

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(NPD).No.1103 of 2009
M.P.No.1 of 2009

1.Ettikkan (Deceased)
2.Sellammal
3.Aruna

.. Petitioners

(P2 and P3 brought as legal heirs
of the deceased sole petitioner vide
order of the Court dated 11.02.2016
made in C.M.P.No.1054 of 2016)

Vs.

1.Nallammal (Deceased)
Rep. By her Power Agent
Ramasamy
2.M.Veerappan
3.M.Arumugham

.. Respondents

(RR2 and 3 brought on record as legal
heirs of the deceased sole respondent
vide order of Court dated 03.10.2017
made in M.P.Nos.1 to 3 of 2010)

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the fair and decretal order dated 22.09.2008 made in R.C.A.No.1 of 2002 on the file of the Sub Court, Nammakkal confirming the order and decretal order dated 13.06.2002 made in R.C.O.P.No.1 of 2000 on the file of the Rent Controller, Namakkal (Principal District Munsif Court, Namakkal).

For Petitioners : T.Dhanyakumar
For R1 : Died
For R2 & R3 : Mr.S.Saravana Kumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 22.09.2008 made in R.C.A.No.1 of 2002 on the file of the Sub Court, Namakkal confirming the fair and decretal order dated 13.06.2002 made in R.C.O.P.No.1 of 2000 on the file of the Rent Controller, Namakkal (Principal District Munsif Court, Namakkal).

2.The first petitioner is tenant and first respondent is the landlord in R.C.O.P.No.1 of 2000. Against the judgment in R.C.A.No.1 of 2002, confirming the order dated 13.06.2002 made in R.C.O.P.No.1 of 2000, the petitioner has come out with the present Civil Revision Petition. Pending Civil Revision Petition, the first petitioner and the first respondent died. Their legal heirs were brought on record as the petitioners 2 and 3 and respondents 2 and 3.

3. Facts of the case: The first respondent is the owner of the petition premises. The first petitioner was tenant in the portion of the petition premises. The first respondent filed the said R.C.O.P against the first petitioner for eviction on the ground of demolition and reconstruction of the petition premises. According to the first respondent, the petition premises is 70 years old and in dilapidated condition. The first respondent has sufficient means and capacity to demolish and reconstruct the petition premises. The petition premises is in Namakkal Paramathi main road and if building is demolished and reconstructed, it will fetch more rent and more income to the first respondent. Further, the first respondent is residing in Malaysia and in her old age, she wants to settle down in Namakkal and for that purpose, she wants to construct the residential house in the back portion of the petition premises.

4. The first petitioner filed counter statement and denied all the averments made in the affidavit. According to the first petitioner, the building is not 70 years old. It is in a good condition. The first respondent filed R.C.O.P only with an intention to evict the first petitioner. The first respondent disconnected the electricity connection and first petitioner got the electricity connection by

initiating legal proceedings. The first petitioner also filed O.S.No.6 of 1996 seeking relief of not to evict the first petitioner except by due process of law. The said suit was decreed. Subsequently, the first respondent has filed the present petition for eviction which is not bonafide. The power agent of the first respondent wants to use the petition premises for his own purpose and therefore R.C.O.P is filed.

5.Before the learned Rent Controller, the power agent of the first respondent was examined as P.W.1 and one Natarajan, Engineer was examined as P.W.2 and marked 5 documents as Exs.A1 to A5. On the side of the petitioner, petitioner examined himself as R.W.1 and did not mark any document. The Advocate Commissioner's report and sketch were marked as Exs.C1 and C2.

6.The learned Rent Controller, considering the pleadings, oral and documentary evidence, ordered eviction. Against the said order of eviction made in R.C.O.P.No.1 of 2000, the first petitioner filed R.C.A.No.1 of 2002. The learned Appellate Authority, considering the materials on record and order of the learned Rent Controller, dismissed the R.C.A.

7.Against the said order of dismissal dated 22.09.2008,

made in R.C.A.No.1 of 2002, confirming the order of the R.C.O.P.No.1 of 2000, dated 13.06.2002, the petitioner has come out with the present Civil Revision Petition.

8.The learned counsel for the petitioners reiterated the averments in the counter affidavit and contentions raised in the grounds of appeal and present revision. According to the learned counsel for the petitioners, the Courts below failed to appreciate the facts and erred in holding that building is 70 years old and has to be demolished, in view of the condition of the building as per the report of the PW2, Engineer and Ex.C1 and C2. The Courts below failed to see there are other tenants in the same building. The first respondent has filed petition for eviction only against the first petitioner. Further, the first respondent has disconnected the electricity connection and first petitioner got the electricity connected only by initiating legal proceedings. The eviction sought for on the ground of demolition and reconstruction alone will clearly establish the malafide intention of the first respondent. The intention of the first respondent is not bonafide and R.C.O.P was filed with malafide intention to evict the first petitioner. The first respondent failed to allege and prove her financial capacity for demolition and reconstruction of the petition premises.

9.The learned counsel for the respondents 2 and 3 contended that first respondent has proved her financial capacity to demolish and reconstruct the property. The Advocate Commissioner inspected the petition premises along with Engineers and filed report and sketch, which was marked as Exs.C1 and C2. The Engineer, who was examined as PW2 has stated that building is 70 years old and roof of the building is not properly maintained and building is with cracks. The first petitioner has not let in any contra evidence and filed documents to disprove the evidence of Pws 1 and 2 in this regard. As far as the capacity of the first respondent is concerned, she has proved her capacity by letting in evidence of PW1. The first respondent also established her bonafide intention for demolition and reconstruction.

10.Heard the learned counsel for the petitioners as well as the respondents 2 and 3 and perused the materials available on record.

11.The first respondent has come out with the present R.C.O.P for eviction on the ground of demolition and reconstruction. The first respondent, by letting in evidence of Pws 1 and 2 has

proved the age of the building and condition of the building. Considering the said evidence and report of the Advocate Commissioner marked as Ex.C1, the Courts below have held that the petition premises is to be demolished. The first petitioner has admitted in his evidence that there are cracks in the walls and terrace. Considering these evidences, the Courts below have accepted the contention of the first respondent for demolishing the said building. PW1 has stated that the first respondent has Rubber estate in Malaysia, one of the sons is a Doctor and another son is a teacher in Malaysia. PW1 has also stated that first respondent's husband owns number of properties and getting rental income. The first respondent has not let in any evidence to disprove this contentions. On the other hand, in the cross-examination, he has stated that he is not aware of this fact.

12.As far as bonafide requirement of first respondent for demolition and reconstruction is concerned, the first respondent has proved through evidence of Pws 1 and 2 and report of the Advocate Commissioner, that building is to be demolished. Further, the first respondent has stated that if building is demolished and reconstructed, she will get more rent and more income. The contention of the learned counsel for the petitioner that there are

other tenants and by evicting the first petitioner alone, the building cannot be demolished is contrary to the facts. The first respondent has filed another R.C.O.P against one Duraisamy, who is a tenant in another portion running a tutorial. As far as the other portion is concerned, the tenant in occupation of the portion and carrying on business in the name and style, Thirumurugan Electricals is the relative of the first respondent and he has agreed to vacate as and when required by the first respondent. It is not the case of the first petitioner that the said statement is not correct. The Courts below have appreciated all the above facts and rightly dismissed the R.C.A.No.1 of 2002, confirming the R.C.O.P.No.1 of 2000.

13.In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

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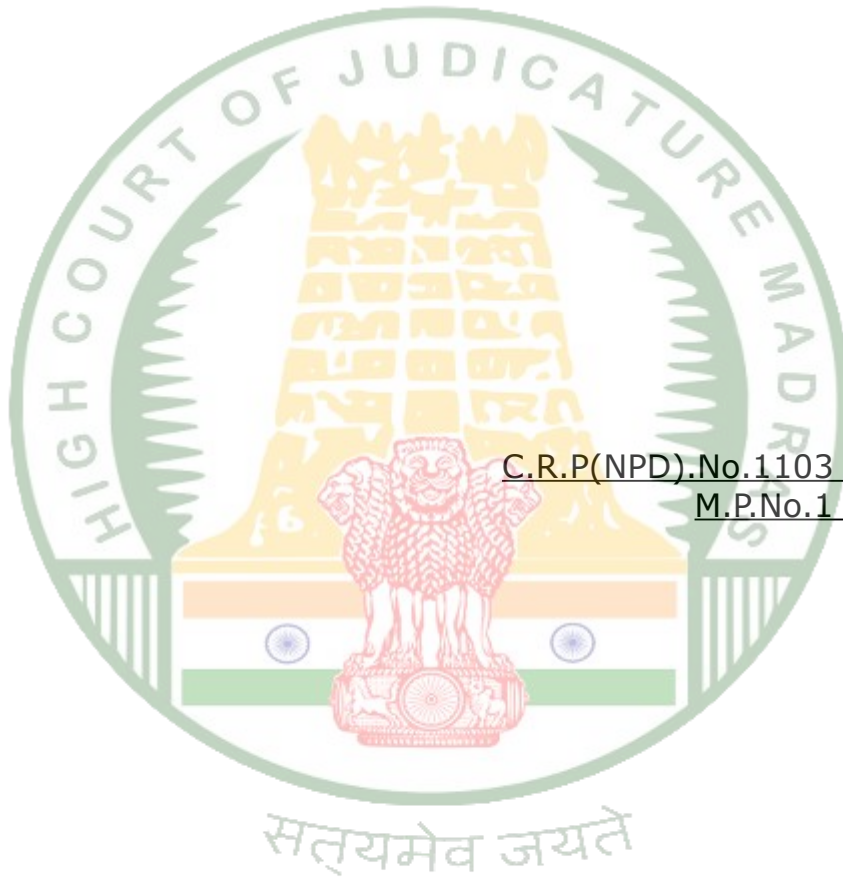
- 1.The Rent Controller,
Namakkal
(Principal District Munsif,
Namakkal).
- 2.The Subordinate Judge,
Nammakkal



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V.M.VELUMANI,J.

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