

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------|------------|
| Reserved on   | 27.07.2018 |
| Pronounced on | 06.08.2018 |

Coram: The Honourable Ms.Justice P.T.ASHA

C.R.P.No.1565 of 1999

Dhavamani ...Petitioner/Land Lord/Respondent

Versus

Radhakrishnan Chettiar ...Respondent/Tenant/Appellant/  
Respondent

This Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act, 18/60 as amended by Act 1/80 praying to set aside the decree and judgment in R.C.A.No.6/98 dated 14.10.1998 on the file of Principal Sub Court cum Rent Control Appellate Authority, Nagapattinam reversing the decree and judgment of the Rent Controller cum District Munsif, Thiruthuraipoondi in R.C.O.P.No.3/96 dated 07.01.1998.

For Petitioner : Mr.V.K.Vijayaraghavan  
For Respondent : No Appearance

ORDER

The above Civil Revision Petition is posted before this Court under orders of remand from the Honourable Supreme Court dated 16.09.2014 in C.A.No.2162 of 2004.

2. The landlord is the petitioner before this Court and the Civil Revision Petition is directed against the orders passed by the Principal Sub Court, Nagapattinam in R.C.A.No.6 of 1998 in and by which, the learned Subordinate Judge had set aside the order in R.C.O.P.No.3 of 1996 on the file of the learned District Munsif (Rent Controller, Thiruthuraipoondi).

3. Heard Mr.V.K.Vijayaraghavan, the learned counsel for the petitioner. Despite notice, the respondent had not appeared in person.

4. The facts in a nutshell are narrated hereinbelow:

The respondent herein who is none other than the maternal uncle of the petitioner was inducted as a tenant under an oral lease in the year 1970 on a monthly rent of Rs.30/- by the petitioner's mother. Thereafter, the rent was increased to Rs.300/- per month and the petitioner had inherited the property from his mother who died in the year 1976, he being the only son. Since the respondent had committed a default in the payment of the rents from May, 1995 and as the respondent had

put the property to different use, the petitioner herein had filed R.C.O.P.No.3 of 1996 on the file of the learned District Munsif (Rent Controller, Thiruthuraipoondi) seeking eviction of the respondent on the grounds of willfull default, different user and he had also sought the premises for his own use. The respondent herein had acknowledged the tenancy but his defence was that though he had tendered the rent for the month of May, 1995, the petitioner refused to receive it and thereafter, in keeping with provisions of Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "Act") the respondent had taken steps to deposit the rent into Court by filing R.C.O.P.No.4 of 1996. The respondent would also contend that he has been in a habit of changing his business and the same has never been objected to by the petitioner herein. He would also contend that the eviction sought on the ground of owner's occupation lack bonafides and further he would be put to relative hardship if he was evicted. The Rent Controller had allowed the Rent Control Petition and directed eviction on all the grounds.

5. The tenant took the matter by way of an appeal to the Principal Sub Court cum Rent Control Appellate Authority, Nagapattinam. The learned Principal Sub Judge by an order dated 14.10.1998 allowed the appeal. Challenging the order, the petitioner has preferred the above Civil Revision Petition. This Court by judgment dated 10.02.2004 was pleased to allow the Revision Petition only with reference to the ground of willfull default and with reference to the grounds of different user and the owner's occupation, the petitioner's claim was rejected. The petitioner took up this order by way of an appeal to the Honourable Supreme Court in Civil Appeal No.2162 of 2004. By an order dated 16.09.2014, the Honourable Supreme Court had remanded the matter back to this Court for fresh consideration.

6. A perusal of the records would show that the respondent was in default in the payment of rents from the period May, 1995 to November, 1995 as detailed in the petition filed for eviction. This fact has been admitted by the respondent and his defence was that the petitioner had refused to receive the rents constrained him to issue a legal notice dated 03.07.1995 calling upon the petitioner to provide details of his Bank Account which was not responded too by the petitioner. Thereafter, a money order was sent on 17.07.1995 and the same was also returned. Thereafter, on 28.02.1996, the respondent had filed an Application under Section 8(5) of the Act in R.C.O.P.No.4 of 1996 on the file of the learned Principal District Munsif (Rent Controller) Thiruthuraipoondi. On the date of filing of this Rent Control Petition, the respondent was in arrears to the tune of Rs.3,000/-. Further R.C.O.P.No.4 of 1996 has been filed by the respondent only after the petitioner/landlord had filed R.C.O.P.No.3 of 1996 for evicting the respondent. It is seen that even thereafter, the respondent had not deposited any amount and deposited the arrears of rent only on July, 1996. This clearly demonstrates the supine indifference on the part of the respondent/tenant to pay/deposit the rents and the default is nothing but willfull. As regards the grounds of owner's

occupation and different user, the petitioner herein had not challenged the earlier order of this Court dated 10.02.2004. Further, the petitioner has been in the habit of not objecting to the change of business that was being made by the respondent every time. Therefore, he is estopped from now objecting to the same on the ground of different user.

7. In the result, this Civil Revision Petition is allowed ordering eviction only on the ground of willfull default and setting aside the order of the learned Rent Control Appellate Authority, Nagapattinam dated 14.10.1998 made in R.C.A.No.6 of 1988. The Revision is dismissed with reference to eviction sought under the grounds of different user and owner's occupation. The respondent/tenant shall hand over the possession of the petitioner premises within a period of two months from the date of receipt of a copy of this order. No costs.

mrr

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sub Court cum  
Rent Control Appellate Authority,  
Nagapattinam.

2.The Rent Controller cum  
District Munsif,  
Thiruthuraipoondi.

+1cc to Mr.V.K.Vijayaraghavan, Advocate SR.NO.54539

SJ(CO)

sm:27.9.2018

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