

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.07.2018

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.3188 of 2016

and

C.M.P.No.16208 of 2016

P. Gurupatham

... Petitioner

Vs.

S. Ramachandra Chettiyar
(Died)

1. R. Suseela

2. R. Baskaran

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to allow this Civil Revision Petition and set aside the fair order and decreetal order dated 13.08.2013 by the learned Rent Control Appellate Tribunal (Sub Judge) Vellore and made in RCA No.11 of 2010 and allow the appeal and set aside the fair order and decreetal order dated 09.08.2010 by the learned Rent Controller (District Munsif) Katpadi and made in RCOP. No.1 of 2009 and dismiss the RCOP with costs.

For Petitioner : Mr.A. Rajenra Kumar

For Respondent : Mr. P. Mani

ORDER

This Civil Revision Petition has been filed to set aside the fair order and decreetal order dated 13.08.2013 passed by the learned Rent Control Appellate Tribunal (Sub Judge) Vellore in RCA No.11 of 2010 and allow the appeal and set aside the fair order and decreetal order dated 09.08.2010 by the learned Rent Controller (District Munsif) Katpadi and in RCOP. No.1 of 2009.

2. The case of the revision petitioner is that he was tenant under the landlord Ramachandra Chettiyar, who died subsequently. The said landlord filed a petition in R.C.O.P. No.72 of 1995 before the learned District Munsif, Katpadi, Vellore, seeking to evict the petitioner from the premises on the ground that the portion occupied by the petitioner was needed by the landlord for his own use and occupation and on the ground of willful default by payment of rent by the petitioner. The learned trial Judge, after full fledged enquiry, allowed the original petition and directed the petitioner to vacate from the premises. However, with regard to the payment of arrears and rent, since, there was no document to show that the amount due from the petitioner. The said prayer was dismissed.

3. Even though aggrieved that the order, the petitioner filed a Rent Control Appeal before the learned Subordinate Judge, Vellore. The learned Appellate Rent control Authority confirmed the order passed by the learned Rent Controller and dismiss the appeal. Feeling aggrieved the concurrent judgment, the petitioner has filed the present Revision Petition.

4. This Court while exercising revisional power, need not re-appreciate the evidence recorded by the learned Rent Controller and appreciation of the evidence of the learned Rent Control Appellate Authority, this Court has only to see, if there is any perversity in the orders passed by the courts below.

5. Heard the rival submission made on the learned counsel appearing for either side and perused the materials available on **records.**

6. It is not in dispute that the building belonging to the deceased, which was let to the revision petitioner. The land lord requested the petitioner vacate the building for the reason to set up his own business in the property. Since the petitioner refused to vacate the premises. The land lord initiated the rent control proceedings in

RCOP. No.72 of 1995 before the learned District Munsif, Vellore, on the ground of own use and occupation and willful default. The landlord contended that the petitioner was not regular in paying rent and he defaulted. On his two grounds, the landlord prayed that the petitioner may be ordered to vacate and handed over the vacant position to the landlord. The petitioner resisted the rent control proceedings on the ground that the land lord has given only a vacant land and he has put up super structure over it. The rent control petition itself is not maintainable. The revision petitioner also contended that the requirement of the landlord is not bonafide. The revision petitioner also took a stand, he was regular in payment in record and he was not in default at any point of time.

7. The learned rent controller on going through the oral and documentary evidence found that the landlord has proved his requirement of his own use. However, the learned rent controller hold that the landlord has not proved the amount of arrears that the revision petitioner has to pay towards rent to the landlord in short, the leaned rent controller allowed the original petition in part and thereafter the revision petitioner to vacate and hand over to the vant position to the landlord within a period of two months from the date of

receipt of a copy of this order.

8. Challenging the said order, the revision petitioner has filed the appeal before the learned Rent Control Appellate Authority. After hearing the appeal, the learned Appellate Authority dismissed the appeal.

9. There is no dispute in landlord and tenant relationship and it is not in dispute that the landlord has filed the petition for eviction in R.C.O.P. No.13 of 1995, on the ground that the land lord requires the building for his own use and occupation and also willful default. The rent controller negated the ground of willful default and passed an order of eviction on ground of own use and occupation. The land lord has not filed any appeal before the appellate authority. The tenant had filed an appeal before the appellate authority challenging the order passed by the rent controller.

10. The main contention of the revision petitioner is that only vacant site was let out but not the building. However, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not applicable to the present case. Hence, the petition is not maintainable. Both the rent controller and rent control appellate authority wrongly came to the

conclusion that the respondent has proved that he let out the building and his requirement was bonafide. The revision petitioner has not proved that he put up a super structure. It is bounded duty of the landlord in rent control proceedings to prove that he let out the building and the Tamil Nadu Buildings (Land and Rent Control) Act is applicable. A careful perusal of the entire records and order passed by both the Courts. When the revision petitioner has admitted that he has taken the land for rent, it is for him to prove that he has put up a super structure. From the elaborate discussion about the evidence of the witnesses, the rent controller and the rent control appellate authority held that the respondent herein/landlord let out the building (thatched shed) when the petitioner herein/tenant denied that he had taken only vacant site, it is for him to prove the same.

11. On a perusal of the evidence of the witnesses, the landlord let both vacant site and super structure. The revision petitioner has not proved that he had taken only vacant land and he put up a super structure. On the other hand, the landlord proved that he let out the land with super structure and also proved that his requirement is bonafide. Since, the appellant authority is fact finding Court, while exercising revisional jurisdiction, this Court need not sit in the

armchair of the appellate authority and to re-appreciate the entire evidence. In this revision, this Court has to see as to whether any perversity in the order passed by the appellate authority while appreciating the factual issue or legal issue.

12. On a perusal of the materials available before this Court, this Court does not find any perversity in the order passed by the rent control appellate authority.

13. This revision petitioner is directed to vacate and hand over the possession within three month from the date of receipt of a copy of this order. The petitioner herein directed to file an undertaking affidavit in accordance with law.

18.07.2018

Index: Yes/No

Speaking order/Non speaking order

rli

To

1. The Rent Controller (District Munsif), Katpadi.
2. The Rent Control Appellate Tribunal
(Sub Judge) Vellore.

P.VELMURUGAN, J.,

rli



C.R.P.(NPD)No.3188 of 2016
and
C.M.P.No.16208 of 2016

WEB COPY

18.07.2018