

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2018

CORAM

THE HONOURABLE MR. JUSTICE **D.KRISHNAKUMAR**

CIVIL REVISION PETITION (PD) No.401 of 2018
and C.M.P.No.2186 of 2018

Suseela,
Proprietor,
Ganesh Bhavan,
carrying on business at
No.127, Arcot Road,
Vadapalani,
Chennai 600 026.

.. Petitioner

VS

M.Mohamed Dawood

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 17.08.2017 passed in M.P.No.384 of 2016 in R.C.O.P.No.903 of 2015 on the file of the Rent Controller/XII Small Causes Court, Chennai.

For Petitioner

... Mr.Richardson Wilson
for Wilson Associates

ORDER

The Civil Revision Petition has been filed to set aside the order dated 17.08.2017 passed in M.P.No.384 of 2016 in R.C.O.P.No.903 of

2015 on the file of the learned Rent Controller/XII Small Causes Court, Chennai.

2.The respondent filed R.C.O.P.No.903 of 2015 under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 seeking a direction to the respondent to quit and deliver vacant possession. The petitioner filed M.P.No.384 of 2016 under Section 18-A of the Tamil Nadu Buildings (Lease and Rent Control) Act to appoint an Advocate Commissioner to inspect, measure and draw a sketch of the petition premises and take photographs so as to ascertain whether the entry to the petition premises (Hotel) is only through common passage measuring about 10' breadth and 30' length and also the petition premises is situated behind 8 shops.

3.The learned counsel for the petitioner submitted that the appointment of Advocate Commissioner is necessary, so as to ascertain, as to whether the entry to the petition premises (Hotel), is only through a common passage, measuring about 10' breadth and 30' length. If the application is allowed, no prejudice would be caused to the respondent.

4. The learned counsel for the petitioner further submitted that the Court below erroneously dismissed the petition on the ground that the appointment of Advocate Commissioner is not necessary and devoid of merits and without assistance of the Engineer, the Advocate Commissioner cannot measure the petition premises and mere appointing an Advocate Commissioner will not solve the dispute on hand and the said finding of the Court below is contrary to the decision of this Court in **A.Nagarajan vs. A.Madhanakumar (1996 [1] I.W. 278)**, wherein paragraph No.10 reads as follows:

"10. It is well settled that Article 227 of the Constitution can be invoked only in the following circumstances, namely, when there is lack of jurisdiction, erroneous assumption of jurisdiction of excess of jurisdiction or where there is gross dereliction of duty, flagrant violation of law, error of law apparent on the face of the record or where there is violation of principles of natural justice and finding is based on no material or whatever which is by very nature arbitrary or capricious. The power conferred on the court to appoint a Commissioner for local inspection is for better appreciation of the evidence already on record. The trial court had the jurisdiction to decide under what circumstances it can appoint a

Commissioner. The Commissioner so appointed is not performing a judicial act and it is a "ministerial Act". Nothing is left to discretion and there is no occasion to use judgment or adjudicate the issue involved but only noting the details and reporting the actual state of affairs. Such report does not automatically form part of evidence in the proceeding and the court has power to confirm, vary or set aside the report or issue a new commission. Hence there is neither abdication nor delegation of the powers of functions of the Court to decide the issue. Only an examination of the Commissioner, the report forms part of the record and evidence. The opposite party has opportunity to cross-examine the Commissioner. Of course, failure to do so to elicit such information as it required, cannot at later stage object to the report being accepted on the ground Commissioner not examined or cross examined. The contention of the learned counsel that the impugned order is per se illegal, unsustainable and amounts to delegating the functions of the Court to decide the issue are misconceived and hence rejected. Thus, I answer the point that Commissioner can be appointed after closure of his side of evidence by a Party for the purpose

of clarification, explanation and proof of the matter in issue or a fact which requires elucidation. I see no reason to quash the impugned order, but however, I direct the learned Judge to complete the evidence of the respondent who is the petitioner in R.C.O.P. and then give effect to the order impugned."

5.This Court considered the submissions made by the learned counsel for the petitioner and perused the materials available on record.

6.In the decision **cited supra**, it is held that the act of appointing a Commissioner cannot be termed as one without jurisdiction, there is nothing like a general bar in this regard. But, such power has to be used sparingly and at the initial stage, without any evidence by the party.

7.So far as the present case is concerned, the petitioner has filed the present I.A for the aforesaid reasons, without seeking assistance of Engineer, the Advocate Commissioner cannot measure the petition premises and therefore, the learned Judge has rightly dismissed the application and the prayer sought for by the petitioner

is rejected. The petitioner can very well raise the issues before the trial Court by producing necessary materials at the time of the trial in the O.P. proceedings.

8.Considering the facts and circumstances of the case, this Court is not inclined to entertain the Civil Revision Petition. There is no warrant to interfere with the order passed by the Rent Control Authority.

In the result, the Civil Revision Petition is dismissed. The order dated 17.08.2017 passed in M.P.No.384 of 2016 in R.C.O.P.No.903 of 2016 by the learned Rent Controller/XII Judge, Small Causes Court, Chennai is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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19.02.2018

Speaking/Non speaking order.
Index: Yes/No.

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To
The Registrar,
Small Causes Court,
Chennai.

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D.KRISHNAKUMAR,J.
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C.R.P.(PD)No.401 of 2018

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Date: 19.02.2018

decision of this Court in **A.Nagarajan vs. A.Madhanakumar (1996 [1] I.W. 278)**, wherein paragraph No.10 reads as follows:

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Hence there is neither abdication nor delegation of the powers or functions of the Court to decide the issue. Only an examination of the Commissioner, the report forms part of the record and evidence. The opposite party has opportunity to cross-examine the Commissioner. Of course, failure to do so to elicit such information as it required, cannot at later stage object to the report being accepted on the ground Commissioner not examined or cross examined. The contention of the learned counsel that the impugned order is per se illegal, unsustainable and amounts to delegating the functions of the Court to decide the issue are misconceived and hence rejected. The act of appointing a Commissioner cannot be termed as one without jurisdiction. There is nothing like a general bar in this regard. But such power has to be used sparingly and not at the initial stage without any evidence by the party. The wise course would be to place evidence on a disputed question or issue. On placing such evidence by the respective parties, in order to confirm, explain or to throw light on the matter in issue or for elucidation of the fact in issue, commission can always be issued. The impugned order does not suffer from any of the infirmities such as lack of

jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or violation of law. To ascertain the nature of the extent of the property, manner of use, extent of damage, according to learned Judge is proper for just decision of the case. The Supreme Court in The Central Bank of India Ltd., v. V.S. Gokal Chund, has held orders such as summing witnesses, discovering, production, inspection of documents, issue of commission, inspection of premises, fixing the date of hearing, admissibility of documents, relevancy of questions are all steps to be taken towards the final adjudication and not open to correct error or defect or irregularity by way of invoking a revisional jurisdiction. If any of the order on these aspects is bad in law, it is open to the parties to raise as one of the ground against the final order. Since the Petitioner has an opportunity to cross examine the Commissioner and also to question the veracity of the report, in the absence of any prejudice, it is not proper to interfere with the impugned order. Learned Judge ought to have allowed the respondent-petitioner to complete his side of the evidence and then resorted to this course of appointing a Commissioner, if so advised. As has been held by this Court

in Sangili v. Mookan I.L.R. 16 Madras 350, the word elucidation presupposes the existence of some independent evidence on record. It is reasonable to resort to the appointment of a Commissioner after placing evidence by the respective parties. With respect, I differ from the view expressed in Johan v. Kamarunnissa . Thus, I answer the point that Commissioner can be appointed after closure of his side of evidence by a Party for the purpose of clarification, explanation and proof of the matter in issue or a fact which requires elucidation. I see no reason to quash the impugned order, but however, I direct the learned Judge to complete the evidence of the respondent who is the petitioner in R.C.O.P. and then give effect to the order impugned."

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