

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM

THE HONOURABLE THIRU JUSTICE T.S.SIVAGNANAM

C.R.P.(NPD)No.1444 & 1445 of 2018 &
C.M.P.No.7695 of 2018

Mohanasundaram

.. Petitioners in both CRPs

v.

Dr.S.D.Vijayasankar

... 1st Respondent in both CRPs

2.Periyasamy

... 2nd Respondent in CRP No.1445/2018

Civil Revision Petition No.1444/2018 filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 30.06.2017 made in R.C.A.No.1 of 2015 on the file of the Sub Court, Gobichettipalayam, confirming the fair and decreetal order dated 16.06.2015 made in R.C.O.P.No.1 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

Civil Revision Petition No.1445/2018 filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 30.06.2017 made in R.C.A.No.2 of 2015 on the file of the Sub Court, Gobichettipalayam, confirming the fair and decreetal order dated 16.06.2015 made in R.C.O.P.No.9 of 2008 on the file of the District MUnsif Court, Gobichettipalayam.

For Petitioner : Mr.Anand Venkatesh, Senior Counsel
for Mr.V.Anandhamurthy

For Respondents : Mr.R.L.Ramani, Senior Counsel
for MrB.Raveendran

COMMON ORDER

Heard Mr.Anand Venkatesh, learned Senior Counsel for Mr.V.Anandhamurthy, learned counsel appearing for the petitioner and Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel appearing for the respondents.

2. These Civil Revision Petitions have been filed by the tenant challenging the common order passed by the Rent Control Appellate

Authority cum Sub Court, Gobichettipalayam in R.C.A.Nos.1 and 2 of 2015, which appeals were filed by the tenant against the order passed in R.C.O.P.No.1 of 2009 and R.C.O.P.No.9 of 2008.

3. The respondent-landlord filed R.C.O.P.No.9 of 2008 to evict the petitioner-tenant on three grounds, viz., (i) the building has been put to a different use than for what it was leased out; (ii) taking into consideration the age of the building, the same required to be demolished and reconstructed to enable the respondent-landlord to augment his income; and (iii) on the ground that the tenant has sublet the property.

4. The tenant filed R.C.O.P.No.1 of 2009 under section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to permit the petitioner to deposit the rents payable to the landlord.

5. The learned Rent Controller, by common order dated 16.06.2015, partly allowed R.C.O.P.No.9 of 2008 and ordered eviction of the petitioner-tenant on the ground that the requirement of the

landlord for demolition and reconstruction of the building has been established. So far as the other two grounds, viz., on the allegation of different user and subletting, the learned Rent Controller rejected the claim made by the tenant. As a consequence of eviction being ordered in R.C.O.P.No.9 of 2008 on the ground of demolition and reconstruction, petition filed by the petitioner-tenant in R.C.O.P.No.1 of 2009 for depositing the rent was dismissed.

6. The petitioner-tenant filed R.C.A.Nos.1 and 2 of 2015, challenging the order of eviction ordered in R.C.O.P.No.9 of 2008 and the order dismissing the R.C.O.P.No.1 of 2009 filed by the tenant. The landlord also filed Cross Appeals as against the findings of the learned Rent Controller rejecting the claim petition on the other two grounds, viz., different user and subletting.

7. The learned Rent Control Appellate Authority by common order dated 30.06.2017, dismissed the appeals filed by the petitioner-tenant as well as the cross appeals. Aggrieved by the same, the tenant has filed these Civil Revision Petitions.

8. Mr.Anand Venkatesh, learned Senior Counsel appearing for the petitioner pointed out that the learned Rent Controller and the Appellate Authority concurrently erred in ordering for eviction on the ground of demolition and reconstruction, when the age of the building was not ascertained and no report or assessment by a Civil Engineer was placed before the court to ascertain the age of the building. Further, from the documents, which were filed by the respondent-landlord, it was shown that the proposed construction is to an extent of 720 and 1/4th sq.ft. whereas, the total area of the property is 8680 sq.ft. and the courts below ought to have accepted the stand taken by the petitioner-tenant that leaving alone the small portion occupied by the petitioner, the remaining extent of the property could have been developed as per the plan, which was approved by the local authority. Therefore, it is submitted that the courts below ought not to have directed the eviction to be ordered on the ground of demolition and reconstruction.

9. Mr.R.L.Ramani, learned Senior Counsel appearing for the respondent-landlord submitted that the courts below have considered the oral and documentary evidences placed before it and came to the

conclusion that the respondent-landlord has established a case for ordering eviction on the ground of demolition and reconstruction.

10. So far as the contentions advanced by the learned Senior Counsel appearing for the petitioner that there was no materials before the courts below with regard to the age of the building, it is pointed out by the learned Senior Counsel appearing for the respondent that the landlord had filed an application in I.A.No.14 of 2011 in R.C.O.P.No. 9 of 2008 to appoint an Advocate Commissioner to visit the petition mentioned premises to assess the condition of the building and the said petition was ordered by the learned Rent Controller by order dated 01.02.2012. The petitioner-tenant challenged the said order by filing C.R.P.(PD)No.1164 of 2012, which was allowed by order dated 11.01.2013 and the observation made by the court clearly show that there was no dispute with regard to the age of the building.

11. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, this court is of the

considered view that the courts below rightly ordered eviction on the ground of demolition and reconstruction. This conclusion is supported by the following reasons.

12. So far as the age of the building is concerned, the landlord had filed an application before the Rent Controller for appointing an Advocate Commissioner to assess the condition of the building. The learned Rent Controller allowed the application, which was challenged by the petitioner-tenant by filing C.R.P.(PD) No.1164 of 2012. This Court, by considering the petition, pointed out that having regard to the allegations made in the petition, there is no need for appointing an Advocate Commissioner to assess the condition of the building. Though the landlord stated that the building is more than 150 years old, it has no relevance and it has no load bearing strength and is in a dilapidated condition, having regard to the other allegations that the building is situate in the commercial locality and the landlord is having funds to demolish the old construction to put up a new complex, so as to augment his income, there is no need to appoint Advocate Commissioner, to find

out the condition of the building, as it has no relevance. Further the court observed that it can take judicial notice of the condition of the building and having regard to the allegations that the existing building is going to be demolished for the purpose of constructing a new commercial complex in order to accommodate more shops, the need to assess the condition of the building does not arise. Further, the court noted the legal position that even a newly constructed building can be demolished by the landlord for the purpose of raising a huge building to augment his income and that the building is to be demolished for the purpose to putting up a new construction to augment the income of the landlord, the condition of the building has no relevance and only the means of the landlord has to be taken into consideration along with *bona fides*. Therefore, the court held there is no necessity to appoint the Commissioner to assess the condition of the building.

13. Though the petitioner-tenant succeeded before this court in the said Civil Revision Petition, the findings rendered by the court are categorical against the petitioner-tenant. In other words, the court held that the age of the building has no relevance when an application under

section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, has been filed. Therefore, at this stage, for the petitioner-tenant to raise such a contention before this court in these Civil Revision Petitions cannot be permitted. Accordingly, the said ground raised by the learned Senior Counsel for the petitioner stands rejected.

14. So far as the size of the proposed construction is concerned, it is contended that the proposed construction for which building plan approval has been obtained is only for 720 and 1/4th sq.ft., when the total extent of the property is 8680 sq.ft. The learned Rent Controller as well as the Appellate Authority concurrently found that the respondent-landlord has obtained an approved building plan for putting up a construction of a building consisting of three floors with a built up area of 1353 sq.ft. The Appellate Authority also found that the proposed construction is to be made after leaving a frontage area, shown to serve as parking area and the commercial building will be raised little away from the main road. Further, the court took into consideration the location and the site, accepted the case of the respondent-landlord. In my view,

it is not for the tenant to dictate terms to the landlord as to what is the size of the construction the landlord has to put up. Admittedly, the landlord has obtained a building plan approval to put up a three floor building. Therefore, for the tenant to state that he can construct a building in the remaining extent and leave the portions in his occupation, is a plea to be outrightly rejected.

15. Thus, the courts below had on a proper appreciation of the factual and legal position had ordered eviction. The courts below were also right in rejecting the petition filed under section 14(1)(b) of the Act, especially, when the landlord had succeeded in obtaining an order of eviction in R.C.O.P.No.9 of 2008.

16. Thus for the above reasons, the Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision petitions are dismissed. The petitioner-tenant is directed to vacate and handover vacant possession of the petition premises to the respondent-landlord, within a period of two months from the date of

receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

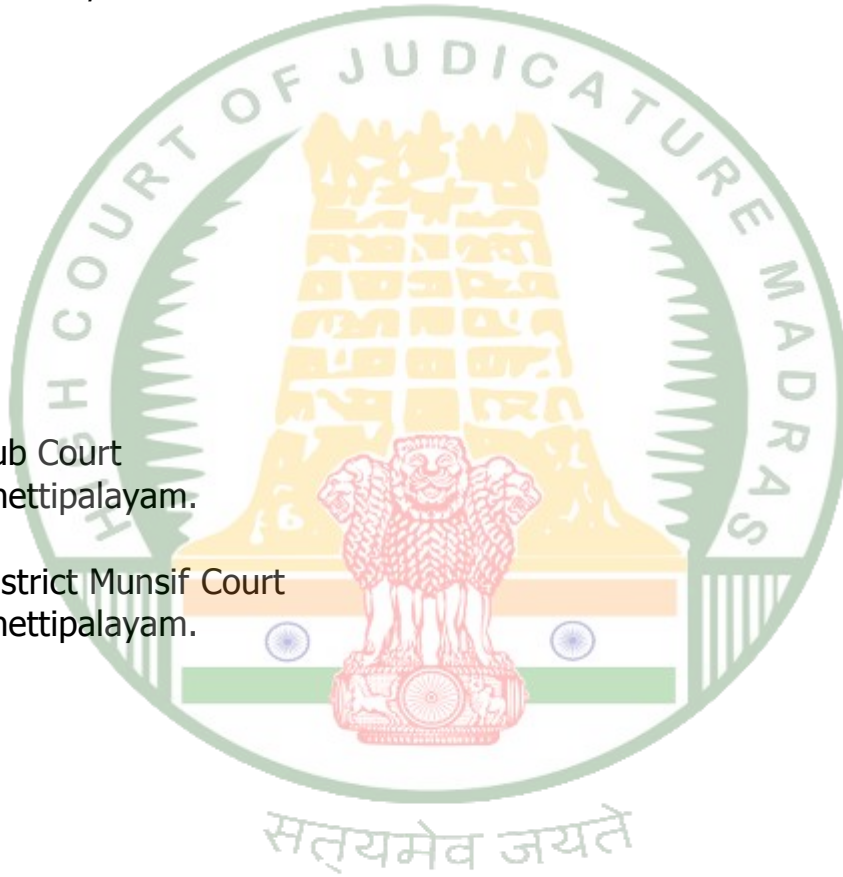
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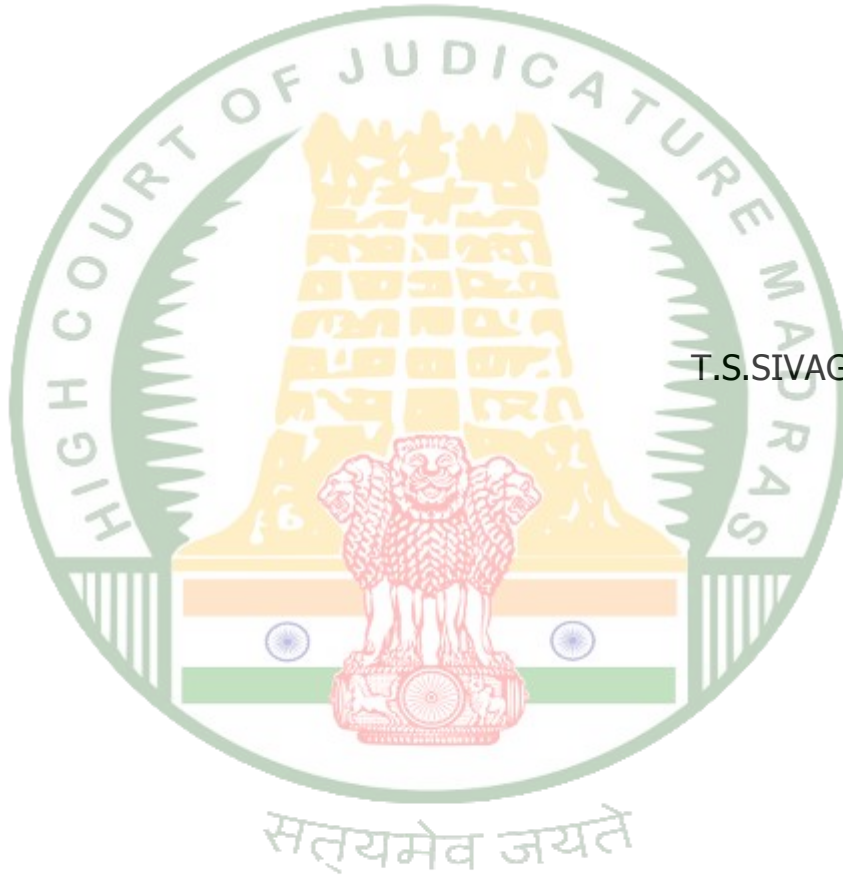
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To

1. The Sub Court
Gobichettipalayam.
2. The District Munsif Court
Gobichettipalayam.



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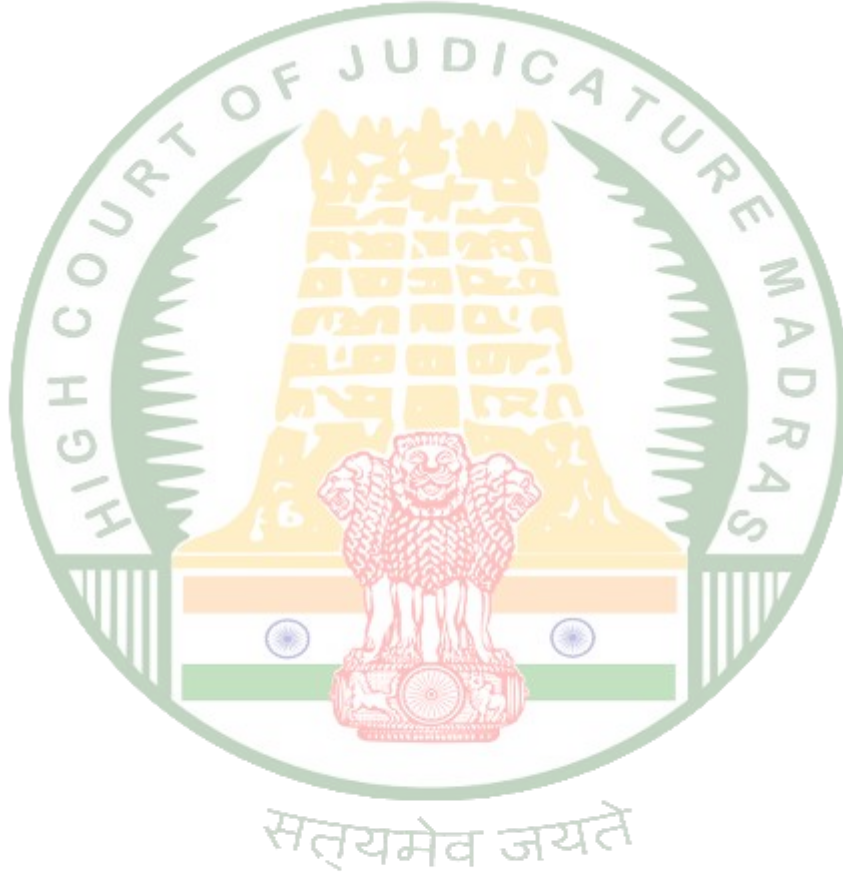
T.S.SIVAGNANAM,J.,

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