

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.3567 OF 2014
AND MP NO.1 OF 2014

N.Khareem

... Petitioner

Vs.

Muthaiah Chettiyar

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order dated 30.07.2012 made in R.C.O.P.No.18/2011 on the file of the Principal District Munsif cum Rent Controller, Poonamallee, as confirmed by the judgment and decree dated 01.07.2014 made in R.C.A.No.41 of 2012 on the file of Sub Court / Rent Control Appellate Authority, Poonamallee.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondent : Mr.S.Rajesh

ORDER

This Civil Revision Petition is filed against the concurrent findings of the Rent Controller as well as the Rent Control Appellate Authority.

2. The petitioner is the tenant. The respondent has filed an eviction petition on the grounds of willful default and demolition and reconstruction, under Sections 10(2)(i) and 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Rent Controller has dismissed the petition on the grounds of willful default and ordered eviction on the grounds of demolition and reconstruction. The Rent Control Appellate Authority has confirmed the findings of the Rent Controller.

3. The learned counsel for the petitioner would submit that in a petition filed under Section 14 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for demolition and reconstruction, the landlord should prove his *bonafide* and financial competency.

4. Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, reads as under:

"14. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sections 12 and 13, I repairs or for for on an application mad³ by a landlord, the Controller shall, if he is satisfied -

(a) that the building is bonafide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated ; or

(b) that the building is bonafide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished,

pass an order directing the tenant to deliver possession of the building to the landlord before a specified date. "

5. The learned counsel for the petitioner has taken this Court elaborately to the evidence adduced by the respondent/landlord, wherein he has deposed before the Court that he had only Rs.25,000/- in his bank account and the only source of income was the rent derived from the building owned by him to the tune of Rs.25,000/- per month. It is admitted by the landlord that he is running his family only with the income of Rs.25,000/- derived from the rent and has no other source of income. Therefore, it is contended that the landlord has no financial means to demolish and reconstruct the building. Moreover, the landlord has come out with contradictory statements. He would take his claim on the requirement of the building for renovation and for demolition and reconstruction. The stand taken by the landlord is contradictory and therefore, it is not *bonafide*. The landlord owns more than seven buildings. When the other buildings were not sought for demolition and reconstruction, he has selectively chosen the petitioner's shop for demolition, which is not *bonafide* and the claim of the respondent/landlord shall not be entertained. The other point contended by the learned counsel for the petitioner is that any person, who is

claiming the requirement of the building for demolition and reconstruction, shall have to prove that he has made preliminary arrangements for the same.

6. In the instant case, the respondent / landlord has not even obtained permission for demolition as well as the approved plan. It is clearly proved by the evidence of the respondent/landlord that he was a PWD Contractor under the Government and therefore, he is very much aware of all the procedures. Hence, his statement that he has not obtained any such permission from the concerned authorities would go to show that the real intention of the landlord is to vacate the tenant and not for demolition and reconstruction. If it is *bonafide*, he should have come out with the specific details as to the budget, sources of money to construct the building, exact estimate to secure loan, and other requirements. In the absence of any of this, the landlord cannot be said to have proved the *bonafide* requirements. Therefore, the findings of the Rent Controller as well as the Rent Control Appellate Authority sought to be set aside.

7. The learned counsel for the petitioner would rely on a judgment of this Court in **R.SRINIVASAN VS. V.THANGARAJU [1999 (1) LW 398]** wherein it is held that if the landlord gives evidence that he intended to borrow money, should come out with the facts as to what is the cost of the estimated project; what is the fund available in his hand and to what extent the landlord is going to borrow. In the absence of any material to prove the same, the requirement for demolition and reconstruction is not made out.

8. The learned counsel for the petitioner would further contended that even assuming that the landlord could borrow money from the financial institutions, he has drastically failed to prove that as to how the money can be repaid. Therefore, absolutely there is no *bonafide* in the claim of the landlord and the petition and the petition filed for eviction should be dismissed.

9. Per contra, learned counsel appearing for the respondent / landlord would take this Court through the deposition of the landlord,

wherein the respondent has deposed that he owns an extent of 1 ½ acres of land in Singarayapuram village. He has clearly deposed during cross examination that he would sell the land and construct the building. This part of the evidence was not discredited. Further, it was shown that the landlord owns a row of shops on the southern side of the petition premises and it is admitted by the tenant that the building is in damaged condition and he is paying lesser rent when compared to the others in the same area. There is no averments with regard to the financial status of the landlord and has stated that he is only a tenant and therefore, he was not aware of the financial status of the landlord. It was also admitted that the petition premises is low lying. Therefore, it is the contention of the respondent / landlord that it is clearly proved that the building is in dilapidated condition and there is no contra evidence with regard to the financial status of the respondent/landlord. On the other hand, it has been clearly proved by the landlord that he has enough financial sources to demolish and reconstruct the petition premises. It is also clearly admitted by the tenant that the landlord has renovated other seven shops. The deposition that it was renovated from the advance amount received from the tenants and there is possibility of demolishing and reconstructing

the petition premises also in the same way. Therefore, he would contend that the tenant himself has admitted the financial status of the landlord and therefore, the contention made by the petitioner is not sustainable.

10. In support of his contention, the learned counsel for the respondent would rely on a judgment of this Court in ***S.KATTAPPAN AND ANOTHER VS. CIVIL ADVOCATES CLERKS ASSOCIATION REP. BY ITS PRESIDENT, DINDIGUL [1997 (2) CTC 41]*** wherein this Court has held that when the area is developing, naturally, the Court has to consider the surrounding places where the building is situated. The primary importance that was given to physical condition of the building has now been watered down to a certain extent in the decision of the Supreme Court. The Court must have due regard to the importance of the locality in which the building is situated, the developing nature of the locality and also the development of the area where the particular building itself is situated. With respect to the means of the landlord, it is observed that the landlord is not expected to produce the entire money before the Court to show their means. Will the landlord be in a position to complete the proposed construction is the only question that has to be considered. In the instant

case, it is well proved that the building is in a dilapidated condition and the means is proved by the evidence of the landlord that he owns lands measuring an extent of 1 ½ acres, in Singarayapuram village, which is not controverted.

11. The learned counsel for the respondent would further rely on a judgment of this Court in **HABIBULLAH VS. MOHAMED SULTAN [2004 (2) CTC 270]** wherein this Court has held that Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, does not say that the landlord should possess sufficient means or should have made preparation for the proposed construction, such as getting approval, depositing the amount in a Bank or something like that. The Section contemplates that the building is *bonafide* required by the landlord. Only to test the *bonafide*, we have to see the basis, on which ground, the eviction is sought for, in order to satisfy that the requirement is a *bonafide* and the satisfaction must be subjective satisfaction and not to doubt about the *bonafides* of the landlord.

12. The learned counsel for the respondent would also rely on

a judgment of this Court in **SRIDHARAN VS. S.NATARAJAN AND 2 OTHERS** [2007 (3) CTC 45] wherein in a similar situation, this Court has accepted the deposition of the landlord that he would mobilize money by selling the lands and jewels and it is sufficient to hold that the landlord has means to put up construction. The landlord need not produce currencies before this Court to prove his means. Since the property is in prime locality, which is developing, the landlord could very well mobilize funds either from Banks or financial institutions. Therefore, it was held that eviction need not be denied on the grounds that the landlord has not produced the approved plan. The *bonafide* can be proved by evidence.

13. From the perusal of the pleadings, evidence, judgments and after hearing the arguments of both sides, it could be seen that the premises is in a dilapidated condition and it is well proved by the landlord that the demised premises is in old and dilapidated condition. Further, it is admitted by the tenant that the property is situated in Poonamallee High Road and in a very important and developing location. It is also clearly proved by the landlord that he has already renovated the other shops and let them for rent to other parties. The evidence in so far as the

financial means is proved by the deposition of the landlord that he owns 1½ acres of land in Singarayapuram village goes unassailable. From the judgments of this Court as well as the Hon'ble Supreme Court, the *bonafide* requirement of the landlord has to be seen from the totality of the circumstances. It is not necessary that the building should be old and the preparation for demolition and reconstruction by getting license for demolition as well as the sanctioned plan for building only prove the *bonafide*. On the other hand, sometimes, the plans gets lapsed due to the intervening litigation like the present one. It is well settled by this Court as well as the Hon'ble Supreme Court that the statute does not say that these are matters to be proved by the landlord. In the instant case, it is proved that the building is in a bad condition and it is lying 1 ½ feet lower than the road and hence, requires demolition and reconstruction.

14. In view of the statement made by the respondent / landlord that demolition and reconstruction will give him good income in the developing area and the same is also well proved by the statement of the tenant himself that he is paying a very lesser rent when compared to his neighbours, this Court finds that the respondent / landlord has proved

his *bonafide* as well as the means for demolition and reconstruction of the building. The concurrent findings of the Courts below are based on sound reasons and does not require any interference.

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

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Index : Yes/No

Internet : Yes/No

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To

1.The Principal District Munsif
cum Rent Controller
Poonamallee.

2.The Sub Court /
Rent Control Appellate Authority
Poonamallee.

M.GOVINDARAJ, J.

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