



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2017
(Reserved on 14.03.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.461 of 2017

and

CMP (MD) No.2251 of 2017

H.T.Selva Kumar

... Petitioner/Appellant/
Respondent/Tenant

vs.

Aejmalkhan

... Respondent/Respondent/
Petitioner & Landlord

Prayer:- Civil Revision Petition filed the under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decreetal order passed in RCA.No.59/2011 on the file of the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli dated 15-11-16 confirming the fair and decreetal order passed in RCOP.No.44/2007 dated 22-01-11 on the file of the Rent Control Authority (1st Additional District Munsif Court), Tirunelveli.

For Petitioner : Mr.H.Arumugam
For Respondent/Caveator : Mr.M.P.Senthil

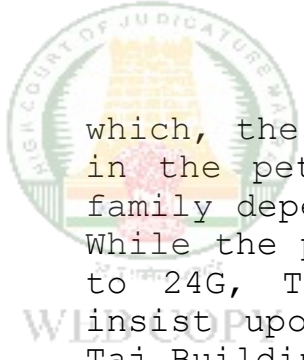
ORDER

This Civil Revision Petition is filed against the order of eviction passed in RCOP filed under Section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act and confirmed in RCA.

2.The brief averments in the RCOP is that the petition building is a non residential building purchased by the petitioner for establishing A/C Mechanic shop in the building and therefore, he issued a notice to the respondent who is already a tenant under the erstwhile owner. On receipt of the notice, the respondent issued a reply notice.

<https://hcservices.ecourts.gov.in/hcservices/>

3.On completion of exchange of notices, RCOP was filed, for



which, the respondent filed a counter, stating that he is a lessee in the petition premises for more than 40 years and his entire family depends on the business conducted in the petition premises. While the petitioner is having other shops in Door No.24/3 and 24A to 24G, Taj Building Salai Street, Tirunelveli-1, he need not insist upon vacating the petition premises bearing Door No.24C, Taj Building Sinthu Poonthurai, Tirunelveli-1.

4.The respondent further stated that it is false to state that the petitioner has no other building in the town when he has property as aforesaid in the very same Taj building. Further, it is contended by the respondent that the petitioner's father is running a business in the same building at Door No.24E, which is bigger than the petition building and therefore, there is no bona fide in the case of the petitioner.

5.The Trial Court, after examining PW1, RW1 to RW4 and Exs.P1 to P7 marked on behalf of the petitioner and Ex.X1 marked on behalf of the respondent, held that the landlord-tenant relationship is admitted and the monthly rent of Rs.1,100/- is admitted and from Ex.A1 ownership of the building is also proved. The petitioner has proved that he is a qualified A/C Mechanic and requires premises for his own use and occupation to start A/C Mechanic shop, hence the respondent is liable to vacate the premises and hand over the vacant possession.

6.The first appellate court on hearing the appeal, confirmed the order of the Trial Court, holding that the requirement of the petitioner/landlord is bona fide and he has no other building in the city.

7.Aggrrieved by the concurrent finding, the present revision is filed by the tenant on the ground that since admittedly, the landlord is having shops near the petition premises, petition under Section 10(3)(a)(iii) of the Act is not maintainable and he should have opted for Section 10(3)(c), for additional accommodation. It is proved beyond doubt that the landlord is having other shops bearing Door Nos.24/3, 24A to 24G in the very same Taj Building. While so, his plea that he does not have any building in Tirunelveli town is belied and therefore, the landlord is not entitled for vacant possession.

8.In support of his contention, the counsel for the petitioner cited the following judgments:-

(i) In S.Devaji vs. K.Sudarshana Rao, reported in 1994-1-L.W.24, the Hon'ble Supreme Court has held as follows:-

"The object of the Act is to enable the landlord to recover possession of his non-residential building in occupation of a tenant, if his requirement is bona fide for the purpose of the business which he is carrying on or he



bona fide proposes to commence. The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intendment of the Legislature thereby is clear that a landlord who is in occupation of a non-residential building which in his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom.'

(ii) In Kanniammal vs., Chellaram, reported in 2002 (4) SCC 627, the Hon'ble Supreme Court has held as follows:-

'Section 10(3)(c) came up for the consideration of this Court in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty & Ors., (1987) 2 SCC 707. The provision was dealt with in-depth, analysed and made clear. This Court held that Clause (c) makes provision enabling a landlord to seek the eviction of any tenant occupying the whole or any portion of the remaining part of the building for residential or non-residential purposes for satisfying the additional need of the landlord irrespective of whether the need is for residential or business purpose. The phraseology employed by the Legislature in framing Section 10(3)(c) and the use of non obstante clause therein make it clear that Section 10(3)(c) overrides the provisions of Section 10(3)(a)(i) and (iii). The latter provisions, i.e. 10(3)(a)(i) and (iii) have two in-built restrictions, viz. the landlord seeking eviction of a tenant thereunder should not be occupying a building of his own, and secondly, the nature of user of the leased property by the tenant must correspond to the nature of the requirement of the landlord. The use of the words "requires additional accommodation", as qualifying "for residential purpose or for purpose of a business which he is carrying on" indicates that under Section 10(3)(c) the requirement for additional accommodation must be for the same purpose for which the part of the building in occupation of the landlord is being used. If a landlord is occupying only a part of a residential building he may seek ejectment of tenant for his requirement of additional accommodation for residential purpose though the tenancy premises are being used by tenant for non-residential purpose.'

(iii) In Shri Balaganesan Metals vs, M.N. Shanmugham and others, reported in 1987 (2) SCC 707, the Apex Court has held as follows:-

'It is no doubt true that under Section 2(2) a building has been defined as not building or hut but also part of a building or hut let separately for residential or non-residential purpose. That would, however, only mean that a part of a building which has been let out or which



is to be let out separately can also be construed as a separate and independent building without reference to the other portion or portions of the building where it is not necessary to treat the entire building as one Whole and inseparable unit. A limitation on the definition has been placed by the Legislature itself by providing that the application of the definition is subject to the contextual position. Therefore, it follows that where the context warrants the entire building being construed as one integral unit, it would be inappropriate to view the building as consisting of several disintegrated units and not as one integrated structure. Secondly there is vast difference between the words "residential building" and "non-residential building" used in Section 10(3)(a)(i) and (iii) on the one hand and Section 10(3)(c) on the other. While Section 10(3)(a)(i) and (iii) refer to a building only as residential or non-residential Section 10(3)(c) refers to a landlord occupying a part of a building, 'whether residential or non-residential'. (Emphasis supplied). Further-more, Section 10(3)(c) states that a landlord may apply to the Controller for an order of eviction being passed against the tenant "occupying the whole or any portion of the remaining part of the building" (Emphasis supplied).''

9.Per contra, the counsel for the respondent/landlord submitted that it is evident from the documents relied by the respondent that the petitioner purchased the property in the year 2007 and the portion requiring for establishment of a new business is in the ground floor and the portion which the tenant refers is in the first floor and though the petitioner is in possession of the property as a owner, he is not occupying the property and carrying on any business in that premises. Therefore, the question of filing petition under Section 10(3)(c) for additional accommodation does not arise, since factually the intention of the landlord is to establish a new business in the ground floor, which is more suitable for A/C Mechanic Shop.

10.It is further contended that there is a vast difference between occupation of portion of building and carrying on business to that of possessing the property without occupying. In the facts and circumstances, it is only Section 10(3)(a)(iii) is applicable and not Section 10(3)(c). Therefore, the plea raised by the revision petitioner is unsustainable.

11.In support of his contention, the learned counsel for the respondent relied upon the judgment of the High Court in *The Regional Manager, Tamil Nadu Handloom Weavers' Cooperative Society Ltd., Thanjavur, and two others vs. V.Natarajan*, reported in 2010 (6) CTC 454, wherein, it has been held as follows:-



13. It is admitted that the respondent is the owner of the building and in the upstairs, he got possession, but it is not a case of revision petitioners that the respondent/landlord has occupied that portion. As per Section 10(3)(a) (iii) only in case the landlord or any member of his family is not occupying for his business a non-residential building, he is entitled to evict the tenant from other premises. The fact that the landlord is having possession of cannot be equated with occupation.

14. In this case, it is not disputed by the revision petitioners that the landlord/respondent has occupied the upstairs portion and it is admitted by the tenants that the landlord has not occupied the upstairs portion, but he is having the possession of the same. According to me, the possession of the premises cannot be equated to occupation and as per Section 10(3)(a)(iii), occupation is the main criteria and not the possession.

16. Further, as per Section 10(3)(c), only in the case of landlord occupying a part of the building and requiring the remaining part of the building, he has to apply under Section 10(3) of the Act. As stated supra, that question does not arise as the landlord has not occupied the upstairs portion though he has got possession of the same. Hence, Section 10(3)(c) will not be applicable to the facts of this case.'

12. This Court, on appreciation of the rival contention, finds that the respondent/landlord is in possession of upstairs portion, but not occupying it. He is not carrying on any business, but intend to carry on new business in the petition premises. Therefore, his plea for owners occupation under Section 10(3)(a) (iii) is appropriate and he cannot resort to Section 10(3)(c), since there is no business in existence or occupation of the part of the premises.

13. One of the contentions of the revision petitioner is that the fact of the ownership of upstairs portion of the petition premises not disclosed by the landlord in his petition and therefore, it is fatal to his case and it indicates his *mala fide*.

14. This Court is unable to accept the abovesaid contention, for sole reason that the landlord has purchased both the upstairs portion and the ground portion together and had disclosed the same by marking the title deeds. He has chosen the downstairs portion to be fit for establishing his business. It does not mean that he is not in need of the upstairs portion for his business. Since it is vacant, he has not referred about it and it will not amount to suppression of material fact. Therefore, this Court finds no merit in this revision petition.



Accordingly, this Civil Revision Petition is dismissed. No costs. Time for handing over possession is four months. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1) The Principal Subordinate Judge,
Rent Control Appellate Authority,
Tirunelveli.
- 2) The 1st Additional District Munsif,
Rent Control Authority,
Tirunelveli.

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 15602
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 15395

NBI
TE/MR/SAR-II : 25/04/2017 : 6P/5C

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