

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.03.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.1582 of 2016

Kaliaperumal

.. Petitioner

vs

1. Parvathi

2. Arul

3. Asha

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 18.01.2016 passed by the learned Subordinate Judge, Coimbatore [Rent Control Appellate Authority] in CMA No.20 of 2014 in confirming the fair and decreetal order dated 13.10.2014 passed by the learned Principal District Munsif (Rent Controller), Chidambaram in un-numbered I.A....of 2014 in RCOP No.1 of 2007.

For Petitioner : Mr.R.Gururaj

For Respondents : Mr.A.Muthukumar

ORDER

The revision is filed by the tenant in a Rent Control Proceedings, challenging the order passed by the Appellate Authority confirming the order passed by the Rent Controller in an unnumbered IA No.. of 2014 in RCOP No.1 of 2007 to decide the preliminary issue regarding the maintainability of the original petition and the jurisdiction of the Rent Controller to try the eviction petition.

2. This Rent Control proceedings seems to have a checkered history as the oldest of the proceeding was in the year 1996. To decide the question of maintainability as a preliminary issue, the factual background of the case is necessary.

3. The respondents/landlords had filed RCOP No.15 of 1996 for fixation of fair rent and the same was allowed on 30.12.2002 fixing the fair rent at Rs.500/- per month. Aggrieved by the same, the landlord preferred RCA No.20 of 2003 wherein, the fair

rent was re-fixed and enhanced to Rs.2,679/- per month vide order dated 07.10.2003. It was the turn of the tenant to prefer the revision in CRP PD 1102 of 2004, which came to be dismissed on 11.02.2011 and it was also confirmed by the Hon'ble Supreme Court in SLP No.17020 of 2011 on 12.09.2011. Thus the fair rent proceedings reached a finality.

4. There was yet another RCOP filed by the landlords in RCOP No.3 of 1996 for eviction on the ground of wilful default and for demolition and reconstruction, which was dismissed by the Rent Controller and on appeal in RCA No.39 of 2011, the same was confirmed as the requirement of the landlords for demolition was found to be not bona fide and the revision in CRP NPD No.1246 of 2002 preferred by the landlords was also dismissed. In the said RCOP No.3 of 1996, the default period was from 01.04.1995.

5. The present RCOP No.1 of 2007 was filed for eviction on the ground of wilful default and demolition and reconstruction and the default is with respect to the dues in the rent paid and

the fair rent fixed by the Court. As difference between the amount of fair rent and agreed rent is arrears of rent for the building, it becomes payable when the order fixing fair rent becomes final. Failure of the same would amount to wilful default. In this regard, the judgment of the Division Bench of this Court reported in **1996-2-LW 849 [J.Visalakshi Ammal vs T.B.Sathyanarayana]** could be usefully referred to. The relevant portion reads as under:

"11.We are firmly of the view that the difference of the amount between the fair rent fixed and the agreed rent is the arrears of rent for the building, and it becomes payable when the order fixing the fair rent becomes final, and the same shall have to be paid within 15 days from the last day of the tenancy month, failing which, it would be open to the landlord to issue notice calling upon the tenant to pay the arrears of rent, and in the event of the tenant failing to pay the arrears of rent pursuant to the notice, it would be open to the landlord to institute a proceeding for eviction on the ground falling under

Section 10(2)(i) of the Act."

Pending RCOP, the landlord filed an application in I.A.No.12 of 2012 under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [in short ' the Act'] for payment of the arrears of rent and in default to order immediate eviction.

6. I.A.No.12 of 2012 seeking a direction to the tenant to pay arrears of rent was allowed on 27.06.2012, after contest and the tenant was directed to pay the arrears of Rs.4,68,135.50 to the landlords as arrears of rent, as on the date of the petition. As the payment was not made, I.A.No.45 of 2012, was filed seeking direction to the Rent Controller to pass an order of eviction under Section 11(4) of the Act. In the meanwhile, RCA No.10 of 2012 was filed by the tenant challenging the order passed in I.A.No.12 of 2012. However, that was allowed to be dismissed for default on 20.02.2014. Thus the order dated 27.06.2012, passed in I.A.No.12 of 2012 became final. In such circumstances, the tenant has filed the un-numbered IA to frame and decide the preliminary issue regarding the maintainability of the RCOP No.1 of 2007 and the jurisdiction of the Rent Controller

to decide the RCOP.

7. The tenant/revision petitioner had filed this I.A. contending that the demised property belong to one Ellappan as the patta stands in his name. That apart, one Ahmed Moideen Saheeb had sold an extent of 4050 sq.ft in T.S.No.528 to one Ramasamy Mudaliar. The said Ramasamy Mudaliar is said to have bequeathed the property in favour of his wife Pushpam Ammal and Jayalakshmi; from them one Ranganathan Pillai had purchased the above said property comprised in T.S.No.528. The petition mentioned property is in T.S.No.803 in Kamakshi Amman Koil Street. Therefore, according to the tenant the said Ranganathan Pillai is not the owner of the property whose heirs has now filed the eviction petition. It is also stated that the tenant has filed an additional counter setting out the said facts for the first time. As the landlords who have filed the eviction petition have got no title and their title is denied by the revision petitioners, the present unnumbered IA has been filed for maintainability of the original petition. The Rent Controller, who heard the said application and on perusal of records, dismissed the same. Aggrieved by the said order, the present revision is

preferred by the tenant.

8. The question that arise for determination is whether the petition, which is yet to be numbered by the Rent Controller for trying the maintainability of the RCOP, as preliminary issue, has to be allowed or not?

9. Heard both sides.

10. As stated earlier, the tenant has filed the application for maintainability of the Rent Control Proceedings denying the title of the landlords for the first time. Even in the earlier proceedings mentioned supra, the ownership was not disputed and the same was admitted. As the denial of the title was not raised in the earlier proceedings, the tenant had filed additional counter, which is not yet taken on file by the Rent Controller.

11. The learned counsel for the respondent/landlord placed his reliance on the judgment of this Court reported in **2004-1-LW-172 [Mrs.Yashoda Raju vs. A.Kuselan]** wherein it is held as follows:

"7. As rightly pointed out by both the courts below, the petitioner is estopped from taking a different stand, which is made clear under Section 116 of the Indian Evidence Act. Section 116 of the Indian Evidence Act contemplates that no tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property of license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

8. Section 116 of the Indian Evidence Act sets out in clear term that during the continuance of tenancy, a tenant cannot be permitted to deny the title of the landlord. The decision of the Constitution Bench of the Honourable Supreme Court reported in

(Aryam Veeraraju and others vs. Pechetti Venkanna and others] AIR 1996 SC 629 held in para-13 as follows:-

"13. Having regard to Section 116 of the Indian Evidence Act, 1872, during the continuance of the tenancy, a tenant will not be permitted to deny the title of the deity at the beginning of the tenancy. In Bilas Kanwar vs. Desraj Ranjit Singh, ILR 37 All 557 at P.567: (AIR 1915 PC 96 at pg.98] the Privy Council observed:

"A tenant who has been let into possession cannot deny his landlord's title however defective it may be so, so long as he has not openly restored possession by surrender to his landlord."

The ratio laid down in the above judgment by the Honourable Supreme Court is squarely applicable to the facts and circumstances of the case on hand."

12. It is an admitted fact that in I.A.No.12 of 2012, the Rent Controller had directed the tenant to pay the arrears of rent and the RCA filed against the same was dismissed for non-prosecution on 20.02.2014 and as on date it has not been restored to file. Therefore, it is presumed that the order passed in I.A.No.12 of 2012 has become final and the tenant is bound by the order and had not complied with the direction given. Thereafter, I.A.No.45 of 2012 was filed by the revision petitioner under Section 11(4) of the Act to pass an order of eviction as the tenant had not complied with the conditional order. Pending the said application, the present un-numbered IA has been filed for trying the maintainability of the RCOP as a preliminary issue.

13. The Rent controller has found that as on 30.09.2014, arrears of rent was Rs.5,51,184.50 as the said amount has not been deposited by the tenant, the proceedings have to be stopped and an order of eviction has to be passed by the Rent Controller. The Rent Controller has further found that the order passed in Section 11(3) application has not been complied with. When an order of eviction is about to be passed in Section 11(4)

application or in other words to stop further proceedings in the RCOP, the application filed by the tenant challenging the maintainability of the RCOP is filed and the same cannot be taken up and hence dismissed it even without numbering the same. The Appellate Authority also held that the application is not maintainable and confirmed the order of the Rent Controller.

14. Admittedly, this is the third round of litigation between the same landlords and tenant. When the fair rent was fixed, which went up to the Supreme Court, the tenant has not whispered about the ownership of the property. The tenant, who is now facing the consequences of Section 11 of the Act has unnecessarily filed this application. The scheme of Section 11 of the Act is only to safe guard the interest of the landlord to secure the arrears of rent as well as the future rents, pending proceedings. The section is intended to make the tenant alert during the entirety of the proceedings and be conscious of his obligations and statutory duties of payments of rents.

15. It is also a settled law that a tenant cannot deny the

title of the landlord when the tenancy is subsisting as per Section 116 of the Indian Evidence Act. In fact, the tenant has not denied the title of the landlords in the counter affidavit instead in para No.2 he has stated as follows:

"The respondent, took the schedule mentioned property on rent in the year 1986 from Ranganathan, who acted as the agent of the house owner. The petitioners are the present owners of the property."

Having admitted categorically in the counter affidavit that the petitioners are the owners of the demised property, the tenant is estopped from denying the same and demand for an enquiry as to the maintainability of the original petition.

16. Denial of title during the course of the proceedings itself is a ground for eviction. In this context, the judgment of the Hon'ble Supreme Court reported in **2014(16) SCC 472[Kamaljit Singh vs. Sarabjit Singh]** can be fruitfully referred. The relevant portion is as follows:

"16. A three-Judge of this Court in Sri Ram Pasricha vs. Jagannath reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant.

.....

.....

.....What is important is that so long as a jural relationship exists between the respondent/tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the appellant of the property....."

17. Section 2(6) "Landlord" includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor,

administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

18. The definition is an exclusive one and so far the Tamil Nadu Buildings (Lease and Rent Control) Act is concerned it is not the ownership of the property that entitles a person to file an eviction petition, but when a person comes under the definition of 'landlord' as mentioned in Section 2(6) of the Act, he is entitled to maintain a petition for eviction.

19. In the instant case, the revision petitioner/tenant having recognized the respondent as landlord, it is not open to him to deny the title of the landlord.

20. It is contended by the learned counsel for the revision petitioner that there was no cause of action for filing the present petition as already RCOP No.3 of 1996 was dismissed. The fair rent in the prior proceedings was fixed based on the jural relationship between the parties and the title of the respondent.

Having contested the proceedings till the Supreme Court, the tenant has got no right to deny the same, when the order of eviction is about to be passed. It is for the first time, that too by filing an additional counter, which is yet to be taken on file, the tenant is trying to deny the title of the landlords. It is only the jural relationship of the landlord and tenant based on which the Rent Control proceedings are filed. Admittedly, the jural relationship was not denied by the tenant till such time an order was passed under Section 11(3) of the Act. The tenant is estopped from denying the title of the landlord as per Section 116 of the Evidence Act.

21. In I.A.No.12 of 2012 in RCOP No.1 of 2007 the Rent Controller himself has ordered that if the amount was not paid within a particular date, the main OP will stand allowed on filing an application under Section 11(4) of the Act. Even if no formal order is passed, the Rent Controller cannot entertain any other application at the instance of the tenant.

22. In the aforesaid circumstances, the order passed by

the Rent Controller, as confirmed by the Appellate Authority is correct and warrants no interference. The Rent Controller is directed to pass orders in I.A.No.45 of 2012 as expeditiously as possible. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs.

02.03.2017

vj2

Index : Yes

Internet: Yes

To

1. The Subordinate Judge,
[Rent Control Appellate Authority]
Coimbatore

2. The Principal District Munsif
(Rent Controller), Chidambaram

PUSHPA SATHYANARAYANA,J.,

vj2

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