

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2523 of 2010
and
M.P.No.1 of 2010**

R.Kumarasamy

.. Petitioner

Vs.

Devaraj Arcade Private Limited & Company

Registered office at No.177,

N.P.N. Street, Sithaputhur,

Coimbatore.

Rep. by its Managing Director,

T.Jayalakshmi

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Building (Lease and Rent) Control Act 18/1960 as amended by Act 23/1973 of Act 1/1980, against the Judgment and decree passed in RCA.No.29 of 2008, on the file of the Principal Sub-Court-cum-Rent Control Appellate Authority, Coimbatore, dated 12.04.2010 confirming the Judgment and Decree passed in RCOP.No.53 of 2005, on the file of Principal District Munsif Court, Coimbatore, dated 27.03.2008.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.N.Damodaran

ORDER

The revision petitioner is the tenant and the respondent is the landlord. For the convenience of the court, the parties are referred as per their rank before the trial court. The land lord/petitioner has filed R.C.O.P.No.53 of 2005 against the tenant/respondent on the ground of Act of Waste and Nuisance. The respondent was inducted as tenant in the demised premises on a monthly rent of Rs.3,016/- in the year 1991. The lease is for non residential purpose for running restaurant. The tenancy was renewed from time to time and finally the lease agreement was executed into between the petitioner and respondent on 01.08.2002. Thereafter the lease was renewed orally and the respondent has been continued his business as on today. While so, the respondent approached the petitioner for the lease of front side of vacant portion covered by the title roof measuring 103.5 square feet for extension of shop. The petitioner in a good faith agreed to extent the lease hold premises and thereby additional lease agreement was entered into between them on 03.12.2004. For the lease of front portion of the vacant site, the respondent agreed to pay monthly rent

of Rs.1000/- with effect from 01.01.2005 onwards. The terms of additional lease agreement dated 03.12.2004 specifically stipulated the condition that no part of building shall be demolished or altered or additional construction to be put up without obtaining consent of landlord in writing.

2.The further case of the petitioner is that contrary to the above said condition the tenant started demolishing the sun side walls of lease hold premises and removed tile roof which was appending the main building without the knowledge and consent of landlord. The petitioner objected the unlawful act of the respondent. But the respondent despite the objection did not heed to the request of petitioner, has caused several damage to the building. Therefore, the petitioner lodged a police compliant against the respondent on 25.12.2004. Since, the respondent violated the terms and condition of lease agreement, the petitioner filed suit against the respondent in O.S.No.4547 of 2005 on the file of the Principal District Court for permanent injunction and obtained order of status quo. The respondent also filed a suit in O.S.No.4539 of 2005, on the very same day and both the suits are pending. The commissioner was appointed in the above suit and filed a report which would prove the damages caused by the respondent to the demised premises. The respondent

has no right to put up additional construction or alter the existing structure without permission of land lord. Hence, the petitioner sent a legal notice to the respondent on 28.12.04 cancelling the additional lease hold area and the respondent also sent a reply to the same. Since, the respondent caused the extensive damage to the building which amounts to act of waste and so the respondent is liable to be evicted.

3.The petitioner also assessed the damage caused to the building by the qualified Engineer and the Engineer given a report about the damage caused to the building and value of cost. The respondent never used to clean the food wastage properly and does causing nuisance to the neighbor of the restaurant. For the above reason the petitioner has filed R.C.O.P for eviction under section 10(2) (III) and (V) of the Tamil Nadu Building (Lease and Rent Control) Act.

4.The respondent/ tenant has filed a detailed counter statement and contended as follows. The petition mentioned property belongs to the petitioner and the respondent was inducted as tenant under the petitioner from 1990 onwards. The petition mentioned property is a non-residential purpose. Originally the monthly rent was fixed for the

demised premises in the year 1990 was at Rs.1250/-. The petitioner use to give oral permission to the respondent to carry out repair. At present the respondent is running restaurant in the petition mentioned building. Apart from original advance amount, on 06.06.1998 the respondent paid additional advance amount of Rs.50,000/-. With the permission of the petitioner, Electricity Service connection was obtained for the demised premises in the name of respondent and for that he has deposited a sum of Rs.32,000/-. The present monthly rent is Rs.3,162/-. But the respondent has been paying monthly rent of Ra.3,000/- from 01.08.2009 onwards, because the petitioner failed to provide internal alteration as agreed by him. The respondent in order to extent his business, on 03.12.2004 entered into a rental agreement with the petitioner in respect of front portion measuring to an extent of 103.5 square feet and for the additional area, the respondent agreed to pay Rs.1000/- in addition to the existing rent of Rs.3000/-, totally Rs.4000/- towards monthly rent. The petitioner agreed to alter the structure for the convenience of the business of the respondent. As per the promise, the petitioner also started the alteration work by demolishing the cement floor into Mosque floor. But all in a sudden, on 22.12.2001 as if the respondent is altering the petition mentioned property without the consent of the petitioner and came with his henchmen and threatened the

respondent to vacate the petition mentioned property. Hence on 26.12.2004 the respondent lodged a police complaint against the petitioner. The agreement dated 03.12.2001 came into force and the cancellation of said agreement by petitioner by way of telegram and notice is not binding on the respondent. The petitioner stopped the alteration work in the extended lease area only at the instigation of A.S.Fast Food Leasee who is also a tenant in the same complex of the petitioner.

5.The further case of respondent is that at no point of time there is a roof in front portion of the petition mentioned property. The front portion of 103.5 Square feet is only open to sky and no sun shade is available at any point of time. The respondent never damaged the sun shade. It is also false to state that the respondent has been causing nuisance to the neighbor shop owners by dumping wastage.

6.Before the Rent Controller Court, on the side of petitioner PW-1, 2 and 3 were examined and Ex.P1 to P18 was marked. On the side of respondent, the respondent was examined as RW-1 and Ex.R1 & R2 were marked. Apart from that Ex.C1 to C3 were marked as court documents. Upon considering the material evidence available on

record, the Learned Rent Controller was pleased to order eviction on the ground of act of waste and rejected the case of petitioner on the ground of nuisance by order and decree dated 27.02.2008. Aggrieved over the order of eviction, the respondent / tenant filed R.C.A.No.29 of 2008 on the file of Rent Control Appellate Authority (Principal Sub-Court, Coimbatore). The Learned Rent Control Appellate Authority was pleased to dismiss the appeal filed by tenant by confirming eviction order of the Learned Rent Controller by order and decree dated 12.04.2010.

7.The unsuccessful tenant in both the Courts has filed the present Revision Petition. I have carefully gone through the entire records and also heard the arguments of Mr.A.Thiyagarajan, learned counsel appearing for the petitioner and Mr.N.Damodaran, learned counsel appearing for the respondent.

8.It is not in dispute that the Revision Petitioner is a tenant under the respondent/landlord from the year 1990 itself. It is also an admitted fact that under Ex.P2 dated 03.12.2004 a rental agreement was entered into between the petitioner and the respondent with respect of 103.5 square feet of additional area available in front of the petition mentioned property. The Learned Counsel appearing for the

Revision Petitioner contented that as per Ex.P2 agreement to alter the structure in the extended Lease area of 103.5 square feet, the landlord also started doing alteration work. However, to the shock and surprise of the Revision Petitioner on 22.12.2004 the landlord asked the Revision Petitioner to vacate the petition mentioned premises, since the tenant has demolished the front portion and was doing alteration work without the consent of the landlord. In that regard an Advocate Commissioner was appointed by the Learned Rent Controller.

9.It is seen from the records that the Learned Advocate Commissioner visited the petition mentioned property along with an Engineer. After inspection they filed report with plan in Ex.C1 to C3. The Learned Advocate Commissioner was examined and in his evidence, he has not specifically stated whether the iron rod is a new one or old and the same has not mentioned in his report. The Learned Advocate Commissioner has not specifically stated in his report that cement floor measuring 103.5 square feet new one or not?. Apart from that in Ex.C3 Engineers report there is no mention about the crack in the wall. That apart, in the front portion of the demised premises measuring to an extent of 103.5 square feet which is a disputed area is not belongs to the respondent/landlord which would be proved from the evidence of PW-1.

10. Further, the Learned Counsel for the petitioner has argued that the Courts below have not touched the issue relating to an act of waste which impairs materially or affects adversely the value or utility of the building. To support his case the Learned Counsel for Revision Petitioner/tenant has relied upon a Judgment reported in 1995 (1) CTC 47 in the case of ***C.Kailaschand jain and two others –Vs- Mohamed Kasim*** wherein in paragraphs 11 and 16 it is held as follows:

“11. Under Section 10(2) (iii) eviction could be ordered where the tenant has committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building. In constructing this provision as early as in Govindaswami Naidu –Vs- Pusphammal (A.I.R. 1952 Madras 181) a Division Bench of this Court has pointed out that every act of waste by the tenant will not entitle the landlord to obtain an order of eviction under the provisions of Section 7 of Madras Buildings (Lease and Rent Control) Act 15 of 1946. A finding whether the impugned construction must necessarily be deemed to be an act of waste which is likely to impair materially the value or utility of the building

must be based upon the particular facts as emerged from the evidence that is adduced in the case. Where there was almost complete absence of material relevant to the determination of this main question, except the evidence of the land lady's husband who said that the act of the tenant would impair materially the value or utility of the building but did not choose to say how and why, Held it is difficult to hold that the demolition of the wall in their case has resulted in impairing the value or utility of the building. In the case of Natarajan -Vs- Thandavarayan (1969 II MLJ 19) Ramaprasada Rao.J as he then was has held that while considering the contents standards have to be set, before a tribunal or Court engaged, in the adjudication of rights of parties decisively concluded that the acts complained of is or has to be characterized as one impairing materially the value or utility of the building. Hence rendering of subjective opinion may not be of any avail unless such opinion is backed by expert evidence. What is contemplated in the section is the lowering of the economic value of the building and not a possible mental inconvenience suffered subjectively by the landlord on a prima facie examination of the building. Unless there is

clinching evidence to satisfy the conscience of the Court that the acts complained of have caused damage to the building or its utility, it would be in the region of wild speculation to conclude that the necessary ingredients or the sine quo non of the section have been satisfied. His Lordship took the view that drilling a hole 3" in diameter in the terraced portion of a building (leased for running a hotel) to let out smoke, and removal of a portion of the parapet wall said to impair materially the value or utility of the building. The same learned Judge has held in *Mesdames Tara Moolgaular –Vs- Raja Mohan Rao* (1979 II MLJ 504) that by using a garage as a room it could not be said that the tenant had committed acts of waste. In the absence of any evidence to show that by such user the utility of the building had been materially impugned, it could not equally be said that the tenant had committed any acts of waste which would come within the mischief or meaning of section 10(2)(iii) of the Act.

16. The Learned Counsel for the respondent/landlord submitted that the concurrent findings of the Courts below cannot be disturbed in the present proceedings which is only a revision. We find from Section 25 of Tamil Nadu Act

18 of 1960 that the High Court is entitled to go into the regularity of the proceeding or the correctness, legality or propriety of any decision or order passed by the Rent Controller (AIR 1988 S.C 1422) the Apex Court has held that satisfaction of the "legality and propriety" of the order under revision is a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not "a Second Court of the first appeal, In Shiv Lal -Vs- Sat Prakash (AIR 1993 S.C.275) while interpreting Section 15 (5) of East Punjab Rent Restriction Act which was also the subject of interpretation in the earlier decision, the Supreme Court has pointed out that while exercising the revisional jurisdiction, the High Court should not act as a regular third appellate authority and can interfere only within the scope of the sub-section, discussed and defined in many reported cases by that Court. In the instant case the findings of the Court regarding erection of the new wall would be a finding of fact. But the question whether the construction has materially altered the accommodation is a mixed question of fact and law. It should be determined on

the application of the correct principles”.

11.The learned counsel appearing for the Revision Petitioner has relied upon a Judgment reported in **1969 (2) MLJ 19** in the case of **G.Natarajan –Vs- P.Thandavarayan** wherein in paragraph 4 it is held as follows:

“4. While considering the content of Section 10(2)(iii) of the Act XVIII of 1960, it is necessary that certain objective standards have to be set, before a tribunal or court engaged in the adjudication of rights of parties decisively concluded that the act complained of is or has to be characterized as one impairing materially the value or utility of the building. Mere rendering of subjective opinion may not be of any avail unless such opinion is backed by expert evidence. The landlord in this case did not examine any expert to prove that the drilling of a hole in the terrace or the cutting of a portion of the parapet wall tantamount to the building’s utility being impaired or its value being diminished. What is contemplated in the section is the lowering of the economic value of the building and not a possible mental

inconvenience suffered subjectively by the landlord on a prima facie examination of the building. That such is the intention of the legislature has been held by a Division Bench of our High Court in Govindaswami Naidu –Vs- Pushpalammal MANU/TN/0142/1952: AIR1952 Mad181, while considering a similar provision in the Madras Building (Lease and Rent Controller) Act (XV of 1946) Rajamannar, C.J., speaking for Bench, observed as follows:

It is obvious that every act of waste will not entitle the landlord to obtain an order of eviction under the provisions with which we are now concerned. It is equally clear that it cannot be laid down as a rule of law that a demolition of any wall in a building must necessarily be deemed to be an act of waste which is likely to impair materially the value or utility of the building”.

12.The learned counsel appearing for the Revision Petitioner has relied upon a Judgment reported in **99 L.W page 678** in the case of **R.R.Dinakaran –Vs- S.L.Chinna Kuppuswami** wherein in paragraphs 4 and 5 it is held as follows:

“4. In order to canvass the correctness of the order of the appellate authority, the tenant has preferred this

revision. Before we go to the facts of the case, it will be relevant to refer to the terms of S.10 (2)(iii) of the Act. The said S. 10(2)(iii) reads as follows:-

“10(2) A landlord who seeks to evict his tenant shall apply to the controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.

(iii) that the tenant has committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building, the controller shall make an order directing the tenant to put the landlord in possession of the building and if controller is not so satisfied, he shall make an order rejecting the application.”

On a plain reading of the above provision, it may be seen that what is envisaged is committing of acts of waste which are likely to impair materially the value or utility of the building. In other words, the act of the tenant must be such as would prejudicially affect the interests of the building or by either lowering the value of the building or by reducing its utilitarian value for being let out for the same purpose for which it had been let out, or for allied

purpose. Therefore it goes without saying that every act of a tenant, even if it is not permitted by the landlord, will not amount to an act of waste, as contemplated under S.10(2)(iii) of the Act. namely, an act of waste which impairs materially or affects adversely the value or utility of the building.

5. Viewed in this perspective, it is seen that the petitioner herein cannot be said to have committed any act of waste as would materially impair the value or the utility of the building. In his petition, the respondent was taking the stand that even without the repairs the building was that even without the repairs the building was in good condition. But he shifted his stand during the enquiry and tried to contend that the condition of the building was such that it warranted demolition and reconstruction, but the tenant was putting spokes in the wheel by effecting improvements spokes in the wheel by effecting improvements to the building. The Commissioner's report shows that the petitioner has replaced the worn out roof with new roof and that he has also replaced the mud walls and the wooden pillars with brick walls and brick pillars. Both the Rent Controller and the appellate authority have

held that the changes effected by the petitioner have enhanced the value of the building. In so far as its utilitarian value is concerned, the respondent herein has not shown how the building has been rendered less fit or useful for running a hotel by reason of the works carried out by the petitioner. Therefore, on the established facts, the petitioner is entitled to succeed”.

13.Per contra, the Learned Counsel for the respondent argued that the act of waste committed by the Revision Petitioner / Tenant has been proved from the reports of the Advocate Commissioner who was examined as PW-2 and the Engineer who was examined as PW-3. The landlord at no point of time has given permission to the petitioner herein to alter the extended portion of 103.5 square feet. Further, under Ex.P2 there is no recital to alter the additional lease area in front portion of the demised premises.

14.To support his case, the learned counsel appearing for the respondent has referred two Judgments as follows:

(I) ***A.M.P. Revathi rep. by her power of attorney A.M.V.Sukumaran v. Subashchandran*** reported in **2014 (1) L.W. 817:**

"As far as the ground of 'act of waste' is concerned, it is seen from the records that the tenant has produced Exs.R1 and R2 to substantiate his contention that he had made alterations to the petition premises and it was done only with the permission of the landlady. Ex.P2 Lease Agreement specifically stipulates that without the permission/consent of the landlady, the tenant shall not make any alterations. Hence, the tenant without the written consent of the landlady, is not entitled to make any alteration to the petition premises. Ex.R1 and Ex.R2 are only purchase receipts, which would show that the tenant purchased materials for making alterations to the building. But, the tenant did not produce any documentary evidence to prove his case that the landlady gave her consent, for making such alterations in the petition premises.

In view of the judgment referred to supra, the contention of the tenant that he had spent more than Rs.3,00,000/- for making improvements to the building and the same will not impair the value of the building, cannot be accepted. As per the lease agreement Ex.P2, the tenant cannot make any alteration, without the

written permission of the landlord. The tenant, in violation of the lease agreement, made alterations. Therefore, I am of the view that the landlady is entitled for eviction of the tenant on the ground of 'act of waste'. The learned Rent Controller, on the basis of evidence, has rightly held that the tenant committed the 'act of waste' and converted the petition premises for non-residential purpose and ordered eviction on both the grounds."

(II) ***B.Selvaraj (deceased) and others v. Krishna Reddy***
reported in **2014 (5) L.W. 299**:

"It is the case of landlords that the tenant has altered the structure of the building without their written consent and thus, has committed 'acts of waste' which has materially impaired the value and utility of the building.

It cannot be disputed that, it is the objective standard that would be applicable to find out whether there is any impairment to the value and utility of the building. It is equally true that it is for the landlord to prove the same. But, so far as this case is concerned, from the contradictory stand taken by the tenant himself, it is proved that the tenant has altered the structure of the

building, without the consent of the landlords.

The impairment in the value and utility must be judged from the landlords' point of view. In the case on hand, it is the case of the landlords that because of the alterations done, the value and utility of the building has been impaired. The value of utility may be different for the landlords and for the tenant depending upon the need. What is useful for the tenant need not be useful for the landlord and vice-versa. The works carried out by a tenant may increase the material value, but may affect the utilitarian value. Therefore, the reasons stated by the Courts below on a finding of fact does not require any interference from this Court. Those findings cannot be said to be perverse."

15. In this case, admittedly from the evidence of PW-2 Advocate Commissioner and PW-3 Engineer this court could safely come to the conclusion that there is no act of waste committed by the tenant as defined under section 10 (2) (iii) of the Tamilnadu Buildings (Lease and Rent Control) Act. For committing the act of waste, the act of the tenant must be such as would prejudicially affect the interest of the landlord by either lowering the value of the building or by reducing its

utility value. In this case, in the front portion i.e., the additional lease area measuring to an extent of 103.5 sq.feet, the advocate commissioner has noticed that there is cement flooring. Therefore, the tenant has not damaged the floor and even assuming that the floor was damaged, at present there is a cement floor. Therefore it goes without saying that every act of a tenant, even if it is not permitted by the landlord, it will not amount to an act of waste. The above judgments referred by the revision petitioner is squarely to the facts of the present case and the judgments referred by the respondent herein is not applicable to the facts of the present case.

16.Further, the landlord states that the tenant has caused damage to the sun shade and it amounts to an act of waste. For that, the tenant has answered that originally the alteration work was undertaken by the landlord, but subsequently he has not did so and the landlord also filed a suit against the tenant and obtained interim order and that it the reason, he was not in a position to complete the alteration which was already commenced by the landlord. This court could find force in the said argument of the tenant. In my opinion, the above said damage can't be construed as an act of waste and so eviction can't be ordered by holding that the tenant has committed an act of waste. Both the Rent Controller and the appellate authority

have held that the changes effected by the petitioner could be construed as an act of waste and it diminishing the value of the building. For the foregoing reason, I am unable to accept the reasoning given by the courts below to come to the conclusion that the tenant has committed an act of waste to the demised premises. Therefore the order of eviction passed by the Learned Rent Controller is liable to be rejected. Accordingly eviction order passed by the Rent Controller and confirmed by the Rent Control Appellate Authority are hereby set aside.

17.In fine, this Civil Revision Petition is allowed and the Judgment and decree passed in R.C.A.No:29 of 2008 on the file of the Principal Sub-Court cum Rent Control Appellate Authority, Coimbatore dated 12.04.2010, confirming the Judgment and Decree passed in R.C.O.P.No.53 of 2005 on the file of the Principal District Munsif Court, Coimbatore dated 27.03.2008 are set aside. There is no order as to costs. Consequently connected miscellaneous petition is closed.

17.03.2017

Index:Yes

Internet:Yes

Note:Issue order copy on 22.03.2017.

vs

To

- 1.The Principal Sub-Court-cum-
Rent Control Appellate Authority,
Coimbatore.
- 2.The District Munsif Court,
Coimbatore.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.2523 of 2010
and
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