

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.376 of 2011
and
M.P.No.1 of 2011

Nagalakshmi

.. Petitioner

vs

Savithri

.. Respondent

Revision filed under Article 227 of Constitution of India against the decree and judgment dated 21.10.2010 in R.C.A.No.3 of 2010 on the file of the Rent Control Appellate Authority, Nagapattinam, confirming the fair and decreetal order dated 23.12.2009 in RCOP.No.7 of 2009 on the file of the Rent Controller Court, Nagapattinam.

For Petitioner : Mr.K.Selvaraj

For Respondent : M/s.R.T.Shyamala

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ORDER

This Civil Revision Petition is directed against the judgment and decree dated 21.10.2010 in R.C.A.No.3 of 2010 on the file of the Rent Control Appellate Authority (Sub-Court), Nagapattinam, confirming the order dated 23.12.2009 passed by the Rent Controller (District Munsif), Nagapattinam in R.C.O.P.No.7 of 2009. Revision petitioner is the tenant and the respondent is the landlord.

2. Brief facts are that the demised premises bearing Door No.38/47 is situated at Sattaiappar East Street, Nagapattinam. The petitioner-tenant took lease of the third portion of residential building in the said demised premises for a monthly rent of Rs.630/- and the petitioner-tenant was also given right to enjoy the usufructs from the coconut trees in the backyard, for which the petitioner-tenant agreed to pay monthly sum of Rs.130/- to the respondent-landlord and the petitioner-tenant executed a lease deed in favour of the respondent-landlord for a period of 11 months. Since the petitioner-tenant failed to pay the rent properly, the respondent-landlord issued notice on 7.1.2014, for which the petitioner-tenant issued reply through her

Advocate.

3. The case of the respondent-landlord is that the demised premises is a very old and it requires demolition and reconstruction, for which the respondent-landlord has also obtained building permission from the Nagapattinam Municipality. The respondent-landlord has also sufficient means to construct a new building. The respondent-landlord undertakes to demolish and construct new building within three months from the date on which the petitioner-tenant delivers possession of the building. Therefore, the respondent-landlord has filed R.C.O.P.No.7 of 2009 praying to evict the petitioner-tenant from the demised premises on the ground of demolition and reconstruction.

4. Resisting R.C.O.P.No.7 of 2009, the petitioner-tenant has filed the counter stating that the monthly rent fixed by the petitioner-tenant is Rs.500/- towards rent for the building and Rs.130/- was fixed towards enjoyment of usufructs in the backyard of the building. The petitioner-tenant along with her family members are living in the demised premises from 1989 and she has not in arrears of rent. In the counter, it has been stated that in order to evict the petitioner-

tenant from the demised premises with a wrong motive, the respondent-landlord obtained building construction approval from the Municipality stating that the building is in a bad condition. It is further averred in the counter that the petitioner-tenant incurred Rs.10,000/- for cleaning of the septic tank in the years 1994, 1997, 2001 and 2004. Since the respondent-landlord did not come forward to repair the Bombay latrine, the petitioner-tenant has repaired the same by spending her money. Apart from the above, the petitioner-tenant has spent Rs.20,000/- towards maintenance of the demised premises and the demised premises is in good condition. In order to evict the petitioner-tenant from the house, the respondent-landlord has filed the RCOP and the same is not maintainable. Therefore, the petitioner-tenant prayed for dismissal of the RCOP.

5. Before the Rent Controller, the power agent of the respondent-landlord one Sundaravadivelu was examined as P.W.1 and Ex.P1 to P15 were marked. On the side of the petitioner-tenant, her son Renganathan was examined as R.W.1 and Ex.R1 to R3 were marked.

6. Upon considering the oral and documentary evidence

adduced by both sides, the learned Rent Controller allowed has RCOP.No.7 of 2009. Aggrieved by the same, the petitioner-tenant has filed R.C.A.No.3 of 2010. The learned Rent Control Appellate Authority, after considering the rival submissions and upon perusing the materials, dismissed the appeal in R.C.A.No.3 of 2010 confirming the order of the learned Rent Controller with a condition that the landlord should demolish the petition mentioned building within one month from the date on which the petitioner recovers possession of the building from the petitioner, failing which the tenant is entitled to seek for reoccupation of the building by invoking the provision under Section 16 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "*the said Act*"). Aggrieved by the same, the present revision has been filed by the petitioner-tenant.

7. The learned counsel for the petitioner-tenant submitted that the Courts below erred in allowing the petition filed by the respondent-landlord on the sole ground that the building has to be completely demolished and new building is to be constructed. The learned counsel would submit that the building is in good condition and it does not require any immediate demolition. In order to evict the petitioner-tenant from the demised premises, the respondent-landlord

has invoked the provisions of Section 14(1) of the Act. It is argued that the respondent-landlord has not given any undertaking to the petitioner-tenant as per the provisions of Section 14(2)(b) of the Act and that the respondent-landlord has not entered into any agreement with the petitioner-tenant to the effect that after the construction of a new building, she would hand over possession of the building to the petitioner-tenant.

8. Countering the arguments, the learned counsel for the respondent-landlord submitted that the demised premises is a very old building and it requires demolition and reconstruction, for which the respondent-landlord has also obtained approval from the Municipality. He further submits that the respondent-landlord has sufficient means to construct new building.

9. The relationship of the landlord and tenant is admitted. There is no dispute that the respondent-landlord had obtained requisite permission for demolition of the demised premises and reconstruction. In his evidence, P.W.1 has spoken about the condition of the demised premises. P.W.1 has also stated in his evidence that the landlord has means to construct a new building. In his evidence,

R.W.1 admitted that the demised premises is 40 years old building. R.W.1 further admitted in his cross-examination that nearby the demised premises, only RCC buildings are situated and the demised premises alone is the tiled old building.

10. It has been held in numerous decisions that while age and condition of the buildings are relevant factors to be taken into account, it is not possible to insist that the condition of the building must be such that there is an imminent threat to the building and the same crumbling down in the near future and only in such contingency, the landlord could resort to the process under Section 14(1)(b) of the Act. In this case, on facts, there is sufficient evidence to show that the condition of the building is not sound and is in a dilapidated condition.

11. In his chief examination, P.W.1 stated that after completion of new building, if the petitioner-tenant prefers, she can occupy the new building at the prevailing rent at that period, for which the respondent-landlord has no objection. The aforesaid evidence of P.W.1 would show that the respondent-landlord has filed the RCOP with a *bona fide* intention only.

12. To show that the respondent-landlord has financial capacity, she has filed Exs.P6 to P13 – Fixed Deposit Receipts of State Bank of India and Indian Post Office. The Courts below held that the respondent-landlord has sufficient means to put up the construction.

13. The Courts below held that the respondent-landlord has satisfied that she is having sufficient means to undertake the work of demolition and reconstruction. In consideration of the materials adduced, the Appellate Authority has rightly held that there is *bona fide* requirement.

14. When the Courts below recorded concurrent findings, the Revisional Court should not interfere unless the findings suffer from perversity or impropriety. The concurrent findings of the Courts below are in proper appreciation of evidence and materials on record. The impugned judgment does not suffer from any perversity or impropriety calling for interference.

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15. The learned Rent Control Appellate Authority confirmed the order of the learned Rent Controller with a condition that the landlord should demolish the petition mentioned building within one

month from the date on which the respondent-landlord recovers possession of the demised premises from the petitioner-tenant, failing which the petitioner-tenant is entitled to seek for reoccupation of the demised premises by invoking the provisions under Section 16 of the Act.

16. In the result, the judgment dated 21.10.2010 in R.C.A.No.3 of 2010 passed by the Rent Control Appellate Authority (Sub-Judge), Nagapattinam (*arising out of the order dated 23.12.2009 in R.C.O.P.No.7 of 2009 on the file of the Rent Controller (District Munsif), Nagapattinam*) is confirmed. However, the order of the Appellate Authority is modified to the extent that eight months time is granted to the petitioner-tenant to vacate the premises from the date of receipt of a copy of this order. The petitioner-tenant is also directed to pay the arrears of rent, if any, within a period of four weeks from the date of receipt of a copy of this order. All other directions stated in the order of the Appellate Authority remain unchanged.

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17. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, M.P.No.1 of 2011 is closed.

31.01.2017

Note: Issue order copy on 02.01.2018

vs

Index : Yes/No

Internet : Yes/No

To

1. The Rent Control Appellate Authority
(Sub-Court), Nagapattinam.
2. The Rent Controller,
(District Munsif Court), Nagapattinam.

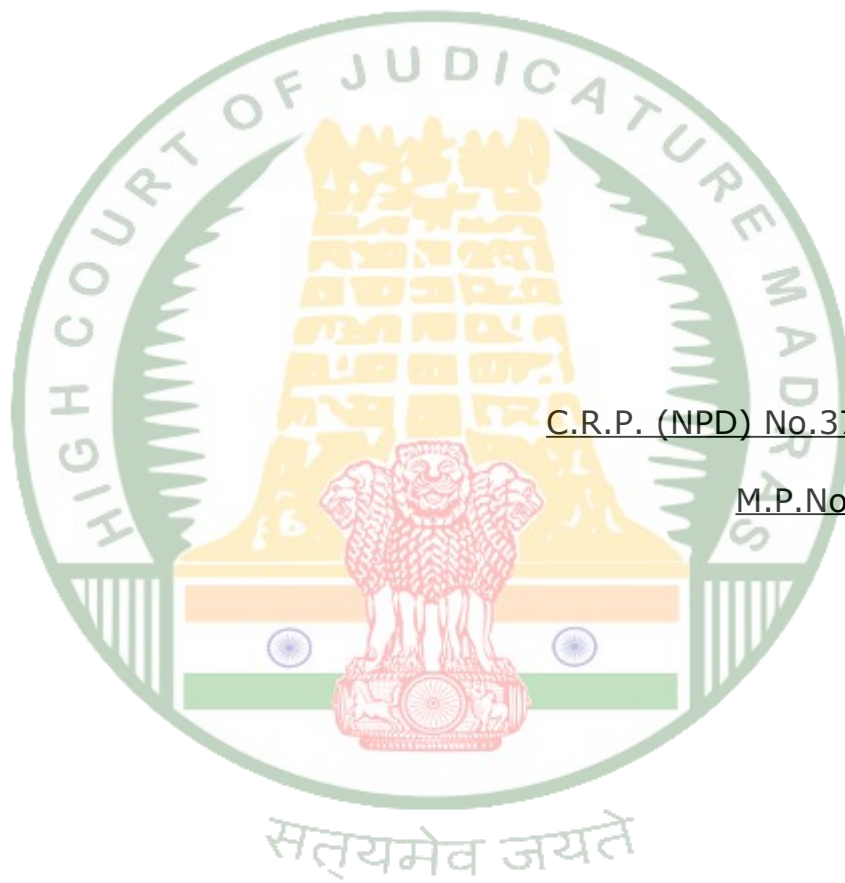
Office to note :-

Send order copy (along with records, if any)
to the trial Court, forthwith.

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M.V.MURALIDARAN, J.

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