IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2018

Delivered on : 24.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2510 of 2009

1.Mahboob Ali
2.Sheik Dawood Malimar ...Petitioners

Vs

Fathima Nachiar Family Trust
Nagore rep. by its Joint Trustees
1.Fathima Nachiar
2.H.A.Ahmed Maricair
3.Setha Maricair ...Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act (Act 18/60) as amended by Act 23/73 and 1/85) against the order and decreetal order dated 24.10.2008 in RCA.No.47 of 2007 on the file of the Appellate Authority (Sub Judge), Nagapattinam, confirming the order and decreetal order dated 22.08.2007 in RCOP No.24 of 2005 on the file of the Rent Controller (District Munsif), Nagapattinam.

For Petitioners : Mr.Srinath Sridevan

For Respondents: Mr.J.R.K.Bhavananantham
for Mr.N.S.M. Mohammed Jaffarullah
for R1 and R2

R3-Dismissed vide Court Order
dated 30.09.2011

ORDER

The above Civil Revision Petition is filed by the revision petitioner challenging the current findings of the authorities below ordering eviction from the petition premises on the ground that the 1st petitioner has sublet the petition premises to the 2nd petitioner and 3rd respondent.

The respondent/landlord's case:

2.The petition premises is situate in the building belonging to one A.M.Hameed Maraicar Family Trust and the respondents 1 and 2 are the trustees. The petition premises was taken on rent by the 1st petitioner in the year 1994 for the purpose of running a provision store. The rent for the premises was fixed at Rs.300/- per month and the 1st petitioner had paid an advance amount of Rs.900/-. Thereafter, on an allegation that the trustees were not receiving rent, the 1st petitioner has moved a petition under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act) in R.C.O.P.No.18 of 1983 for depositing the rents into Court. After entering appearance in the above proceedings, the respondents 1 and 2 herein agreed to receive the rents. Initially, the 1st petitioner had paid the rents directly to the learned counsel for the respondents and thereafter, by Money Order to the trustees, who were managing the building of the trust.

3.In and around the year 2005, the 1st petitioner, who had started running the provisions store had sublet the premises to the 2nd petitioner and 3rd respondent, who were running a Tea Shop in the eastern side and Sweet Stall in the western side of the petition premises. The respondents contended that the 1st petitioner was receiving a total income of Rs.250/- from the 2nd petitioner and 3rd respondent and a monthly income of Rs.7,000/-. The 1st and 2nd respondents through an RTI query to the Municipality of Nagapattinam had come to know that the license in respect of the sweet stall stood in the name of the 2nd petitioner which clearly proved that there was subletting by the 1st petitioner. The trustees had addressed a letter dated 29.01.2005 asking clarifications from the 1st petitioner on 03.02.2005 and the 1st petitioner replied through his counsel contending that there is no stipulation in the Lease Deed that the 1st petitioner should only operate the provisions store in the petition premises and further denied the subletting.

4.A rejoinder has been sent by the respondents 1 and 2 followed by the Rent Control Petition in RCOP.No.24 of 2005 on the file of the learned District Munsif (Rent Controller), Nagapattinam.

Counter of the petitioner/Tenant:

5.The 1st petitioner had objected to the petition *inter alia* contending that the 1st petitioner had not sublet the property but that the 2nd petitioner and 3rd respondent were only his employees. He would further state that the advance paid was not Rs.900/- but a sum of Rs.3,000/-. He therefore sought for dismissal of the rent control petition.

Findings of the Rent Controller:

6.The Rent Controller, on a detailed examination of the evidence on record as well as the submissions of the learned counsel, had held that respondents 1 and 2 herein had proved subletting, particularly, by relying on Ex.P.5 which was the reply of Nagapattinam Municipality to Ex.P.4 Letter of the Trustees stating that the tax was being collected in the name of the 2nd petitioner. The Rent Controller had also held that Exs.R.4, 5, 9 and 20 appeared to have been created on the very same day, particularly, Exs.R.4 and 5 had come into existence after filing of the rent control proceedings. The learned Rent Controller therefore ordered eviction of the petitioners. Challenging the abovesaid order, the petitioners herein had filed R.C.A.No.47 of 2007 on the file of the learned Appellate Authority (Sub Judge), Nagapattinam. In the appeal, the respondents had raised an issue that the Rent Control Petition itself was not maintainable inasmuch as the respondents 1 and 2 was a Public Trust and therefore, exempted under G.O.Ms.No.2000. The appellate authority countenanced this argument of the petitioners on the ground that the petitioners had themselves invoked the provisions of the Rent Control Act, by filing RCOP.No.18 of 2003 and therefore, they were estopped from now contending that the respondent was a Public Trust. The appellate authority has also considered Ex.R.2 – Lease Deed in which the respondents Trust has been described as a Family Trust. In all other respects, the appellate authority has concurred with the findings of the Rent Control Act and confirmed the order of the learned Rent

Controller by her order dated 24.10.2008. Aggrieved by this order, the revision petitioners are before this Court.

Submissions of the learned counsel:

7.Mr.Girish Kumar appearing on behalf of Mr. Srinath Sridevan would submit that the institution of the rent control proceedings was without jurisdiction since the Trust is a Public Trust and therefore, exempt in view of G.O.Ms.No.2000. He would further contend that the appellate authority has dismissed the petition filed by the revision petitioners to receive the additional documents which is the Trust Deed. This application was dismissed on the ground that the documents are registered public documents and the petitioners ought to have filed it before the learned Rent Controller and the appellate authority was of the opinion that without these documents, the Court could still arrive at a conclusion. This omission, according to the counsel had resulted in the erroneous order. He would also argue that the authorities below had not considered Exs.R.5 and 6 which are the

Property Tax Receipts and the Professional Tax receipts. The learned counsel would therefore submit that the orders of the authorities below had to be set aside and the revision has to be allowed.

8.In support of his arguments regarding the maintainability of the Rent Control Petition, the revision petitioners had produced the Judgment reported in ***2010 (3) CTC 851 [B.Shaji v. Sree Pravaraswamy Devasthanam rep. By its Hereditary Managing Trustee C.Balaji, No.20/7, III Street, Veerapandi Nagar, Choolaimedu, Chennai-94]***, where the maintainability of a suit by a Devastanam was questioned since the said Temple would come within the purview of the Tamil Nadu Hindu Religious and Charitable Trust Act (HR & CE Act) 1959, and therefore, exempt under G.O.Ms.No.2000. This Court had ultimately held that the suit was not maintainable and the Second Appeal was allowed.

9.Per contra, the learned counsel for the respondents would argue that the respondent Trust is not a public trust but it is only a private family trust and it is for this reason that the 1st petitioner had initially filed the rent control petition for depositing the rents into Court in R.C.O.P.No.18 of 2003. He would further argue that the respondents had clearly proved subletting and therefore, the authorities below had rightly dismissed the appeal.

Discussion:

10.During the course of argument, the learned counsel appearing for the revision petitioners had at request of this Court provided a copy of the Trust Deed, which was not objected to by the learned counsel for the respondents 1 and 2. A mere reading of this Trust Deed would clearly show that apart from a small portion of the income from the suit properties being spent for religious ceremonies, the remaining 7/16 share was to be distributed among the descendants of the Wakif which clearly shows that the trust was not a public trust but was a private trust and therefore, would not come within an exemption of G.O.Ms.No.2000.

11.The learned counsel for the respondents has produced a Judgment of this Court in ***2009 (2) CTC 25 [Sha Poosaji Mangilal v. The South Indian Humanitarian League represented by its Secretary B.T. Vajawat, No.21, Perumal Mudali Street, Chennai-600 079]***, wherein the learned Judge has held that when a privilege is conferred upon a person, it can be waived, unless there is a express provisions in the statute imposing a bar from contracting out.

12.In the instant case, even assuming without admitting that the respondent/trust is a public trust, the landlord by participating in the rent control proceedings initiated by the tenant under Section 8 of the Act in RCOP.No.8 of 2003 had waived this benefit conferred upon it. Therefore, this Court had held as follows:

> *"24.A benefit or privilege conferred upon a person, can always be waived, unless the statute imposes a bar from contracting out. Some of the Labour Welfare Legislations like the Workmen's Compensation Act, though confer a benefit, also impose a bar upon persons contracting out of the statute. ...*
>
> *25.In the case on hand, the respondent/landlord was entitled to the benefit of the exemption under G.O.Ms.No.2000, Home Department, dated 16.8.1976, issued under Section 29 of the Act, provided the respondent was an institution of public charitable nature. It is true that the objects of the respondent, such as protection of animals and promotion of vegetarianism may be of public charitable nature, in view of the decisions*

relied upon by Mr.T.V.Ramanujun, learned Senior Counsel for the petitioner. However no evidence was let in, on both sides, to show (i) that any property or fund was dedicated for public charitable purposes (ii) that the respondent was registered in terms of Section 12-A and was also availing the exemption under the Income Tax Act and (iii) that any obligation in the nature of a trust had been created. Therefore to hold that the respondent was entitled to exemption from the provisions of the Rent Control Act, would tantamount to thrusting a benefit or privilege upon them, despite their unwillingness to avail such a benefit. Interestingly, if the respondent had gone to the Civil Court, on the basis that their building was exempt, a burden would have been cast heavily upon them to show that it was entitled to the benefits of the Government Order granting exemption. If the *respondent had failed to discharge such a burden, the Civil Court would have been obliged to non suit them. Therefore in such circumstances, it cannot be held that the respondent should avail the exemption, irrespective of whether they want it or not and whether they fulfill all pre conditions for the benefit of exemption or not. Hence, following the aforesaid decision of the Supreme court in Lachoo Mal's case, I hold that the respondent in this case should be deemed to have waived the benefit of exemption and that consequently, the petition was maintainable. At any rate, there is not sufficient material on record to hold that the respondent was entitled to exemption."*

13.This Court ultimately held that the respondents herein had waived the benefit of exemption and therefore, the rent control petition was maintainable. The said ruling would apply to the facts of the instant case, if the 1st respondent/Trust was a public trust. However, in the case on hand the respondent trust is not a public trust.

14.The authorities below have considered the evidence in a very great detail and have deprecated the conduct of the revision petitioners for having created certain documents after the institution of the rent control proceedings like Ex.R4 and R5 – Receipts, this Court also had a look at these documents. As regards Ex.R.4 -Attendance Register and Ex.R.5 – Salary Slips, a mere look at these documents would reveal that the same was created in a single day. Therefore, no exception can be taken to the order of the authorities below. I find no infirmity in the orders of the authorities below.

15.The Civil Revision Petition is dismissed and the respondents, who had been given two months time to vacate the premises by the learned Rent Controller in his order dated 22.08.2007 has continued in the premises for a further period of

11 years on account of the pendency of the proceedings. The 1st petitioner/tenant shall therefore vacate and hand over the vacant possession within a period of one month from the date 25.10.2018. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

24.10.2018

Index : Yes/No
Internet : Yes/No
mps

To

1.The Appellate Authority (Sub Judge),
Nagapattinam.

2.The Rent Controller (District Munsif),
Nagapattinam.

P.T. ASHA, J,

mps

Pre-Delivery Order in
C.R.P.(NPD).No.2510 of 2009

24.10.2018