

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.618 of 2010

|                                  |                                    |
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| Orders reserved on<br>27.07.2017 | Orders pronounced on<br>21.09.2017 |
|----------------------------------|------------------------------------|

Dr.K.Ali Shariff

.. Petitioner

Vs.

1.T.N.S.Jayaraj  
2.Arul  
3.Alphonse  
4.Augustine @ Agutti

.. Respondents

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, against the judgment and decree dated 11.01.2010 made in R.C.A.No.1092 of 2005 on the file of the VII Small Causes Court, Chennai, reversing the order dated 23.08.2005 made in R.C.O.P.No.509 of 2005 on the file of the XII Small Causes Court, Chennai.

For Petitioner : Mr.M.Mohamed Shafi

For Respondents : Mr.G.Anbumani  
Mr.R.Ganesan

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 11.01.2010 made in R.C.A.No.1092 of 2005 on the file of the VII Small Causes Court, Chennai, reversing the order dated 23.08.2005 made in R.C.O.P.No.509 of 2005 on the file of the XII Small Causes Court, Chennai.

2. The petitioner is landlord and respondents are the tenants. The petitioner filed R.C.O.P.No.509 of 2005 on the file of the XII Small Causes Court, Chennai, against the respondents/tenants for eviction on the ground of owner's occupation and subletting the petition premises. According to the petitioner, he is owner of the petition premises, which is non residential one. The petitioner is a registered medical practitioner, he worked in Medical Department of Chennai Corporation and retired in the month of December 1997. The petitioner is at present residing in a rented house. The petitioner's wife is a retired school teacher and she is suffering

partial paralytic attack. His first son is mentally retarded person. There are seven residential portions in the petition building owned by the petitioner and one non residential portion, which is under occupation of the respondents. The petitioner is practising medicine and there is no separate room for running his clinic. The present premises, where he is having clinic is not convenient for him to reside as well as to practise medicine. The petition premises was rented out to the first respondent. He has sublet the petition premises to the respondents 2 to 4 and first respondent is not carrying on business therein. In the circumstances, the petitioner filed the above R.C.O.P. for eviction.

3. The first respondent filed counter statement and denied all the averments made in the R.C.O.P. The first respondent denied that the petitioner is a medical practitioner and that he is practising medicine. The portion under occupation of the respondents is not convenient for the petitioner's occupation. The petitioner is in occupation of the residential portion in the petition building and he ought to have sought for additional accommodation. The respondents 2 to 4 and first respondent are close relatives and first respondent is carrying on partnership business with respondents 2

to 4. He has not sublet the premises to the respondents 2 to 4. The R.C.O.P. is hit by the principles of resjudicata, as the earlier R.C.O.P.No.1562 of 2002 filed by the petitioner was dismissed and the present petition for the very same relief is not maintainable.

4. Before the learned Rent Controller, the petitioner examined himself as P.W.1 and examined one Abdul Kareem, husband of landlord of the rented house, where the petitioner is residing, as P.W.2 and marked 10 documents as Exs.P1 to P10. First and third respondents were examined themselves as R.W.1 and R.W.2 and marked one cheque as Ex.R1.

5. The learned Rent Controller considering Ex.P4/Medical Registration Certificate held that the petitioner is a medical practitioner, he is residing in a rented house, his requirement of the petition premises for owner's occupation is bonafide and ordered eviction on that ground. The learned Rent controller dismissed R.C.O.P. with regard to subletting of petition premises holding that the petitioner failed to prove that the first respondent sublet the petition premises to the respondents 2 to 4.

6. Challenging the said order of eviction dated 23.08.2005 made in R.C.O.P.No.509 of 2005, the respondents filed R.C.A.No.1092 of 2005 on the file of VII Small Causes Court, Chennai.

7. The learned Appellate Authority considering the materials on record, reappraising the evidence let in by the parties and order of the learned Rent Controller, allowed the R.C.A. filed by the respondents holding that the petitioner failed to prove that he is practising medicine and the petition premises will not be convenient for the petitioner to carry on his medical practise.

8. Against the said order dated 11.01.2010 made in R.C.A.No.1092 of 2005 reversing the order dated 23.08.2005 made in R.C.O.P.No.509 of 2005, the present Civil Revision Petition is filed by the petitioner.

9. The learned counsel for the petitioner submitted that the learned Appellate Authority erred in holding that no averment was made in earlier R.C.O.P.No.1562 of 2002 (petition copy, judgment

and decree were marked as Exs.P5 to P7) filed by the petitioner about medical practise by the petitioner. The petitioner has stated about the inconvenience of practising medicine in the rented house. The learned Appellate Authority ought to have seen that the petitioner has stated about the vacancy of residential portion in the petition building and the same was not disputed by cross-examination by the respondents. Vacancy of residential portion in the petition building is not relevant, as the R.C.O.P. is for eviction of the respondents from the non residential portion. The learned Appellate Authority is not correct in holding that the petition premises is not suitable for the petitioner to run dispensary. It is not for the tenant to dictate terms to the landlord as to which portion is convenient for the landlord to reside or to carry on business. The petitioner has proved his bonafide requirement for owner's occupation. The petitioner was not in the occupation of any of the portions in the petition building at the time of filing of R.C.O.P. and the petitioner has stated that tenant in occupation of the residential portion in the first floor agreed to vacate the said portion as and when required by the petitioner. The petition filed for owner's occupation is maintainable in the circumstance. In any event, the petitioner is not occupying any non residential portions in the

petition building. Admittedly, there is only one non residential portion in the petition building, which is under occupation of the respondents. Subsequent to filing of R.C.O.P., the petitioner has shifted his residence to the petition building and it will be convenient for him to look after his paralytic attack wife and mentally retarded son and to practise medicine in the petition premises. In support of his contentions, he relied on the following judgments:

- (i) AIR 2002 SC 1739 (Kanniammal v. Chellaram);
- (ii) Order dated 02.09.2010 made in C.R.P.NPD(MD)No.1541 of 2010 (K.M.N.Jegannathan v. S.Chidambaram);

10. Per contra, the learned counsel for the respondents submitted that petition building is predominantly a residential building and therefore, the petitioner is not entitled to seek eviction of the respondents for owner's occupation of the non residential building. The petitioner has admitted in his cross-examination that he has not produced any document to show that he is practising medicine in a residential portion occupied by him on rent. The petitioner has not proved his bonafide requirement. According to the respondents, petitioner is a Unani doctor and mostly people of Muslim community take Unani treatment. The portion, where the

petitioner residing is surrounded by Mulsim community and that will be the best place for the petitioner to practise his medicine. There is vacant portion in the ground floor from the year 2005 and the petitioner could have occupied the said premises. The petitioner is occupying residential portion of the said building and he can ask for only additional accommodation and not owner's occupation. In support of his contention, he relied on the following judgments:

(i) 1996 (II) CTC 492 (Gajendra Sha and another v. M.Govindarajan);

(ii) 1995 2 MLJ 27 (Nataraja Trading Company represented by its Partners and others v. K.Manohar);

11. Heard both sides and perused the materials available on record.

12. The petitioner has sought for eviction of the respondents on two grounds i.e., owner's occupation as well as subletting. The learned Rent Controller considering the pleadings, oral and documentary evidence, ordered eviction holding that the petitioner has proved his requirement of the petition premises for his own use and occupation and dismissed R.C.O.P. with regard to claim of the

petitioner that the first respondent has sublet the petition premises to the respondents 2 to 4. The learned Appellate Authority allowed R.C.A. filed by the respondents 2 to 4 on the ground that the petition building is predominantly a residential building, portion under occupation of the respondents is only non residential portion and the petitioner is not entitled to seek eviction on the ground of owner's occupation, when the building will not be convenient for petitioner for non residential purpose. This reasoning is not correct.

13. It is an admitted fact that the petition premises is let out for non residential purpose and the respondents are running provision and vegetable stores in the petition premises. The learned Appellate Authority failed to see that the petitioner is not seeking eviction of the respondents from residential portion for his non residential use. The petitioner has proved that he is a registered medical practitioner and he wants the petition premises to practise medicine. The learned Appellate Authority erred in accepting the contention of the respondents that the petition premises is not convenient or comfortable for the petitioner to shift clinic and practise medicine. The learned Appellate Authority also erred in

rejecting the stand of the petitioner for shifting the clinic on the ground that the present premises occupied by the petitioner is in broader road and the petition premises is in narrow road.

14. It is well settled that it is not for the tenant to dictate the terms to the landlord as to which portion or which building is convenient for the landlord to choose for his residence or non residential purpose. It is for the landlord to choose the building or portion of the building for his own occupation. The Court has to see that whether such requirement of the landlord is bonafide or not or such petition is filed with malafide intention for evicting tenant.

15. In the present case, the petitioner has proved that he is a medical practitioner and he requires the petition premises for his medical practise. It is not the case of the respondents that such requirement is not bonafide one. On the other hand, the respondents have gone to the extent of denying the fact that the petitioner is a medical practitioner. Secondly, they have contended that the petitioner has not proved that he is practising medicine in the premises occupied by him at the time of filing of R.C.O.P. Their contention is that the petition premises is not convenient for the

petitioner to practise medicine and he will not get patients in the petition premises. They have suggested that the petitioner must practise Unani medicine only in a predominant place, where the Muslim community are residing. These contentions are untenable. The learned Appellate Authority failed to consider whether the requirement of petitioner is bonafide or not and on extraneous and erroneous considerations, rejected the contention of the petitioner. The learned Rent Controller by properly appreciating all the materials on record held that the petitioner's requirement of the petition premises for owner's occupation is bonafide. In addition to the above fact, the learned Appellate Authority failed to see at the time of filing of R.C.O.P., the petitioner was residing in a rented house and not residing in the building in which the petition premises is part of the building. On the said admitted fact, the petition filed by the petitioner for owner's occupation is maintainable as the petitioner could not have filed petition for additional accommodation, as he was not in occupation of any of the portions of the building. For the above reason, order of the learned Appellate Authority is liable to be set aside and it is hereby set aside.

16. In the result, the Civil Revision Petition is allowed by setting aside the order dated 11.01.2010 made in R.C.A.No.1092 of 2005 on the file of the VII Small Causes Court, Chennai and order of the learned Rent Controller dated 23.08.2005 made in R.C.O.P.No.509 of 2005 is restored. The respondents are directed to vacate and handover the vacant possession of the petition premises to the petitioner, within two months from the date of receipt of a copy of this order. No costs.

21.09.2017

Index : Yes/No

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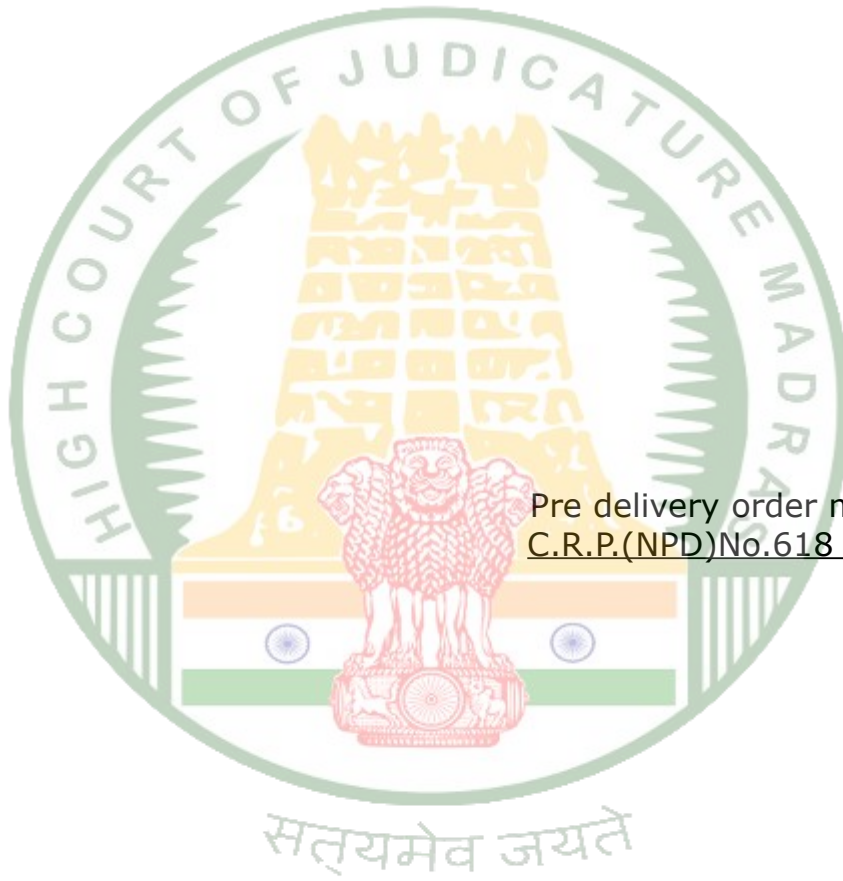
To

1. VII Small Causes Court, Chennai.
2. XII Small Causes Court, Chennai.

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**V.M.VELUMANI,J.**

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Pre delivery order made in  
C.R.P.(NPD)No.618 of 2010

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