

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2016

DELIVERED ON : 06.03.2017

CORAM

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

C.R.P. (NPD) No.3754 of 2013

and

M.P.No.1 of 2013

Soundara Rajan

.. Petitioner

vs

D.Sasikumar

.. Respondent

Revision filed under Section 25 of Tamil Nadu Buildings (L & R) Control Act, against the decree and judgment dated 22.08.2013 passed in R.C.A.No.15 of 2011 on the file of the Sub-Court, Vellore, confirming the order passed passed in R.C.O.P.No.43 of 2004 dated 19.01.2011 on the file of the Principal District Munsif Court, Vellore.

For Petitioner

: Mr.R.Margabandhu

For Respondent

: Ms.P.T.Asha

for M/s.A.Rajendra Kumar

ORDER

This Civil Revision Petition is directed against the judgment and decree dated 22.08.2013 passed in R.C.A.No.15 of 2011 on the file of the Subordinate Judge, Vellore, confirming the order passed in R.C.O.P.No.43 of 2004 dated 19.1.2011 on the file of the learned Principal District Munsif, Vellore. The revision petitioner is the tenant and the respondent is the landlord.

2. Brief facts are as follows: The premises in question and other property originally belonged to Dakshinamoorthy Chettiar, the father of the respondent and after the demise of Dakshinamoorthy Chettiar, there was a partition in the family of the respondent. As per registered partition dated 24.02.1997, the petition mentioned premises fell into the share of the respondent and on or after the partition, the respondent became the owner of the petition mentioned premises.

3. The petitioner was occupying the petition mentioned premises for his non-residential purpose and paying monthly rent of Rs.600/- Since the respondent had taken steps to run a garment

shop, he needs the petition mentioned premises for running his garment shop. The petition mentioned premises requires alteration to suit the purposes of the respondent for running his garment shop. Such alterations can be made only after demolishing the existing structure and putting up a reconstruction suitable for running the garment shop. The respondent was ready to demolish and put up construction within three months of delivery of the property to him. Therefore, the respondent requires the premises for immediate demolition and reconstruction and for his own use and occupation.

4. It is averred that the respondent was not owning any other building of his own in Vellore town suitable for running his garment shop. However, the petitioner was owning two shops in Beri Kalamman Koil Street and in fact, he had effected alteration of them and he was in possession and occupation of those two buildings. According to the respondent, two years ago, the petitioner agreed to vacate the petition mentioned premises, but for mala fide purpose, he was evading to vacate the premises. The respondent undertakes to start demolition work immediately on his getting delivery of the premises. Hence, the respondent filed petition under Sections 10(3)(a)(iii) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent

Control) Act (hereinafter referred to as "*the said Act*").

5. Resisting the petition the petitioner filed counter stating that the petition mentioned premises was not in any way connected with the respondent. The original owner Vaiduriyam Ammal gave the petitioned mentioned premises to the petitioner and when she had refused to receive the rent, the petitioner sent the rent by money order to her and the same was also returned. Without any reason, the respondent directing the petitioner to vacate the premises. Moreover, the respondent had not been informed as to how he became the owner of the premises. The petitioner has been paying the rent without any arrears and he had also invested huge amount by borrowing the amount from several persons. According to the petitioner, the respondent was attempting to evict the petitioner to rent out the premises to some one else with an object of getting higher rent. The petition mentioned premises was in good condition and there was no agreement between the petitioner and the respondent in respect of the petition mentioned premises. According to the petitioner, there was no bona fide in the petition filed by the respondent and prayed for dismissal of the petition.

6. Before the learned Rent Controller, the respondent examined himself as P.W.1 and marked Exs.P1 to P5. The petitioner examined himself as R.W.1 and he had also examined two witnesses as R.W.2 and R.W.3 and marked Exs.R1 to R9.

7. Upon consideration of the oral and documentary evidence, the learned Rent Controller allowed the petition on both grounds, thereby directed the petitioner to evict from the petition mentioned premises within two months. Aggrieved by the same, the petitioner had preferred an appeal being R.C.A.No.15 of 2011.

8. The Rent Control Appellate Authority, upon consideration of the rival submissions of both sides, dismissed the appeal. Assailing the concurrent findings of the Courts below, the petitioner has preferred the present Civil Revision Petition.

9. The learned counsel for the petitioner submitted that the Courts below failed to note that *bona fide* requirement was not pleaded as per Section 10(3) of the said Act either for the landlord or for any member of his family and that the Courts below failed to note that the respondent had not produced any piece of paper to show that he had

obtained permission for demolition and reconstruction. Therefore, in the absence of any such proof, there was no *bona fide* requirement. According to learned counsel, the respondent had not made out a case under Sections 10(3)(a)(iii) and 14(1)(b) of the said Act. The learned counsel further submitted that the Courts below erred in holding that the petitioner was doing business in three floor building and that the petitioner was not having any other business of his own. He would submit that the petitioner was running metal mart business from 1985 under valid tenancy agreement and had invested about Rs.30 lakhs for his business. Hence, the Courts below erred in ordering eviction of the petitioner.

10. Reiterating the findings of the Courts below, the learned counsel for the respondent submitted that after appreciating the oral and documentary evidence, the Courts below rightly ordered eviction of the petitioner from the petition mentioned premises and therefore, there is no illegality in the order of the Courts below.

11. I have considered the rival submissions of both sides and also perused the materials available on record.

12. According to the petitioner, there is no evidence to substantiate the requirement of the respondent/landlord under Section 10(3)(a)(iii) of the said Act. In other words, the requirement for invoking Section 10(3)(a)(iii) of the said Act stated in the petition is not correct. In the petition, the respondent pleaded that he was carrying on the business of garment and the petition mentioned premises required to run his garment business.

13. As far as the ground for own use and occupation is concerned, when this Court look into the order of the learned Rent Controller, it had not properly dealt with the said ground. There was no discussion in the order of the learned Rent Controller. On the other hand while dealing with the said ground, the learned Rent Controller Appellate Authority held that when this Court considers that whether the petition mentioned premises would be suited for running business of the landlord, in his evidence, the petitioner admitted that apart from the petition mentioned premises, he was owning two business buildings.

14. Though the petitioner pleaded that the respondent owning other business shops, nothing has been produced to prove the

same. Merely because, the petitioner is in occupation of other premises, the respondent is not entitled to take possession unless he had satisfied the ground under the said Act while considering the grounds for eviction. While considering the requirement, the law is settled that the requirement must continue till the final disposal of the eviction petition. In fact, in his cross-examination the respondent admitted that he had filed R.C.O.P.No.7 of 2009 for fixation of fair rent and also admitted that he wants enhanced rent. Therefore, the contention of the respondent that the petition mentioned premises required for his own occupation, *prima facie*, is not acceptable and also the requirement of the respondent is not *bona fide*.

15. When this Court looks into the evidence of the respondent, this Court finds that in his evidence the respondent admitted that he was owning shop measuring 147 square feet opposite to CMC Hospital, which would prove that the respondent has made false allegation in the petition that he was not having any other shop. But the fact remains that other shop was still available for the respondent to occupy and to do the garment business.

16. It is to be noted that in his evidence, the respondent

stated that he was running Javuli business in his house. To prove that the respondent was doing Javuli business in his house, no proof has been produced. In the absence of proof, it is to be held that the respondent was not running any business much less garment business and therefore, the requirement of the respondent was not *bona fide*. Therefore, this Court finds that the Courts below failed to note that respondent had failed to plead and establish the *bona fide* requirement under Section 10(3)(a)(iii) of the said Act.

17. It is settled law that a claim for eviction, on the ground of *bona fide* own occupation, is available to the landlord not only on the date of petition but it should continue to be there on the date of final adjudication of rights. If, in between the periods, there is a change of circumstances due to subsequent events, that is also a matter which should be taken into consideration by the Court.

18. Under Section 10(3)(a)(iii) of the said Act, a landlord can take possession of his property if he establishes that he *bona fidely* requires the premises for his own use and occupation. In the case on hand, the respondent had failed to prove before both the authorities that he was in *bona fide* need of the petition mentioned premises.

However, without any basis, the learned Rent Control Appellate Authority went wrong in holding that the requirement of the respondent was *bona fide*. Admittedly, as stated supra, the respondent has not established that he *bona fide* requires the petition mentioned property for his own use and occupation. Therefore, on the ground of owner's occupation, the respondent/landlord is not entitled to evict the petitioner from the petition mentioned premises.

19. The next ground seeking eviction of the petitioner from the petition mentioned premises is that the respondent required the petition mentioned premises for demolition and reconstruction for the purpose of doing Javuli business. No proof has been produced to show that the respondent had obtained permission from Vellore Municipal Corporation for demolition and necessary approval for reconstruction of a new building. In his evidence, the respondent admitted that he had not obtained planning permission for construction of a new building. In the absence of any such proof, it is to be held that there was no *bona fide* requirement for demolition and reconstruction.

20. Section 14(1)(b) of the said Act contemplates a building which is *bona fide* required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Thus, Section 14(1)(b) of the said Act does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site.

21. There is no evidence on record and/or proof to show that the respondent had applied to the competent authority and got the plan approved for construction of a new building after demolishing the old structure. The respondent has not stated anything in respect of cost of construction. Therefore, from the materials available on record, it is seen that the respondent had not satisfactorily established before the Courts below that he had means to reconstruct the building and the respondent had failed to give details relating to his means to construct a new building. Moreover, he had not disclosed, how he was going to raise funds for reconstruction.

22. While granting permission under Section 14(1)(b) of the said Act, all relevant materials for recording a finding about the requirement of the landlord for demolishing the building and reconstruction of a new building have to be taken into account.

23. Though the respondent stated that he was ready to demolish and put up reconstruction within three months of delivery of the petition mentioned premises, the respondent has not established his means to put up a new building.

24. Observing the change in scenario in country and that loans are easily available for property owner to put up new construction, in 2007 (2) CTC 518 (*Lakshmi v. M.V.Balamurali and another*), the learned Single Judge of this Court held:

"28. In the case on hand, the Rent Controller after going through Exs.C-1 and C-2 which are Commissioner's report and plan and Exs.A-9 and A-10 which are the approval of the Salem Municipal Commissioner for the proposed construction came to the conclusion that the landlord has means to reconstruct the building and he has also taken some positive steps towards reconstruction. Therefore in the light of the Supreme Court judgment reported in S.Venugopal v. A.Karruppusami and another, 2006 (2)

CTC 615, and also in the light of the change in scenario in this country where loans are easily available for a property owner to put up a new construction, I am of the view that the Appellate Authority is wrong in holding that the landlord has not established his means to put up a new construction."

25. In the case on hand, as stated supra, the respondent had failed to prove his means to put up a new construction. Admittedly, the Courts below failed to analyse means of the respondent/landlord to put up a new construction.

26. According to the learned counsel for the respondent, the petitioner owned two other buildings in the area where the petition mentioned premises situate. To prove that the petitioner was owning two more buildings, the respondent has not produced any proof.

27. By relying upon the decision in *Lakshmi v. M.V.Balamurali and another*, supra, the learned counsel for the respondent submitted that the reliefs viz., demolition and reconstruction and owner's occupation are mutually exclusive and once the landlord establishes *bona fide*, mere reference to Section 14(1)(b) of the said Act will not deny remedies available to the landlord and the

tenant is liable to be evicted under Section 10(3)(a)(iii) of the Act.

28. According to the petitioner, when the requirement of the building by the respondent for demolition and reconstruction is not *bona fide*, in such circumstances the eviction ought not to have been passed on the ground of respondent's use and occupation.

29. Countering the arguments of the learned counsel for the petitioner, the learned counsel for the respondent contended that the two reliefs viz., demolition and reconstruction and owner's occupation are mutually exclusive and they are complimentary to each.

30. It is settled proposition that when landlord's use and occupation and the requirement of the building by the landlord for demolition and reconstruction are mutually exclusive and once it is established that the requirement of the landlord is *bona fide*, a mere reference to Section 14(1)(b) of the said Act will not deny remedies available to the landlord.

31. In the case on hand, as stated supra, there was no *bona fide* in the requirement of the premises by the respondent for own use

and occupation and hence, the respondent is not entitled to get relief under Section 14(1)(b) of the said Act.

32. It is pertinent to point out that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. In the case on hand, on over all analysis of the materials produced on either side, both the grounds on which the respondent/landlord sought eviction of the petitioner have not been proved properly by the respondent and ultimately, there was no *bona fide* in the requirement of the respondent for his own and personal occupation and also there was no *bona fide* in the requirement of the respondent for demolition and reconstruction of the petition mentioned premises. On the other hand, the aim of the respondent/landlord, as could be seen from his evidence adduced before the learned Rent Controller is that he wants more rent for the premises in question, which cannot be decided in the present dispute.

33. For the foregoing reasons, this Court is of the view that the Courts below erred in ordering eviction of the petitioner from the tenanted premises and therefore, in the facts and circumstances of the case on hand, the concurrent findings of the Courts below are liable to

be set aside.

34. In the result, the Civil Revision Petition is allowed by setting aside the order dated 22.8.2013 passed in R.C.A.No.15 of 2011 on the file of the learned Subordinate Judge, Vellore, confirming the order passed in R.C.O.P.No.43 of 2004, dated 19.01.2011 on the file of the learned Principal District Munsif, Vellore. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2017

Note: Issue order copy on 19.11.2018
vs

Index : Yes
Internet : Yes

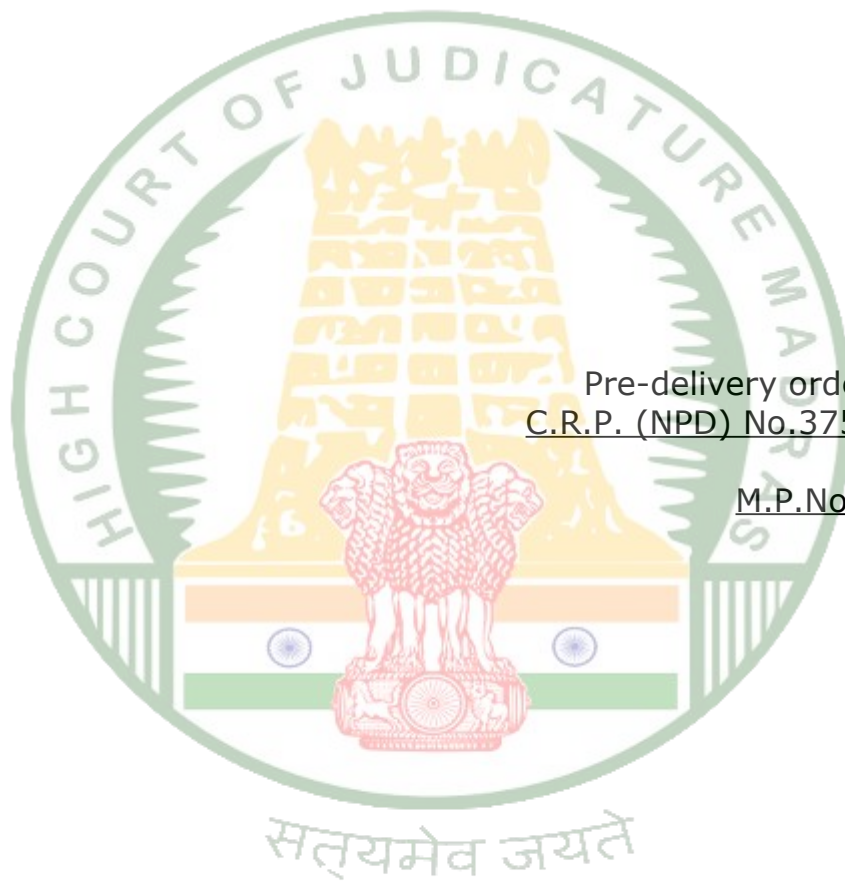
To

1. The Subordinate Judge, Vellore.
2. The Principal District Munsif, Vellore.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P. (NPD) No.3754 of 2013
and
M.P.No.1 of 2013

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