

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2017

Delivered on : 05.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.2208 of 2012

and

CMP.No.2008 of 2016

Chitranjan

.. Petitioner

vs

1.Andal

2.Shanmugam

3.Jothi

4.Theertharaj

.. Respondents

Revision under Section 25 of the Tamil Nadu (Lease and Rent Control) Act, 1960 as amended under Act 23, 1973, as against the judgment passed by the Principal District Judge, Puducherry in R.C.A.No.31 of 2011 dated 23.02.2012, confirming the order passed by the Rent Controller, Puducherry in H.R.C.O.P.No.48 of 2005 dated 29.06.2011.

For Petitioner

:

Mr.Sai Srujan
Tagivivekmani

for M/s.P.V.S.Giridhar &
Sai Associates

For Respondent

:

Mr.S.Subbiah
Senior Counsel
for M/s.P.Raja

ORDER

This Civil Revision Petition has been filed by the petitioner against the judgment dated 23.2.2012 passed in R.C.A.No.31 of 2011 on the file of the Principal District Judge, Puducherry, confirming the order dated 29.06.2011 passed in H.R.C.O.P.No.48 of 2005 on the file of the Rent Controller, Puducherry.

2. The petitioner is the landlord and the respondents are tenants.

3. The petitioner has filed petition under Section 10(3)(c) of the Pondicherry Buildings Lease and Rent Control Act, 1969 against the respondents seeking to evict them from the premises bearing Door Nos.126 and 128, Bharathi Street, Pondicherry Town on the ground of additional accommodation/personal occupation.

4. There is no dispute that the petitioner is the absolute owner of double storeyed commercial cum residential building bearing Door No.151, Vysyal Street and he along with his family members are residing on the first floor and out of three shop premises on the

ground floor, two shops bearing Door Nos.126 and 128 clubbed together were originally leased out to one Vinayaga Acahari, who is the husband of the 1st respondent and father of the respondents 2 to 4 under lease agreement dated 01.3.2001 for a monthly rent of Rs.1,900/- and Vinayaga Acahari paid an advance amount of Rs.30,000/-. After the demise of Vinayaga Achari being legal heirs, the respondents 1 to 4 continued the tenancy.

5. The petitioner initiated rent control proceedings against the respondents seeking eviction on the ground of additional accommodation/personal occupation contending that he was working as Assistant Project Officer and was possessing Post Graduate Diploma in M.Sc. Psychology and also possessed Post Graduate Diploma in Guidance and Counseling. Now the petitioner proposes to start the profession of guidance and counseling in the premises which were leased out to the respondents. Therefore, the petitioner in need of the shops in question for the purpose of additional accommodation/personal occupation.

6. Before the Rent Controller, the petitioner examined himself as P.W.1 and marked Exs.P1 to P16. The 3rd respondent examined

himself as R.W.1 and marked Ex.R1.

7. Upon consideration of the oral and documentary evidence, the learned Rent Controller, dismissed the petition. Aggrieved by the same, the petitioner has preferred R.C.A.No.31 of 2011. By the judgment dated 23.2.2012, the learned Rent Control Appellate Authority dismissed the appeal, thereby confirmed the order of the learned Rent Controller. Aggrieved by the concurrent findings of the Courts below, the petitioner has filed the present Civil Revision Petition.

8. Assailing the order of the Courts below, the learned counsel for the petitioner submitted that since the petitioner in need of the petition mentioned premises, he had initiated the rent control proceedings. However, the Courts below erred in disbelieving the evidence of the petitioner on the ground that he had not obtained prior permission for attending to counselling work. He would submit that the Courts below failed to note that there is no absolute embargo on a Government servant undertaking part-time private work out side office hours and have misconstrued the service rules. The Courts below erred in appreciating that once the landlord requires a premises owned

for his occupation and evidence has been let in in that regard, the petition for eviction cannot be rejected. The learned counsel further submitted that the Courts below erred in appreciating that the respondents have been keeping the premises under lock and key for nearly six years and that they have not obtained any licence from the Municipality for running jewellery shop. Therefore, the learned counsel for the petitioner prayed for setting aside the findings of the Courts below.

9. Reiterating the findings of the Courts below, the learned counsel for the respondents submitted that upon appreciation of the oral and documentary evidence, the Courts below have rightly dismissed the petition. The learned counsel would submit that there is no *bona fide* in the petition filed by the petitioner. Moreover, the petitioner is a Government servant and he cannot start counselling centre while he was in service and hence, prayed for dismissal of the Civil Revision Petition.

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10. I have considered the submissions of Mr.Sai Srujan Tagivivekmani for M/s.P.V.S.Giridhar & Sai Associates, learned counsel appearing for the petitioner and Mr.S.Subbiah, learned Senior Counsel

for Mr.P.Raja, learned counsel appearing for the respondents and also perused the materials available on record.

11. The grievance of the petitioner is that the petition mentioned premises is required for his personal occupation to start profession of guidance and counseling. On the other hand, it is the case of the respondents that the petitioner is hell-bent on evicting them from the petition mentioned premises by one way or the other making false claims. More over, the petitioner was working in Government office and he cannot start the profession of guidance and counseling in the petition mentioned premises.

12. Before going into the point whether the requirement of the petitioner was *bona fide*, let us first consider the plea raised by the respondents that whether the eviction petition filed by the petitioner is not maintainable on the ground of wrong quoting of provision.

13. According to the respondents, the eviction petition was filed under Section 10(3)(c) made it very clear that the landlord who occupies residential premises can only seek eviction of his tenant for his residential purposes and therefore, the eviction petition filed by the

petitioner was not maintainable. The learned Rent Control negated the plea of the respondents and held that the eviction petition filed by the petitioner is maintainable. However, the learned Rent Control Appellate Authority, while answering the said point in the appeal filed by the petitioner, held that the holding of the learned Rent Controller that instead of quoting provision of law under Section 10(3)(a)(iii) of the Act by mistake the petitioner has quoted the provision under Section 10(3)9c) of the Act is untenable, because subsequent to the filing of counter by the respondents a plea for amendment of section of law has not been placed by the appellant before the trial court and also holding of the learned Rent Controller that the petition is maintainable in view of misquoting of provision of law cannot be accepted and thus, the petition is not maintainable.

14. It is to be noted that as against the findings of the learned Rent Controller qua maintainability of the petition decided in favour of the petitioner, the respondents have not preferred any appeal. But the learned first appellate Court in an appeal filed by the petitioner, it has held that the petition is not maintainable on the ground of wrong quoting of provision.

15. It is settled that when the parties have understood the case and adduced evidence, the question of lack of pleadings or misquoting of provision cannot be a ground to disallow eviction. Therefore, instead of quoting the provision of law under Section 10(3)(a)(iii) of Pondicherry Buildings(Lease and Rent Control) Act, by mistake the petitioner has quoted the provision under Section 10(3)(c). Thus, the learned Rent Control Appellate Authority erred in holding that the eviction petition is not maintainable on the ground of misquoting of the provision. Resultantly, the eviction petition filed by the petitioner against the respondents is very well maintainable.

16. A crucial point that arises for consideration of this Court is as to whether the requirement of the petitioner is *bona fide*.

17. The petitioner is in need of the petition mentioned premises on the ground of personal occupation for doing his profession of guidance and counselling. No doubt, the petitioner is a Government employee working under the Government of Puducherry and he was possessing M.Sc., Psychology and Diploma in Guidance and Counselling.

18. The Courts below have held that as a Government employee, the petitioner is bound by Central Civil Services and Conduct Rules, which expressly barred any private consultancy work by Central Government Employees and the petitioner has not even taken any single step to start profession of guidance and counselling and therefore, there was no *bona fide* in the requirement.

19. In **Shive Sarup Gupta v. Dr. Mahesh Chand Gupta**, reported in 1999 (6) SCC 222, the Hon'ble Supreme Court, while considering the *bona fide* requirement has held thus:

"..... the term "bona fide" refers to a state of mind. The requirement is not mere desire. The degree of intensity contemplated by "requires" is much higher than mere desire. The phrase "required bona fide" is suggestive to legislative intent that a mere desire, which is the outcome of a whim or fancy is not taken note of by the rent control legislative. A requirement in the sense of felt need, which is an outcome of a sincere honest desire in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or any other member of the family would entitle him to seek ejectment of the tenant. Looked at from any angle, in setting of the facts

and circumstances protruding the need of the landlord and its bona fide would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the armchair of the landlord and then ask the question to himself – whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, the positive material brought on record by the tenant enabling the Court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretense or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance of the landlord.”

20. Referring to the decision in **Shive Sarup Guptav. Dr.Mahesh Chand Gupta**, supra, in the decision in **South Indian Bank Ltd. v. Saroja Govindarajan**, reported in 2001 (2)LW 647, this Court held as under:

" Thus the Supreme Court has given a categorical guideline to find out as to the bona fide requirement of the premises by the landlord. The

bona fide requirement has to be culled out from the averments contained in the petition and from the evidence adduced in the proceedings and on such objective determination, if it is proved with certain materials, that the requirement is bona fide, then, definitely, under the provisions of the Act, the landlord is entitled to an order of eviction. The proof required for proving the said bona fide is also only to the satisfaction of the Court to arrive at an objective determination and it is not always necessary to prove the bona fide beyond all reasonable doubt as in criminal proceedings."

21. In ***Siddalingamma and another v. Mamtha Shenoy***, reported in **2002 (1) LW 600**, it was held that Rent Control Legislation generally leans in favour of the tenant; it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In the said decision, it was further held as under:

"... The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not

command or compel him to squeeze himself and dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises. The bona fide requirement is in present and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire."

22. Keeping these principles in mind, let us consider whether the requirement of the petitioner is *bona fide*. In his evidence, P.W.1 deposed that he was working in his office from 8.45 A.M. to 5.45 P.M. and after his office hours, he proposes to start the profession of guidance and counselling in the shop premises under the occupation of the respondents.

23. The petitioner's requirement was assailed by the respondent contending that the petitioner has sole intention to get rid of the tenant has filed the eviction petition on an unacceptable ground and that he had no intention to run a profession of guidance and counselling as alleged and no particulars of his profession was established by the petitioner to prove the fact that he really intended to start the profession.

24. The Courts below, particularly, the learned Rent Control Appellate Authority held that either prior to the filing of the eviction petition or till his cross-examination, the petitioner has not obtained permission for doing such profession. Moreover, undertaking the private consultancy work is prohibited under Rule 15(8) of the Central Civil Services (Conduct) Rules. The learned Rent Control Appellate Authority erred in failing to note that there was no absolute embargo on a Government servant undertaking part-time private work out side office hours.

25. The petitioner has produced Ex.P16-letter given to his department for getting permission for practising counselling and guidance after finishing his duty hours. In Ex.P16-request letter, the petitioner had stated that he was proposing to start guidance and counselling centre, for which permission was earnestly requested and the petitioner also assure that his counselling will not be a hindrance in his performing of duties as a technical officer in the office. The department has acknowledged the said letter and no orders yet passed. Applying permission to start practising counselling and grant of permission are between the petitioner and the department and the respondents cannot question the same and they have no way related

to the said aspect. Therefore, the Courts below erred in holding that the petitioner being a Government servant cannot function and do private consultancy work.

26. It is to be noted that a Doctor who was working in Government Hospital was running a private consultancy and there was no prohibition on a Government Doctor undertaking private consultancy. If the petitioner conducted the guidance and counselling without permission of the Government, he has to face the consequences, but not suffered by the respondents. In his eviction petition, the petitioner clearly stated that he was ready to resign the job also. Thus, the Courts below erred dismissing the petition without reading the pleadings of the petitioner.

27. One thing needs to be pointed out in this case that the third respondent was running a jewellery shop at No.135, Bharathi Street, Pondicherry and the fourth respondent was already running a jewellery shop as a tenant at No.119, Bharathi Street, Pondicherry. 1st respondent is home maker and the fourth respondent was working as Village Administrative Officer. In his evidence, R.W.1 admitted that the respondents are running two jewellery shops apart from the shop

in question. Thus, from the evidence of RW1, it is clear that the respondents are running jewellery shops in two other places. Further, in its judgment, the learned Rent Control Appellate Authority held that it was understood from the evidence of RW1 that the petition mentioned premises was under lock and key and there was no licence obtained by the respondents for running a shop in the petition mentioned premises. When that being the position, the learned Rent Control Appellate Authority erred in dismissing the appeal preferred by the petitioner against the order of the learned Rent Controller.

28. In its order, the learned Rent Control Appellate Authority further observed that it was not the prayer of the petitioner on the ground under any one of the sub-section 10(2)(b) of the Act. The aforesaid finding of the learned Rent Control Appellate Authority is not acceptable on the ground that when the learned Rent Control Appellate Authority finds that the premises in question was locked by the respondents and there was no licence obtained by the respondents in running the jewellery shop, it ought to have considered the prayer of the petitioner. The learned Rent Control Appellate Authority erred in appreciating that the respondents have been keeping the premises under lock and key for nearly 5 to 6 years, which has been admitted

by the respondents and that the respondents have not obtained any licence from the Municipality for running the jewellery shop.

29. The learned counsel for the respondents submitted that the petitioner can start his private practice in another vacant shop in the petition mentioned premises building. The aforesaid submission of the learned counsel for the respondents cannot be countenanced as it will not be open to the tenant to dictate as to the requirement of the landlord. It is not fair on the part of the tenant to dictate as to where the landlord shall carry on his business. According to the petitioner, no shop premises in the building is kept vacant.

30. This Court is of the view that considering the principles laid down, the main question that has to be decided is the *bona fide* intention of the landlord to have the personal occupation asked for. As far as the facts and circumstances of the present case, the Courts below never had the opportunity to consider the subsequent events. Admittedly, the premises in question was under lock and key and also the requirement of the petitioner to start profession of guidance and counselling in the petition mentioned premises is *bona fide*. Once it is established that the demand is *bona fide*, it is for the petitioner to

choose the portion for his personal occupation and it is not for the respondent to dictate or direct the petitioner to take another shop which was said to be vacant.

31. In view of the categoric finding as aforesaid based on the pleadings and submissions and/or documents on record, I do not propose to delve into the various decisions relied on by the learned counsel for the respondent.

32. Having regard to the related facts and circumstances of the case, this Court finds that the Courts below erred in dismissing the eviction petition of the petitioner, as the petitioner has established his *bona fide* requirement of the petition mentioned premises. When the findings of the Courts below are perverse, exercising its power under revisional jurisdiction, the High Court can interfere with the same.

33. In the result,

(a) The Civil Revision Petition is allowed by setting aside the judgment passed in R.C.A.No.31 of 2011 dated 23.2.2012 on the file of the learned Principal District Judge, Puducherry and the order and

decreetal dated 29.6.2011 on the file of the learned Rent Controller, Puducherry in H.R.C.O.P.No.48 of 2005.

(b) The time for eviction is two months from the date of receipt of a copy of this order.

(c) No costs. Consequently, connected miscellaneous petition is closed.

05.09.2017

Note: Issue order copy on 05.12.2018

vs

Index : Yes

To

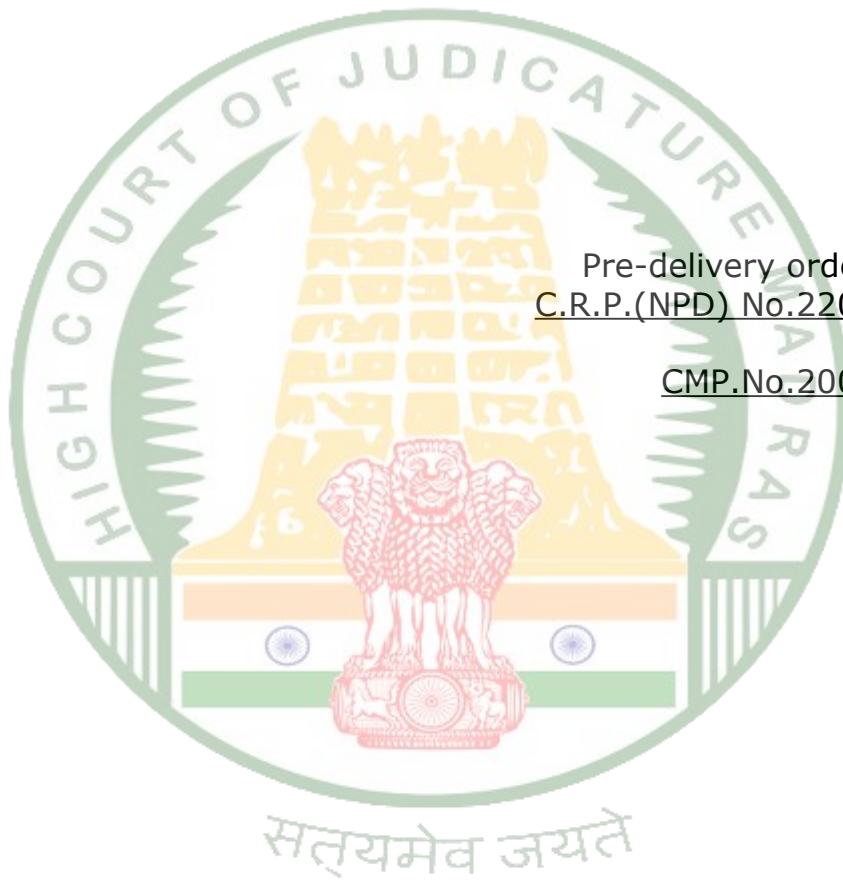
1. The Principal District Judge,
Puducherry.

2. The Rent Controller,
Puducherry.

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M.V.MURALIDARAN, J.

vs



Pre-delivery order made in
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and
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