

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.3.2017

CORAM:
THE HON'BLE MR.JUSTICE P.DEVADASS
CRP(NPD). No.3457 of 2012 and M.P.No.1 of 2012

Thenraj
Petitioner .. (Tenant)Respondent/Appellant/Revision

Vs.

Selvarajan .. (Landlord)Petitioner/Respondent/ Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order of the Subordinate Judge (Rent Control Appellate Authority) Poonamalle dated 24.7.2012 in R.C.A.No. 4 of 2011 confirming the order and decreetal order dated 7.10.2010 in RCOP No.06 of 2003 passed by the District Munsif (Rent Controller) Ambattur.

For Petitioner : Mr.ARL.Sundaresan senior counsel
For Respondent : Mr.G.Saravanan

ORDER

This is a tenant's revision.

2. The respondent is land lord with respect to the petition mentioned non residential building comprising of five shops situate in

the ground floor of the building situated in East Collector Nagar, Mogappair, Chennai. The revision petitioner has been inducted as a tenant. The tenancy is for non residential purposes. The land lord's son has become a M.B.B.S doctor in June 2012. He was employed as Doctor in Rainy hospital, Royapuram, Chennai. The landlord sought the premises, namely, the said shops for the non residential purpose of running a polyclinic by his doctor son. A lawyer's notice has been issued. Thereafter, he sought for his eviction on the ground of owner's requirement under Section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act before the Rent Controller/District Munsif Ambattur, it was resisted by the tenant by filing a counter that the requirement of the landlord is not bonafide. It is a ruse to drive him away from the petition mentioned premises.

3. Considering the oral and documentary evidence, the Rent Controller recorded a finding that the requirement of the land lord is bonafide and thus, ordered eviction.

4. The tenant went in appeal in RCA No.4 of 2011. The Rent Controller Appellate Authority after re-appraisal of the evidence upheld the eviction order. That is how, this revision by the tenant.

5. The learned Senior Counsel for the revision petitioner contended that the requirement contemplated in Section 10(3)(a)(iii) of the Rent Control Act must be bonafide. It has to be established by the landlord. Now, in this case, the learned Rent Controller referred to the rental agreement as between both and commented upon that inspite of the expiry of the period, tenant has not vacated the property, it exposed his attitude to squat on the property. This view is completely outside the scope of the grounds of eviction pleaded.

6. The learned Senior Counsel would further contend that it is stated that the landlord's son intends to start a hospital with ten beds. The premises under the occupation of the tenant is measuring about 1200 sq. ft. It would be hardly sufficient to run a hospital. Further, starting a hospital is a bigger thing. It requires various formalities and license to be obtained. Mere quotation, namely, Ex.P.3 would hardly satisfy that step has been taken towards starting the business or carry on the profession. However, except Ex.P.3, no further license or permission has been obtained from the competent authorities.

7. The learned Senior Counsel for the petitioner further

contended that there are other tenants in non residential portions. As against them, no RCOP has been filed. Further, in the upstairs on the northern side, sufficient place is available. The landlord's son can very well run his polyclinic there after putting necessary constructions.

8. The learned Senior Counsel further contented that the landlord requires shops for his doctor son. But the doctor did not come to the witness box. It is he who is going to run a polyclinic. He must come and say about his requirement.

9. The learned Senior Counsel also submitted that all goes to show that the requirement is not bonafide. It is an indirect attempt to send away tenant from the premises. The eviction petition has been filed for certain ulterior motive.

10. The learned counsel for the respondent/landlord would contend that the landlord can require the non residential premises under Section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control Act) not only for himself, he can also ask for any member of his family. About the requirement, the landlord has spoken in extenso

as P.W.1. That is sufficient. Making his son also a witness is nothing but a duplicating exercise.

11. The learned counsel for the respondent would submit that the landlord's son is a qualified medical doctor. Now, he is not working in the Rainy hospital, a private hospital. Now, he is doing private medical practice. Only upon getting possession of the premises, he could approach the concerned statutory authorities to get permission, license, etc., However, he has initiated steps for purchasing equipment for running a polyclinic. The portions under the occupation of the other tenants are lesser in extent and a major portion in the first floor is in possession of another tenant, namely, Singapore shopping ad the rest of the vacant portion on the northern side is a open terrace. As the ground floor, now in the possession of the revision petitioner is convenient for running a polyclinic for the landlord's son. At the same time, it is not for the tenant to ask the landlord to choose a place, more particularly, open terrace in the first floor invest money and construct and then start his polyclinic. The landlord's son is not going to run an hospital, it is only a polyclinic. Both are different.

12. I have given my anxious consideration to the rival

submissions, perused the impugned order and the materials on record.

13. This court is exercising revisional jurisdiction. Now, in this case as against the concurrent finding rendered by the two authorities under the Rent Control Act. But, it is not that in such circumstances, we cannot interfere. We can interfere, provided when there is manifest legal error, a strong case has been made for interference.

14. The ingredients for the requirement mentioned in Section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control Act) are inbuilt in the section itself. Apart from other requirements, the most important aspect is whether the requirement of the landlord is bonafide.

15. The five non residential shops or petition mentioned premises are situate in the ground floor. It is on the northern side. It measures about 1200 sq ft. On the southern side, there is Singapore Shop measuring about only 200 sq.ft and in another 100 sq.ft, where there is a STD booth. In the first floor, southern side, Singapore Plaza

is in possession which is lesser in extent, the other side is an open terrace.

16. The premises were sought for running a polyclinic. It is situate in the ground floor. Both the authorities have recorded a finding that it is conducive because of the entrance and easy movement for the patients. It is not for the tenant to dictate to the landlord to go and invest huge money and construct in the open terrace and run a polyclinic.

17. The landlord's son is a qualified medical doctor. Then he was working in Rainy hospital, a C.S.I. private hospital. Now, he is doing private medical practice.

18. In the Rent Control Petition in paragraph 6, it has been mentioned that it is for running a polyclinic, of course with ten beds. It is not stated that it is for running an hospital. Hospital and Polyclinic are run by medical professionals. Each has got its own importance and connotation. It all depends on the extent of the work. Now, in many shopping complexes polyclinic are being run. It is not an uncommon sight. Even polyclinic must have some bed for patients.

While some patients were waiting, others will be in the bed. Though polyclinic is associated with hospital, but it is not equivalent to an hospital in size. But it all depends on the extent of running it and the size, place also investment of money and infrastructure. Now, in this case, the ground floor measures 1200 sq.ft and particularly in the polyclinic, various medical consultants also will come and see the patients and will go away, however, the landlord's doctor son will be a permanent fixture. In the facts and circumstances, it cannot be an hospital as contended by the learned counsel for the revision petitioner.

19. The landlord had produced medical degree certificate of his son, Ex.P.3 regarding purchasing of surgical and medical equipments also has been produced. With respect to other statutory formalities, such as getting permission from corporation, health authorities, town planning authorities etc, as rightly submitted by the learned counsel for the respondent, having possession is very important. He is not sure of getting possession immediately, he cannot make out an application now itself. It will be premature. Further the authorities also will not accord permission unless possession of the place is with the applicant.

20. The landlord spoke in extenso, as PW1 and subjected himself for lengthy cross examination of the tenant and answered with regard to all the aspects with reference to Section 10(3)(a)(iii) of the Act. In such circumstances, multiplying the landlord's evidence by examining landlord's son will not be a *sine quo non*.

21. In consideration of the submissions of both sides and on referring to the materials on record, I do not find any reason to interfere with the concurrent findings rendered by both the statutory authorities under the Rent Control Act. There is no flaw in their orders.

22. While I was at the close of this order, the learned Senior Counsel for the revision petitioner asked for one year time to vacate the premises. However, the learned counsel for the respondent/landlord conceded for six months on condition of filing an undertaking affidavit.

23. In view of the foregoing, ordered as under:

1. This revision fails and it is hereby dismissed. However, no

costs.

2. The revision petitioner is given nine months time from today to vacate and deliver possession to the respondent. The revision petitioner will file an undertaking affidavit to the effect that he will vacate the premises on or before the said due date and the affidavit shall be filed before the Registry within two weeks from today. During the said nine months time the regular rent at the rate now he is paying shall be regularly paid by the revision petitioner to the respondent.

P.DEVADASS,J

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24. Consequently, connected miscellaneous petition is closed.

No costs.

09.3.2017

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To

1. The Subordinate Judge (Rent Control Appellate Authority)
Poonamalle
2. The District Munsif (Rent Controller)
Ambattur.

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