

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P. (NPD)No.2145 of 2017 &
C.M.P.No.10257 of 2017

V.E.Panneerselvam

.. Petitioner

VS.

P.Kannappan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in RCA No.12 of 2015, dated 02.02.2017 on the file of Sub-Court, Vaniyambadi, Vellore District, partly allowing the fair and decreetal order in RCOP No.9 of 2013 dated 10.03.2015 on the file of Rent Controller, Vaniyambadi, Vellore District.

For Petitioner

:

Mr.PA.Sudesh Kumar

ORDER

The Civil Revision Petition is filed against the fair and decreetal order passed in R.C.A.No.12 of 2015 on the file of the learned Subordinate Judge, Vaniyampadi dated 02.02.2017. The petitioner is the appellant/tenant before the lower Court. The Rent

Controller ordered eviction on the grounds of wilful default, demolition, reconstruction, own occupation and for costs. The Rent Control Appellate Authority has partly allowed the Appeal thereby modifying the decree of the Rent Controller. The Appellate Authority further dismissed RCOP No.9 of 2013 and granted eviction on the ground of demolition and reconstruction and directed the respondent to vacate and handover the vacant possession to the petitioner within a period of two months. Aggrieved over the order passed by the Rent Control Appellate Authority, the petitioner/tenant is before this Court by raising various grounds in the Civil Revision Petition.

2. The petitioner/tenant has filed a suit in O.S.No.218 of 2010, before the District Munsif Court, Vaniyampadi for injunction. Even after filing the suit, the tenant has failed to pay the rent to the landlord. Therefore, the landlord preferred an Eviction Petition, on the grounds of wilful default, demolition, owners occupation and reconstruction.

WEB COPY

3. According to the landlord, the tenant was inducted into possession on a monthly rent of Rs.1,000/- from 14.09.2001 onwards. He has committed default in payment of rentals. The residential

premises is a thatched roof house, constructed with mud mortar, bricks and plastered with cement. The walls have developed cracks and become soil pittered. Since, the house has been in a dilapidated condition, the landlord has decided to demolish the same and to put up a new modern construction. The landlord would submit that he has sufficient funds to execute the project of new construction and he has obtained licence, building plan and approval from the local body. He would further undertook to complete the construction within a period of three months from the date of recovery of possession. Since, his family consist of more members, he needs to accommodate them in the newly constructed house. Therefore, he demanded vacant possession from the tenant.

4. The petitioner/tenant has denied all the allegations made by the landlord and would contend that the vacant site was leased out to the tenant in the month of February 2001 for a rent of Rs.600/- per month and he has paid an advance of Rs.1,00,000/- (Rupees One Lakh Only). On the vacant site, the tenant constructed a house with bricks and cement by spending more than Rs.2,00,000/- (Rupees Two Lakhs Only) and he obtained EB service connection in the name of the landlord however, he is regularly paying electricity charges. He

further submitted that he has not committed any default in making rentals to the landlord but, the Demand Draft sent by him towards arrears of rent was returned by the landlord. Therefore, he would pray that the Eviction Petition may be dismissed.

5. The Rent Controller, considering the oral and documentary evidences relied on by both the sides had decided the matter on the following issues, 'Whether the tenant had come into the occupation of vacant site and put up construction over the property ?', and on burden of proof as per section 101 of the Indian Indian Evidence Act.

6. On the side of the tenant, as many as four witnesses were examined but, that could not inspire the fullest confidence of the Court to believe the case of the tenant. Further, there is no documentary evidence marked on the site of the landlord to show that he had invested money and put up construction. On the other hand, Exs.B1 to B5 viz., the notice copy, acknowledgement, money order receipt and copy of the Demand Draft were marked by the Tenant. These documents will not go prove that the tenant has constructed the superstructure. The Rent Controller was not satisfied with the evidence adduced by the witnesses on the tenant. Therefore, the

Rent Controller had come to the conclusion that a vacant site was leased out to the tenant on a meager monthly rental of Rs.600/-, cannot be believed and therefore, rejected the same. On the other hand, the issue of wilfull default, demolition, re-construction and owners occupation were held to be proved. The fact that the statement of tenant that he had sent the rental in lumpsum by way of Demand Draft and the same was returned by the landlord by itself proved that there was arrears of rent and the default committed by the tenant in paying rent. Relying on the Judgments in ***E.I.Velayutham v Hajeera*** (2003 (2) MLJ 49) and in ***S.Subramania Pillai v. D.Thenmohan***, (2000(1) LW 600), the Rent Controller has held that the tenant has committed wilful default in paying rent to the landlord.

7. The genuine intention of the landlord to demolish and re-construction was also proved, considering the nature of the building on ground. The Rent Controller has considered the existence of the thatched shed in a dilapidated condition. Considering the three important aspects for eviction viz., (i)the bonafide, (ii)age of the building and (iii)the financial position of the landlord, has held that the landlord has proved his bonafides as he has obtained licence,

building plan approval etc., for reconstruction. Admittedly, the age of the building is more than 13 years and from the evidence of the landlord, it is proved that he is financially sound. Therefore, the Rent Controller has held eviction under section 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, (hereinafter referred to as "the Act") can be ordered. The Rent Controller would rely on **R.Mohammed Hanif v. Abdul Wahab and others** (1997 (3) CTC 469) for deciding the issue of eviction under section 14(1)(b) of Act.

8. Admittedly, the son of the landlord was married and was working in Chennai. He is having an infant. There is a genuine requirement for accommodating the son in the house. Therefore, relying on the judgments in **R.K.Nair Vs. Saramma George and others** (2006 (1) MLJ 322) and in **B.Kishore Vs. Marakathavalli** (2007 (4) MLJ, 251). The Rent Controller has decided that the claim for landlord's son occupation in the alleged premises was also genuine. Therefore, the Rent Controller has ordered eviction under the ground of wilfull default, demolition, re-construction and owners occupation.

9. Aggrieved over the same, the tenant has filed an Appeal in

R.C.A. No.12 of 2015. The Rent Control Appellate Authority has found that the tenant had sent Demand Drafts towards arrears of rent which were returned by the landlord. Thereafter, the tenant was paying monthly rentals before the Court. Therefore, the ground of wilfull default was not accepted and the finding of the Rent Controller was reversed.

10. The Rent Controller has considered the nature of the property. Admittedly, the property is in Vellore. The evidence of the tenant that he had paid Rs.1,00,000/- (Rupees One Lakh Only) towards advance in the year 2001 without getting any written acknowledgement, that too for vacant site was considered unbelievable. The oral evidence adduced in favour of the tenant has also not inspired the confidence of the Court because, one of the witnesses admits that the tenant had enmity towards the landlord and also he is the relative of the tenant. The Building Contractor - R.W.4 also not produced any document for putting up a construction by the tenant. R.W.3 happened to be the neighbouring tenant. Therefore, the evidence R.W.2 to R.W.4 were not believed by the Courts below. Further, during the cross examination, the petitioner/tenant who deposed as R.W.1 could admit that he had not filed any expenditure

accounts for constructing the superstructure on the alleged premises. Curiously, he would admit that the cracks were there in the building from the very inception. The further evidence reveal that the petitioner/tenant was a Councilor in the local body and was a very influential person in the locality. He would further depose that when the vacant site was rented out with an acknowledgement for the services rendered to the landlord. This evidence militated against the tenant. When a person who has offered a vacant site for the service rendered that too, a person with high influence need not pay an advance of Rs.1,00,000/- at that point of time. Therefore, the Rent Control Appellate Authority on considering the oral and documentary evidence had held that the claim of the tenant was not bonafide and the theory projected by him does not inspire the confidence of the Court. For owners occupation, the Rent Control Appellate Authority informed that the evidence of son of the landlord prove that he was working at TCS, Chennai and married. He has a child and also four sisters living in the same house. The present house was not sufficient for their residence and proved that he does not own any house in Vaniyampadi. Nothing was elicited during the cross examination to discredit the evidence. Since, the requirement was considered to be bonafide and the financial position was also sound, the Rent Control

Appellate Authority has confirmed the eviction on the grounds of demolition, re-construction as well as owners occupation. However, considering the payment of arrears as well as deposit made into Court has set aside eviction on the ground of wilfull default.

11. The learned counsel for the petitioner would vehemently contend that the burden of proof lying on the landlord that he had to put up the construction and not the tenant. The Courts below erroneously decided that the tenant has not put up construction on the alleged premises. But, in our considered view, that a person who proposes a fact shall prove the same. We cannot expect the others to dis-prove the same. In the absence of any proof of construction by tenant, the building is deemed to have been constructed and leased out by the landlord.

12. Therefore, the contention of the petitioner that paying Rs.1,00,000/- for vacant site as advance and paying monthly rentals for the superstructure put up by him does not inspire the confidence of the Court. The Courts below have elaborately discussed the oral and documentary evidence and consistantly have held that the landlord has proved his bonafide for demolition and re-construction. From the background of the landlord's family members and their good

financial position proves the financial solvency. Further more, the evidence of P.W.1 would show that the wife of the landlord and landlord are living alongwith their parents and four sisters and a child would go to show, the family is quite big, who definitely require additional accommodation, for their own purpose. The findings of the courts below is based on sound reasons and in conformity with the provisions of the Act 18/1960. Under these circumstances, this Court is of the considered opinion that the Civil Revision Petition does not deserve to be entertained.

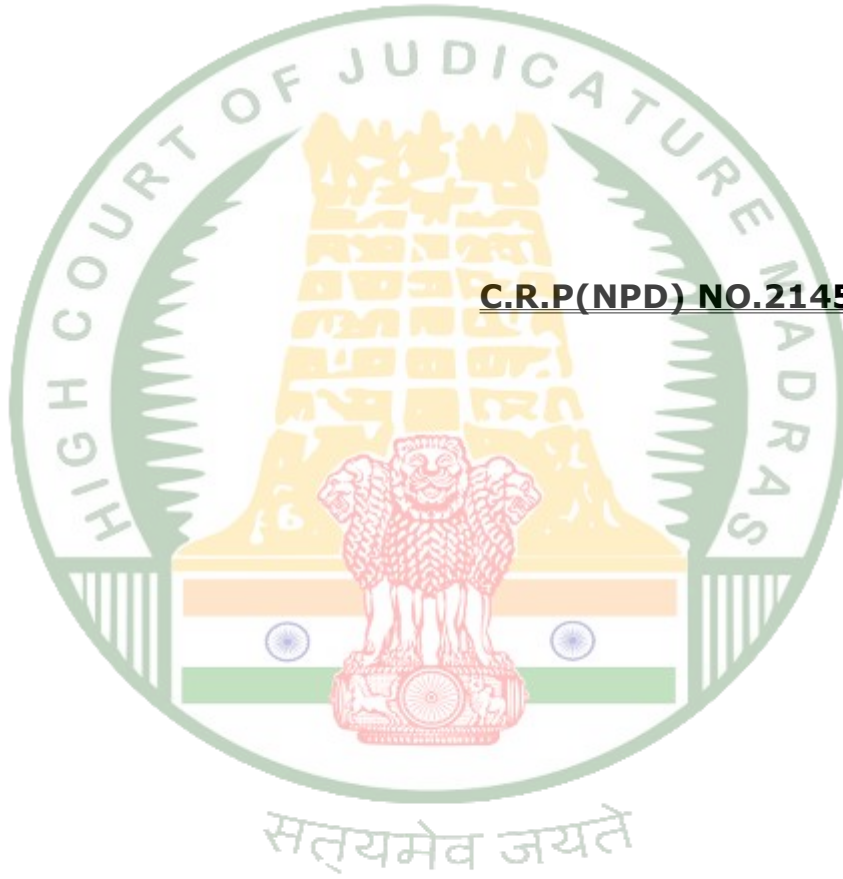
13. In the result this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.07.2017

Index : Yes/No
Internet : Yes/No
jer
To
The Sub-Court,
Vaniyambadi, Vellore District,

WEB COPY

M.GOVINDARAJ, J.



C.R.P(NPD) NO.2145 of 2017

WEB COPY 13.07.2017