

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1972 of 2013
and
M.P.Nos.1 and 2 of 2013**

G.D.Manoharan (Deceased)

2.M.Jayalakshmi

3.M.Ravikumar

4.M.Selvi

5.M.Rajkumar

6.M.Jayanthi

7.M.Sivakumar .. Petitioners

Vs.

1.J.Priya

2.J.Radhika

3.J.Rajesh ..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 13.02.2013 passed in R.C.A.No.21 of 2008, by the learned Subordinate Judge, Tambaram, confirming the Judgment and Decree dated 15.03.2005 passed by the learned District Munsif, Alandur in RCOP.No.23 of 2002.

For Petitioners : Mr.A.Prabhakaran

For Respondents : Mr.N.Baskaran

ORDER

The tenant in RCOP.No.23 of 2002, on the file of the District Munsif Court, Alandur, is the civil revision petitioner before this Court. Challenging the order passed in RCA.No.21 of 2008, dated 13.02.2013, confirming the order passed by the Rent Controller in RCOP.No.23 of 2002, dated 15.03.2005, on the file of the District Munsif Court, Alandur.

2.It is the case of the respondents/landlords is that the property bearing Door No.39 Appavoo Mudali Street, Alandur, Chennai-600 016 belongs to the landlords. Prior to the purchase of the property by the landlords, there were totally four tenants by name Latha, Ramesh,

Bhavani and G.D.Manoharan and on the purchase of the property by them, the two tenants namely Latha and Ramesh were handed over the possession of their portions to the mother of the landlords. The tenant and another tenant namely Bhavani, who were originally residing in small portions on the rear side of the property, had requested the mother of the landlords and the tenant, who was handed over the possession of the portion, which was in the occupation of Ramesh and the other tenant Bhavani was handed over the possession of the portion which was in the occupation of the Latha and thus the tenant G.D.Manoharan and Bhavani were continued to be tenants of the portions, paying the monthly rent of Rs.300/- each exclusive of electricity charges to the mother of the petitioners/landlords.

3.It is further case of the landlords that this tenant and the other tenant Bhavani were paid the monthly rent till October 1989. The mother of the landlords Smt.Rajeswari @ Easwari, expired on 02.12.1989, and as the landlords were all minors as on that date, they were looked after by their grandmother Smt.Vaduvambal, who had also taken care of the petition property. The tenant G.D.Manoharan and other tenant Bhavani had committed willful default in paying the monthly rents of Rs.300/- each, per month from

November, 1989. Due to non payment of rent, the respondents/landlords has sent a lawyer notice on 10.02.1998 to the petitioner/tenant and another tenant Bhavani, demanding them to pay the arrears of the monthly rents from November, 1989 for which the petitioner/tenant has given a reply on 05.03.1998 and the other tenant Bhavani had sent a letter dated 05.03.1998 to the Advocate of the landlords, stating that she had handed over the possession of the portions, which is in her occupation to the petitioner/tenant.

4.The landlords also come forward by saying that the tenant continued to squat on the property belonging to the landlords without paying the monthly rents to them, even after their demand in this regard. Therefore, the petitioner/tenant has committed the act of willful default and the petitioner/tenant has no justifiable cause or reason to withhold the rent and the petitioner/tenant is liable to be evicted on the ground of 'willful default' in paying the rents from November, 1989 to till February, 2002, by totally for 148 months to the tune of Rs.44,400/-.

5.The landlords also states that they are now living in rental house in the above address, but the petitioner/tenant has failed to hand over the possession of the property to the landlords for their

own occupation, apart from having committed willful default in paying the monthly rents also to the landlords, for which the landlords are legally entitled. Therefore, they were filed the above petition on the ground of willful default and also on the ground of the bonafide requirement of the entire portion in the occupation of the tenant for own use and occupation of the landlords in RCOP.No.23 of 2002, before the learned District Munsif Court, Alandur.

6.On receipt of the notice in the said RCOP.No.23 of 2002, the tenant, who is the respondent in RCOP.No.23 of 2002, denying the entire averments, the petitioner/tenant has stated in his counter that he has paid the rent very promptly and she had paid the rent to the grandmother of the landlords Tmt.Vaduvambal, who had looked after the welfare of the landlords. The said grandmother of the landlords Tmt.Vaduvambal, had orally instructed to pay the property tax to the Alandur Municipality and the following dates property tax was paid by this petitioner/tenant:

- "1. .On 19.03.1993 under Receipt No.004670 Paid a sum of Rs.1,043.00.
2. On 31.03.1993 under Receipt No.06410 paid a sum of Rs.418.00.
3. On 04.03.1994 under Receipt No.032946 paid a

sum of Rs.852.00.

4. On 18.03.1997 under Receipt No.2082 paid a sum of Rs.2,210/-.
 5. On 10.01.2000 under Receipt No.034389 paid a sum of Rs.483/-.
 6. On 06.09.2000 under Receipt No.034389 paid a sum of Rs.483/-.
 7. On 10.04.2001 under Receipt No.146778 paid a sum of Rs.966/-.
- in all paid a total sum of Rs.6,938/-"

7.The tenant also states in his counter that he has paid the rent upto April, 1998 and as on date of filing of the said RCOP, viz., upto March 2002, the tenant is liable to pay the rent for 168 months amounting to Rs.30/- X 168 = Rs.5,040/-, since already this tenant had paid a sum of Rs.6,938/- towards tax and as such, this tenant had paid an excess amount of Rs.1,898/- and the payment made by the tenant is only for the benefits of the landlords alone. The tenant also states that the rental amount is not Rs.300/-, it is only Rs.30/- p.m.

8.The tenant states that thus being the case, as such there is

no question of willful default in payment of monthly rent arise, in this case, the alleged ground is created for the purpose of evicting the tenant from the petition premises.

9.The tenant also states that the other ground raised by the landlords that the petition premises is required for the purpose of their own use and occupation is not at all a bonafide one, since the landlords are lived in a very safety manner and the landlords are not at all required the petition premises for their own use and occupation. Therefore, the alleged ground is wantonly set up and filed this vexatious application. Therefore, he prayed the Rent Controller to dismiss the Rent Control Proceedings.

10.Considering both side cases, the learned District Munsif, Alandur was pleased to allowed the Rent Control Proceedings in RCOP.No.23 of 2002, on the ground that the Rent Controller has considered that as per the statement of the 1st petitioner in RCOP.No.23 of 2002, except the petition mentioned property, the landlords have no other property and they are presently living in a rented house at Door No.15, 5th Street, Indra Gandhi Nagar, Adambakkam, Chennai, as a tenant under one Narayanaswamy and to evidence the same has marked Ex.P2 the receipts for payment of rent

paid by the petitioners.

11.It is also stated that though the tenant in his counter has stated that the requirement of the petition mentioned property is not a bonafide one, yet he has not denied the fact that the landlords are residing in a rented house, Ex.R9, is the lawyer notice issued by the landlords to the tenant dated 24.02.2000, in which it has been stated that the landlords are residing in a rented house. As per the provision of bonafide requirement under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is stated as follows:

“(2)A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, or

(ii)that the tenant has after the 23rd October, 1945

without the written consent of the landlord-

(a) transferred his right under the lease or sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so, or

(b) used the building for a purpose other than that for which it was leased, or

(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, or

(iv) that the tenant has been convicted under any law for the time being in force of an offence of using the building or allowing the building to be used for immoral or illegal purposes, or

(v) that the tenant has been guilty of such acts and conduct which are nuisance to the occupiers of other portions in the same building or of buildings in the neighbourhood, or

(vi) that where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, or

(vii) that the tenant has denied the title of the

landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected."

12.The Rent Controller also allowed the Rent Control Proceedings on the ground of willful default since the Rent Controller is confirmed that the tenant has committed willful default and not paid the rental amount, though the tenant has produced the several documents, but except the receipt Ex.R4, there is no other documents to prove that the tenant has paid the excess amount of Rs.1,898/-. Therefore, the learned Rent Controller has allowed the RCA.

13.Challenging the said order in RCOP.No.23 of 2002, this petitioner/tenant has filed RCA.No.21 of 2008, before the Sub-Judge, Tambaram, on the ground that though the landlords raised two grounds that the tenant has committed willful default and also the bonafide requirement, but the tenant has stated that the landlords are not residing at Door No.15, 5th Street, Indra Gandhi Nagar, Adambakkam, Chennai, as a tenant under one Narayanaswamy, who is the owner of the said property and the landlords were not examined as witnesses to establish the case of the tenant.

14.The tenant also raised the grounds stating that except the Ex.P2, the landlords were not produced any rental receipt before the trial Court. Therefore, without considering those facts, the Rent Controller has allowed the RCA.No.21 of 2008 directed to vacate the petition premises to the tenant.

15.Considering both side cases, the learned Rent Control Appellate Authority viz. Sub-Judge, Tambaram, order dated 13.02.2013 dismissed the Rent Control Appeal filed by the petitioner/tenant in RCA.No.21 of 2008, on the ground that, it is the case of the landlords that the tenant has not paid the rental amount from March

2002 at the rate of Rs.300/- per month, on the other hand, the petitioner/tenant stated that the quantum of rent is Rs.30/- only and not Rs.300/-. Though the documents produced by the tenant, it shows that Ex.R1 is a rental receipt, which shows the rent as Rs.30/- only, paid to the landlords in the year 1987. But, the Court states that it is a normal practice in every tenancy that the monthly rent can be increased every year at a certain percentage or once in a specific period agreed by the parties, but, in this case, there is no whisper from the pleadings of the petition that there is such an agreement for periodical increase of rent. Hence, on the basis of Ex.R1, this Court is inclined to fix monthly rent at the rate of Rs.30/- only. The learned Rent Controller has rightly appreciated this aspect which requires no interference by this Court. Therefore, though the tenant has paid the house tax stands in the name of one K.K.Shanmugam by producing the house tax demand notice, the tenant has taking advantage that he has paid the house tax. Since the respondent is the tenant in the petition premises, the house tax demand notice for the said property might have been served on the addressee available in the petition property and hence, the respondent by way of mere filing the demand notice cannot take advantage of the same in his favour. Therefore, the payment of house tax is false one, it is willful default for non payment of rent amount. The Rent Control Appellate Authority also

states that the owners occupation, since the tenant would contend that they are residing in rental House at No.28/14, 5th Street, Indira Colony, Adambakkam, Chennai-88. In support of their contention, they have produced the rental receipt as Ex.P2 issued by their landlords. Therefore, both the Courts committed willful default on the owners occupation, and the Rent Control Appeal is dismissed. Challenging the said order of dismissal, this present Civil Revision Petition has been filed by the petitioner/tenant.

16.I heard Mr.A.Prabakaran, learned counsel appearing for the petitioners and Mr.N.Baskaran, learned counsel appearing for the respondents and perused all the materials available on record.

17.It is the case of the landlords that the tenant is under the occupation of the rental portion for the monthly rent of Rs.300/-, even assuming that the rental amount of Rs.30/-, the payment receipt in respect of the house tax alleged to be made by the tenant was produced before the Rent Control Court and the same was marked as Ex.R5. Thus being the case, the tenant has produced the rent receipt for supporting his case by saying that as per the oral instructions of the landlords' grandmother namely Vaduvambal, he has paid the house tax amount and this point also not acceptable one

and the tenant have no right to pay any tax called by the local municipality. Apart from this, it is stated by the landlords that the petition mentioned property was purchased by their mother in the year 1987. Even assuming that the property let out by the petitioner/tenant, he would be continued as the tenant and that the landlords are the original owner of the property, they have the every right to deal with the property.

18.This was considered by this Court and the Hon'ble Apex Court in various judgments that when the property was let out to the tenant and if the landlords need in bonafide requirement, the tenant have no right to say anything and he has to vacate the premises, because the property was absolutely belongs to the landlords and they have every right to deal with the property on his own willingness dealing with at any point of time.

19.In a recent judgment passed by the Hon'ble Apex Court very clearly held that if the landlords wants the premises occupied by the tenant, it is their bounded duty to return or handing over the property to the landlords.

20.Admittedly, the petitioner/tenant is in possession of the

property, which belongs to the respondents/landlords from the year 1987 for more than 30 years. It is an unfortunate case that when the landlords owned the petition premises as the owner and let out the property for meagre rental amount of Rs.300/- which was denied by the tenant, who are residing in rental house in the other places. In fact, as per the provision under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is cited supra, the landlords had proved his case for bonafide requirement.

21.It is the case of the respondents/landlords is that except this property, he has not owned any other property in the city and he is residing only in the rental property. As per the provision under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the landlords have make out the case before the Rent Controller and the same was considered by both the Courts in a proper and prospective manner. Therefore, there is no necessity warranting interference with the orders passed by the learned Rent Control Appellate Authority as well as the Rent Controller and hence, this Civil Revision Petition is liable to be dismissed.

22.In the result:

(a) this civil revision petition is dismissed, by

confirming the order passed in RCA.No.21 of 2008, dated 13.02.2013, on the file of the Subordinate Judge, Tambaram, confirming the Judgment and Decree in RCOP.No.23 of 2002, dated 15.03.2005, on the file of the District Munsif, Alandur;

(b) the petitioners/tenants are directed to vacate the premises and hand over the vacant possession to the respondents/landlords on or before 31.05.2017, failing which, the respondents/landlords are hereby directed to proceed the Execution Proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

27.01.2017

Note:Issue order copy on 27.06.2017

Internet:Yes

Index:Yes

vs

To

1.The District Munsif,
Alandur

2.The Subordinate Judge,
Tambaram.

M.V.MURALIDARAN, J.

VS

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