

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2218 of 2010

Orders reserved on 09.10.2017	Orders pronounced on 07.11.2017
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D.Kumar

.. Petitioner

Vs.

M.V.huzefa Ismail

.. Respondent

PRAYER: Civil Revision Petition filed under section 25 (1) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, against the fair and decretal order dated 29.08.2008 made in R.C.A.No.1084 of 2006 on the file of the Appellate Authority VIII Small Causes Judge, Chennai, confirming the order passed by the learned XVI Small Causes Judge, Chennai in M.P.No.15 of 2006 in E.P.No.495 of 2005 in R.C.O.P.No.3053 of 1989.

For Petitioner : Mr.S.Veerababu

For Respondent : Mr.M.Himavanth
for Mr.P.Vasanth

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 29.08.2008 made in R.C.A.No.1084 of 2006 on the file of the Appellate Authority VIII, Small Causes Judge, Chennai, confirming the order passed by the learned XVI Small Causes Judge, Chennai in M.P.No.15 of 2006 in E.P.No.495 of 2005 in R.C.O.P.No.3053 of 1989.

2. The petitioner is the respondent and respondent is the petitioner in R.C.O.P.No.3053 of 1989 on the file of the XVI Small Causes Judge, Chennai. The respondent herein is the landlord, who filed the above R.C.O.P for eviction of the petitioner herein on the ground of wilful default. The petitioner filed counter statement and stated that he has not committed any wilful default and he has paid the rent to the respondent. Subsequently, the respondent refused to receive the rent. The petitioner is regular in payment of rent. The learned Rent Controller, considering all the pleadings, oral and documentary evidence, ordered eviction, directing the petitioner to hand over possession to the respondent. The petitioner filed R.C.A.No.1084 of 2006, which was dismissed for

default. He did not take any further proceeding. The eviction ordered by the learned Rent Controller has become final. The respondent filed E.P.No.495 of 2005 for taking possession as per the eviction order. The petitioner filed M.P.No.15 of 2006 under Section 47 C.P.C for permitting him to let in evidence and to dismiss the E.P as not maintainable. According to the petitioner, he became the tenant only for the land under the vendor of the respondent. He constructed the super structure in the land. Subsequent to his construction, the respondent has purchased only the land from his vendor and therefore, the rent control proceedings are not applicable and order of the eviction passed in R.C.O.P.No.3053 of 1989 is null and void.

3. The respondent filed counter affidavit and contended that petitioner admitted in the counter affidavit filed in R.C.O.P that he is tenant under respondent and he paid rent to the respondent and there is no arrears. The petitioner also admitted the landlord-tenant relationship in O.S.No.2788 of 1991 filed by him against the respondent and prayed for dismissal of the M.P.No.15 of 2006.

4. Before the learned Rent Controller, the petitioner examined himself as PW1 and marked Commissioner's report as Exhibit. The respondent did not let in any oral evidence, but marked the notice issued to the petitioner as Exhibit. The learned Rent Controller, considering all the materials on record and documents relied on by the parties, dismissed the I.A.

5. The petitioner filed R.C.A.No.1084 of 2006 on the file of VIII Small Causes Court, Chennai (Appellate Authority), challenging the said order. In that R.C.A, the petitioner filed M.P.No.234 of 2007 for marking additional documents.

6. The learned Appellate Authority (VIII Small Causes Court), considering the materials on record and the order of the learned Rent Controller, dismissed the M.P.No.234 of 2007 on the ground that petitioner has not given any reason for not filing the documents earlier and dismissed the R.C.A holding that the petitioner himself has admitted the landlord-tenant relationship and has not stated that he became the tenant only for the land and not for the superstructure.

7. Against the order dated 29.08.2008 made in R.C.A.No.1084 of 2006, confirming the order passed in M.P.No.15 of 2006 in E.P.No.495 of 2005 in R.C.O.P.No.3053 of 1989, the present Civil Revision Petition is filed by the petitioner.

8. The learned counsel appearing for the petitioner submitted that the Courts below failed to see that petitioner has become tenant only with regard to the land and he has put up superstructure. The respondent by the deed of sale dated 31.10.1988, purchased only the land and not the superstructure. The Courts below failed to see that landlord dismantled the building after order of eviction.

9. The learned Appellate Authority erred in dismissing the M.P.No.234/2007 filed by the petitioner for marking additional documents. The petitioner has given valid reason for filing the said documents in the appeal and these documents are filed to prove his case. The Commissioner's report filed by the petitioner clearly shows that premises is without roof and a premises without roof is not a building and landlord is not entitled to invoke provisions of Rent Control Act to evict the tenant. The learned counsel for the

petitioner relied on the following judgments in support of his contentions:

(i) 2008 4 CTC 392 (Ammaniammal Vs. M.Palanisamy and 14 others):

"11.It is therefore clear, from the rival contention, that those two documents are necessary documents for the disposal of this appeal as it is axiomatic that subsequent developments during the pendency of the litigation could be taken note of by the Court for effective disposal of the case. Here those two deeds are having prima facie relevance to the disposal of the appeal and hence, I am of the considered opinion that those two deeds could be allowed to be marked on the side of the respondents/defendants as Exs.B16 and B17 in continuation of the exhibits already marked on the defendants side before the Trial Court."

(ii) 1999 (1) CTC 566 (Jayarama Naidu Vs. Meenakshi Ammal and another):

"42.It is well settled and fundamental that fraud and collusion in any proceeding before Court or quasi judicial authorities vitiates the very proceedings and they are non est and fraud necessarily renders it null and void.

50.As held by the Supreme Court it is not necessary to seek for a declaration that the earlier

proceeding is collusive or fraudulent and on that score it is not necessary to seek for setting aside the proceeding recording the second defendant as tenant. It is not necessary for the plaintiff to go before the authorities constituted under the Tamil Nadu Record of Tenancy Rights Act and seek for deletion of the entry."

10. The learned counsel appearing for the respondent contended that the stand taken by the petitioner in M.P.No.15 of 2006 is not maintainable. The petitioner has admitted that he is tenant in respect of the petition premises and he has paid rent to the respondent. The petitioner also contended that there is no arrears of rent. The petitioner did not contend in R.C.O.P as well as the suit in O.S.No.2788 of 1991 filed by him that he is tenant in respect of land only. He filed the said suit for injunction not to evict the petitioner except by due process of law. The respondent purchased both the land and building. The learned Rent Controller, considering the rival contention of the petitioner and respondent in R.C.O.P, allowed the R.C.O.P, ordering eviction. The appeal filed by the petitioner also was dismissed and order of eviction has become final. The petitioner has not produced any document to show that he has put up superstructure. The learned counsel for the respondent

relied on the following judgments in support of his contentions:

(i) 2014 9 SCC 78 (Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh)

"43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or

order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

(ii) 2016 1 MLJ 800 (SC) (Kasthuri Radhakrishnan and others Vs. M.Chinniyan and another):

"33. So far as the issue pertaining to exercise of revisional jurisdiction of the High Court while hearing revision petition arising out of eviction matter is concerned, it remains no more *res integra* and stands settled by the Constitution Bench of this Court in *Hindustan Petroleum Corporation Limited V. Dilbahar Singh* AIR 2014 SC 3708: (2014) 9 SCC 78: LNIND 2014 SC 765: (2014) 6 MLJ 597 Justice R.M.Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus:

"43. We hold, as we must, that none of the above Rent Control acts entitles the High

Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to

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(iii) 2016 4 MLJ 506 (Abdul Rahim Vs. Jothi and others):

"37. It is settled proposition of law that this Court while exercising revisional powers shall not interfere unnecessarily with the concurrent findings given by the learned Rent Controller as well as the learned Rent Control Appellate Authority.

48. As observed by Abdul Hadi, J., former Judge of this Court, in the decision cited first supra, regarding reception of any such additional evidence, Rule 16 of Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 only provides for the appellate authority taking such additional evidence, when the appeal before it is pending under Section 23 of the Act. While thus the

said Rules provide for reception of additional evidence only at the time of the first appeal before the appellate authority, there is no provision either under the main enactment or under the Rules, for reception of any such additional evidence at the time of revision before this Court under Section 25 of the Act. If really such additional evidence could be entertained in any such revision, it would have been specifically provided for, particularly when the above said Rules specifically provides for such entertainment of additional evidence before the appellate authority. It is clear that the law has not provided for any such entertainment of additional evidence at the time of revision under Section 25 of the Act."

(iv) 2017 4 MLJ 337 (Parvathi Vs. Sundaram):

"12. All the three rounds of litigation has ultimately ended in holding that the decree holder who is the respondent herein, is the title holder of 2¾ cents of land out of 8¼ cents of land originally allotted to Sudalaimadan Nadar. It is also held by the Courts that the revision petitioner/defendant/judgment debtor has no right or title over any portion of the property, since her alleged predecessor in title herself had no share in the suit property. While so, it is very hyper-technical for the revision petitioner herein, to agitate the issue in

different shades so as to deprive the lawful right of the decree holder.

13. No doubt, in A.S.No.83/82, there is a passing reference that the decree holder has to file a separate suit for partition. It has no bearing after having declared him as a title holder of 2¾ cents of land pursuant to the earlier partition decree passed in O.S.No.6/66, which has reached the logical end with passing of final decree. Taking advantage of such observation, the present judgment debtor who has no title or right over the property, has filed the present application questioning the very validity of the decree passed in O.S.No.503/82."

11. Heard the arguments of the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record and considered the judgments relied on by the learned counsel for the petitioner and respondent.

12. The learned counsel appearing for the petitioner contended that the superstructure in the petition premises is without roof and therefore it is not a building as contemplated in the Rent Control Act. On the other hand, the learned counsel for the respondent contended that superstructure in the petition premises

is a building and it is covered by Rent Control Act. In view of this rival contention, this Court by the order dated 18.03.2014 appointed Mrs.N.Gomathi, an Advocate, as Advocate to inspect the petition premises and file a report. The Advocate Commissioner, after notice to the counsel for the petitioner as well as the respondent, inspected the petition premises on 24.03.2014 along with surveyor and photographer. The Advocate Commissioner with the help of surveyor measured the petition premises and filed a report on 02.04.2014 stating that there is a shed with old walls and the top at 11 feet was demolished as there are remains of madras terrace 2 inch bricks and lime allegedly removed years back and now covered with M.S.Sheets roof at 13 feet height in the hind side of the plot and one watchmen shed in front right side of gate covered on all sides and roof with iron sheet. From the report of the Advocate Commissioner, it is clear that there was a building with RCC roof and RCC roof was removed some years back before the visit of the Advocate Commissioner. At the time of inspection by the Advocate Commissioner, the superstructure was at the roof of M.S sheet at 13 feet height. This clearly shows that petition premises consist of a building as well as land including watchman's room. In the circumstances, the contention of the learned counsel for the

petitioner that superstructure in the petition premises is without roof and therefore, it is not a building is contrary to the facts.

13. In the grounds of revision, petitioner has raised the plea that the landlord dismantled the building subsequent to the order of eviction. The petitioner, by his contention admitted that in the petition premises, there was building. The petitioner has not stated as to when the landlord has dismantled the building. In view of the fact that the superstructure in the petition premises is with roof, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

14. The petitioner contends that he has taken only land for lease and he has put up superstructure. The petitioner has let in oral evidence as PW1 in M.P.No.15 of 2006. In his evidence, he has stated that he is having document to show that he has put up superstructure. The petitioner has not produced those documents. Further, other documents sought to be marked by the petitioner before the learned Rent Controller as well as the Appellate Authority were rejected on the ground that petitioner has not explained as to why he has not filed those documents earlier. The

Courts below appreciated the scope of Section 47 C.P.C and all the materials on record on proper perspective. The petitioner in R.C.O.P and suit O.S.No.2788 of 1991 filed by him did not plead that he is tenant only with regard to the land and he has put up superstructure. On the other hand, after the respondent purchased the property, he has paid the rent to the respondent and he is not in arrears of rent. In the suit O.S.No.2788 of 1991 filed by the petitioner, paragraph 3 to 7 reads as follows:

"3.The plaintiff states that he is a tenant under the defendant in respect of non-residential premises at No.63/7, Association Road, Madras 600 060. Actually the plaintiff was inducted in the suit premises as a tenant by one S.J.Vidrose, the vendor of the defendant, in the year 1980. Subsequently, the defendant has become owner of the suit schedule mentioned property. The plaintiff has automatically become tenant under the defendant. The rent is Rs.150/- per month, which is being computed according to the English Calender Month being payable on or before 15th of every month.

4.The plaintiff states that after the inception of tenancy, he developed the site by way of filing the hallows and placed dresses and fenced the entire property thereby he incurred an expenses of Rs.40,000/-. The plaintiff states that the previous land owner promised him of repaying the said amount, but

the previous owner just sold the schedule mentioned property to the defendant and kept quite. But the undertaking given by the previous owner will bind the defendant.

5.The plaintiff states that he is a statutory tenant within the meaning of Tamil Nadu Buildings Lease and Rent Control Act. Therefore he is fully protected under the Act. Now the defendant by way of adopting the illegal methods trying to dispossesses the plaintiff without due process of law. The plaintiff lastly paid the rent for the month of February, 1980 by way of money order. But the defendant when sent the money for the month of March, 1980, it was refused by the defendant. Therefore, the plaintiff caused legal notice to the defendant dated 23.03.1991 stating that the rents will be deposited in Bank, if the defendant has not chosen to maintain his Bank account. Though the defendant has received the notice has not chosen to give any reply.

6.The plaintiff states that without taking steps through Court, the defendant is trying to dispossess the plaintiff, while the plaintiff was not at the factory shed, the defendant and his men came to the schedule mentioned property and attempted to demolish the entire property, immediately it was resisted by the plaintiff's men.

7.The plaintiff apprehends illegal possession at

the hands of the defendant at any time, unless the defendant or his men are injuncted from doing it, the plaintiff will thrown out."

In paragraph 5, the petitioner has admitted that he is a statutory tenant within the meaning of Tamil Nadu Building (Lease and Rent Control) Act and is fully protected under the Act. Having taken this specific stand that he is a tenant and protected by provisions of Rent Control Act, it is not open to the petitioner that he is tenant only in respect of land and Rent Control Act is not applicable and order of eviction passed by the learned Rent Controller is void. In view of the above facts, the judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

15. For the above reasons, this Civil Revision Petition is liable to be dismissed as devoid of merits and is hereby dismissed. No costs.

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Index: Yes/No
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To

1. The XVI Small Causes Judge,
Chennai
2. The VIII Small Causes Judge,
Chennai,



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V.M.VELUMANI,J.
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