenant to vacate the premises.

5. The learned counsel for the revision petitioner / tenant relied upon the judgment reported in **1996 (1) L.W.Page.No.228** in the case of **Dwarkaprasad Vs.Narinjan**, wherein it has been held by the

Hon'ble Supreme Court that eviction on the ground of owner's occupation, the application filed by the respondent / landlord under S.10(3) (a) (I) of the Act for his own occupation and for the occupation of one of the members of the family, viz. daughter-in-law. In the definition of 'member of the family' there is no mention about the sister, and that S.2 (6-A) of the Act defines that the member of the family in relation to a landlord means his spouse, son, daughter, grand-child or dependant parent and therefore, there is error in the impugned order of eviction passed by the lower court under S.10 (3) (2) (i) of the Act.

6. It is clear that the definition of the term, 'landlord' given under S.2(6) of the Act includes a person who is receiving or is entitled to receive the rent of a building. Whether on his own account or on behalf of himself and others or as an agent trustee, executor, administrator, receiver, guardian, etc. In this case, the petitioner has filed the application with regard to pauper representing the Hindu Joint Family and in the context of the case, 'daughter' is also members of the Hindu Joint Family. After the enactments of Hindu Succession Act, 1956, a daughter has share in the coparcenary property of her father after his death under Proviso and Explanation to S.6 of the Hindu Succession Act, 1956. The definition of the term, 'daughter's S.2 (6-A) of the Act has to be construed

with to include a female member of a Hindu joint family who in relation to the petitioner is sister and as such in the context of a Hindu joint family, the sister of the petitioner squarely comes under the wider definition of 'member of his family' in relation to a landlord.

7. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself / herself, but for other dependent family members. The Hon'ble Supreme Court in the case of **Joginder Pal v. Naval Kishore Behal** reported in (2002) 5 SCC 397, where the Supreme Court held that:

*"The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be requirement of the landlord for his own use .... Keeping in view the social or socio-religious milieu and practices prevalent in a particular*

*section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and / or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord."*

8. The Apex Court in the case of ***Sarla Ahuja Vs. United India Insurance Company Ltd.***, reported in ***AIR (1999) SC 100*** held as under:-

*"6. ....The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passed the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law". In other words, the High Court shall scrutinise the records to ascertain*

*whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available."*

9. It is also noteworthy that though the landlord is having four other shops, the right of the landlord to select any one of his own property for his personal use cannot be curtailed by way of making the representation that the landlord is owning some other property. It is also well settled that the landlord does have every right to chose which of the portion or shop is suitable for own use. Further the learned counsel for the respondent / landlord also relied the judgment reported in **2002-2-L.W. Page.No.611** in the case of **S.V.Janardanam and another Vs.V.Kivraj Sowkar**, wherein this Court held that when the landlord who owns the property filed an application under S.10(3)(a)(i) and (iii) of the Act, the authorities under the Act have to draw a presumption in favour of the bona fide requirement of the landlord. It is now well settled that when

an application is filed under Section 10(3)(a)(i) and 10(3)(a)(iii) of the Act and the requirements of the provision are satisfied, it is not for the tenant to say that the property is suitable or not suitable to the petitioners requirement. Further when the landlord who owns the property filed an application under Section 10(3)(a)(i) and 10(3)(a)(iii) of the said Act, the authorities under the Rent Control Act have to draw a presumption in favour of the bona fide requirement of the landlord.

10. It is also useful to extract the decision of the Hon'ble Supreme Court in the case of **Bhupinder Singh Bawa Vs. Asha Devi** reported in **(2016) 10 SCC 209**, wherein it is held as follows:

*"4. On a proper appreciation of the facts and evidence available on record, the Additional Rent Controller vide order dated 26.02.2014 in E.No.249/2011, passed an eviction order in favour of the respondent and directed the appellant to vacate the suit scheduled premises in accordance with law. The Additional Rent Controller held that the respondent has established that the tenanted premises are required for her dependant son and that there is*

*no alternative vacant accommodation suitably available for her son for his business. Aggrieved thereof, the appellant filed revision petition before the High Court challenging the order of eviction passed by the Additional Rent Controller. The High Court vide the impugned order dismissed the revision petition holding that no case is made out to interfere with the detailed order passed by the Additional Rent Controller decreeing the eviction petition of bona fide necessity. It was held that the respondent landlady and her son are at liberty to decide which premises are more suitable for running business of sanitary and hardware.*

*12. In light of the above, the Additional Rent Controller and the High Court rightly concluded that no alternative premises were lying vacant for running business of the respondent's son. The High Court rightly relied on the ratio of Anil Bajaj Vs. Vinod Ahuja to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the*

*business by her son and that the respondent cannot be dictated by the appellant as to which shop her son should start the business from."*

11. Hence, looking at any angle the presumption relating to own use and personal occupation is absolutely considered in favour of the petitioner / landlord. Therefore, the concurrent orders passed by the courts below, does not warrants any interference by this Court.

12. Accordingly, the Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

**07.06.2017**

Speaking/Non-speaking order  
Index : Yes/No  
Internet : Yes/No  
lok

सत्यमेव जयते  
WEB COPY

To

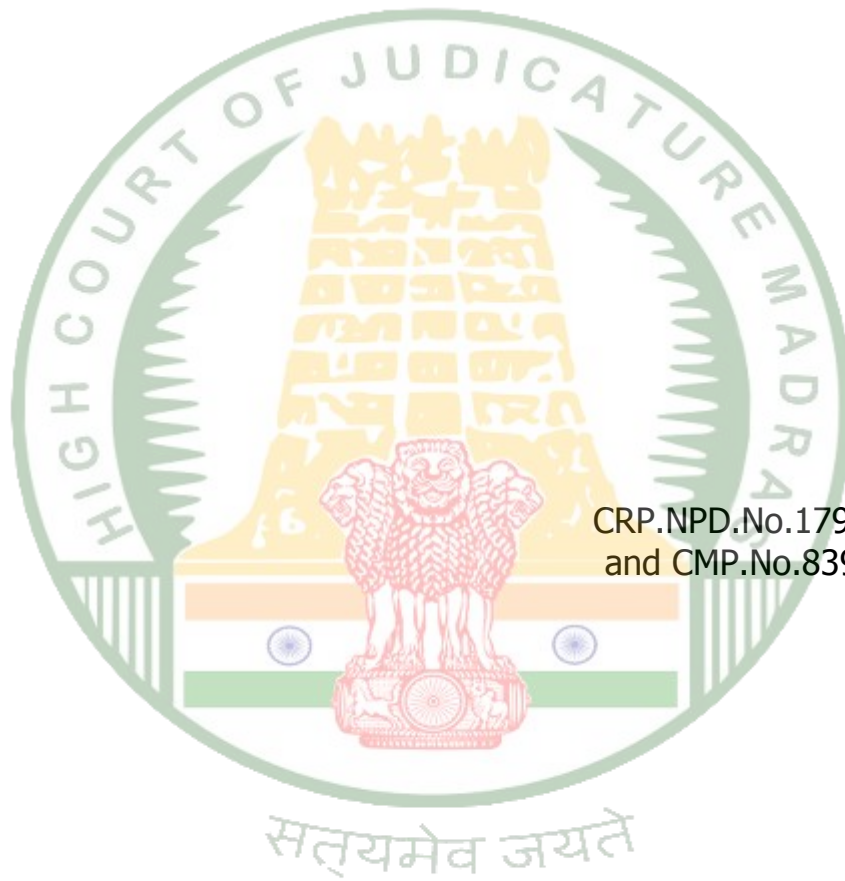
1. The Rent Control Appellate Authority  
(Sub Judge), Gudiyattam,  
Vellore District.
2. The Rent Controller (District Munsif,  
Gudiyattam,  
Vellore District



WEB COPY

**D. KRISHNAKUMAR.J**

lok



CRP.NPD.No.1790 of 2017  
and CMP.No.8393 of 2017

WEB COPY

07.06.2017