

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD)No.351 of 2004

Sri Mouna Swamigal Madam

Also known as Manickavasa Swamigal Trust,

Rep. by its Trustees

1.Thillai Nayagam

2.Thillai Natarajan ... Petitioners/Petitioners/Respondents

48-B, New Street,

Chidambaram Town.

Vs.

1.N.Sambandham (deceased)

2.Saradha

3.Ramalingam

4.Punitha

5.Rani

6.Sankari

7.Anjugam ... Respondents/Respondents/Respondents

(Respondents 2 to 7 brought on record as the
Legal representatives of deceased respondent
As per order dt. 17.03.2014 in CMP.No.14942 of 2004)

Revision filed under Section 25 of the Tamil Nadu Buildings
(Lease and Rent Control Act) against the fair and decretal dated
03.11.2003 made in R.C.A.No.16 of 2003 on the file of the Rent
Control Appellate Tribunal (Sub Court), Chidambaram reversing
the order and decree dated 25.11.2002 made in R.C.O.P.No.13 of
1994 on the file of the Rent Controller (District Munsif),
Chidambaram.

For Petitioners : Mr.V.Bhiman

For Respondents : Mr.S.Venkatraman (for R1, R5 & R6)
(No Appearance)

No Appearance (for R2, R3 & R4)

ORDER

Aggrieved by the order made in R.C.A.No.16 of 2003, reversing the order of eviction passed by the Rent Controller in R.C.O.P.No.13 of 1994, the petitioners, who are trustees of Sri Mouna Swamigal Madam, also known as Manickavasa Swamigal Trust have preferred this revision. Pending revision, sole respondent died. His legal heirs were brought on record as respondent Nos.2 to 7 in this revision. For the sake of convenience, the parties are referred as per their array in the main RCOP.

2.Since it is a reversal order, brief facts and events are to be narrated. The case of the petitioners is that the petition mentioned premises and the abutting area in S.F.No.473 measuring an extent of 26,676 square feet belongs to Manivakavasaga Swamigal Trust, which was also called as Mounaswamigal Madam, a private trust and the petitioners are trustees. The trust was created as per deed dated 17.12.1921. The present trustees were appointed by their father as per deed dated 03.07.1978. The trustees present and past have constructed building in the property and let the same to tenants and collected rents.

3.In the year 1987, the respondent approached petitioners and asked the petition mentioned premises for rent. Accordingly, on oral agreement, the petitioners have given the petition mentioned premises to the sole respondent on a monthly rent of Rs.165. Thereafter, the sole respondent was living in the petition mentioned premises and was doing hayrick business. The respondent paid rent upto December 1991 and thereafter, committed default in payment of rent. Despite request made by the petitioners, the respondent has not paid the rent.

4.On 29.06.1992, the petitioner issued a legal notice to the respondent, which was replied by the respondent. It is averred that when the respondent was trying to get the electricity connection by mentioning wrong door number as 19/1, the petitioners objected the same. The petitioners have also filed O.S.No.437 of 1993 before the learned District Munsif Court, Chidambaram against the Electricity Board and the respondent, not to grant electricity connection to the respondent. The said suit was decreed exparte. On 15.06.1994, the petitioners once again issued notice to the respondent, which was also replied by the respondent and in the reply notice, the respondent denied the petitioners right over the petition mentioned premises.

5.The case of the petitioners is that though the respondent denied the rights of the petitioners over the petition mentioned property, he is liable to be evicted from the petition mentioned premises on the ground of wilful default committed by him. According to the petitioners, since the petition mentioned premises is in dilapidated condition, it requires demolition and reconstruction. Therefore, the petitioners have filed petition seeking eviction of the sole respondent under Sections 10(2)(i), 10(2)(ii) and 14(i)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as "the said Act").

6.The sole respondent opposed the main petition by stating that the averments set out in the petition are false and the same are denied. The premises in which the respondent is residing was constructed by him on his own costs. It is stated that the trust or the trustees have no right over the petition mentioned premises. It is the case of the respondent that based on the fraudulent trust deed, the petitioners have filed this petition. For about 20 years, the respondent was living in the petition mentioned premises without paying any rent to anybody. He was not a tenant under the petitioners. According to the respondent, the petitioners are in the habit of filing suit after suit. Hence, he prays for dismissal of the petition.

7.Before the Rent Controller, the petitioners examined two witnesses and marked Exs.P1 to P25. On the side of the sole respondent, 4 witnesses were examined and Exs.R1 and R2 were marked. The Advocate Commissioner's report and plans were marked as Exs.C1 to C3.

8.Finding that the petition mentioned premises belongs to the Sri Mounaswamigal Madam and the respondent was a tenant for the area measuring to an extent of 2700 square feet and had committed default in payment of rent, the Rent Controller ordered eviction of the sole respondent. The learned Rent Controller also find that the petition mentioned premises requires demolition and reconstruction and directed the respondent to handover vacant possession of the same to the petitioners.

9.Doubting the bonafide of the petitioners and that there is no landlord and tenant relationship between the parties, the learned Appellate Tribunal reversed the findings of the Rent Controller and allowed the appeal, thereby dismissed the main RCOP. The learned Appellate Tribunal also held that the petitioners have failed to prove the correct door number of the

petition mentioned premises. Aggrieved by the order of the Appellate Tribunal, the petitioners have preferred the present revision.

10. Challenging the order of the Appellate Tribunal, the learned counsel for the petitioners submitted that the Appellate Tribunal failed to note that the petitioners are the trustees of Sri Mounaswamigal Madam, which owns the petition mentioned premises and under Ex.P2, the appointment was made by the erstwhile trustee. He submitted that the Appellate Tribunal, failed to appreciate that the building in the property stands in the name of the trust and the finding that the onus lies on the petitioners with regard to the construction of the building is totally irrelevant. The learned counsel submitted that the Appellate Tribunal failed to note that non-production of the receipts cannot be a ground for rejection of the order of the Rent Controller. He also submitted that the findings of the Appellate Tribunal are mainly on surmises and on his own conclusion.

11. As stated supra, pending revision the sole respondent died and his legal heirs were brought on record as respondents in this revision. Though the respondents have entered appearance, no one appeared on behalf of the respondents when the matter was taken up for hearing.

12. The point arises for consideration is whether the Appellate Tribunal was right in reversing the order of the Rent Controller?

13. According to the petitioners, the petition mentioned premises belongs to Sri Mounaswamigal Madam, also known as Manickavasagaswamigal Trust and the petitioners are the trustees for the said trust. The respondent (since dead), approached the petitioners for leasing of the petition mentioned property for rent and accordingly, the same was given to the respondent on a monthly rent of Rs.165/-. According to the petitioners, the respondent paid the rent upto December 1991 and thereafter, committed default in payment of rent. Despite repeated demands by the petitioners, he has not paid the rent. The petitioners have also issued legal notice to the deceased respondent on 22.06.1992 and the same was replied by him through his advocate on 06.07.1992. The case of the petitioners is that since the petition mentioned premises is in dilapidated condition, it requires demolition and reconstruction and the petitioners have sufficient means for reconstruction.

14.Though, in the counter, the sole respondent stated that the petitioners are not trustees and by way of a fraudulent trust deed, they are claiming rights, admittedly, before the learned Rent Controller, the sole respondent has not filed any document to prove the same. According to the respondent, he is living in the petition mentioned premises as his own and he has not paid any rent to anybody. To prove that the petition mentioned property is his own, the sole respondent has not produced any documentary proof either before the learned Rent Controller or before the Appellate Tribunal.

15.Before the learned Rent Controller, the petitioners have filed 25 documents and examined two witnesses. In its order, the learned Rent Controller, upon considering the documentary evidence, held that the survey number of the petition mentioned premises is 473 and the total extent of the said survey number is 26,676 square feet. The learned Rent Controller has also held that the disputed property is measuring 90 feet east west and 30 feet north south, totalling 2700 square feet and the sole respondent was in possession of the same as tenant.

16.On a perusal of the order of the learned Rent Controller, I find that the petitioners have proved by way of Exs.P9 to P14 that the petition mentioned premises was earlier enjoyed by the father of the petitioner namely Ponnambala Pillai and under Ex.P2, Ponnambala Pillai appointed the petitioners as trustees.

17.Though the respondent in his counter stated that the petition mentioned premises never belongs to the trust and he is not a tenant of the petitioners, in Ex.P18-reply notice, the respondent stated that the property belongs to the trust. He has also taken a plea in O.S.No.437 of 1993 on the file of the District Munsif Court, Chidambaram filed by the petitioners that a portion of the property belongs to the petitioners, which show that the respondent has taken a contradictory plea. Therefore, the learned Rent Controller was right in holding that the sole respondent has taken a contradictory plea for the purpose of the case. As against the decree passed in O.S.No.437 of 1993 on the file of the District Munsif Court, Chidambaram, the respondent has not preferred any appeal.

18.The petitioners have also filed O.S.No.788 of 1994 on the file of the District Munsif Court, Chidambaram restraining the sole respondent, his men and agents from demolishing or changing the roof of the petition mentioned premises. Though the respondent entered appearance in the said suit, when the suit

was posted for hearing on 13.08.1998, he was not present and called absent, set exparte and exparte decree was passed in favour of the petitioners. The sole respondent has not taken any steps to set aside the exparte decree or filed any appeal.

19.It is to be noted that the filing of the aforesaid suit being O.S.No.788 of 1994 would show that in the year 1994 itself, the sole respondent was trying to make some construction activities in the petition mentioned premises and the same was obstructed by the petitioners by way of Court order. But the learned Appellate Tribunal held that based upon the decree obtained by the petitioners in O.S.Nos.437 of 1993 and 788 of 1994, they cannot claim any right over the petition mentioned premises since in the two suits, no issues were framed qua ownership/rights of the petitioners over the petition mentioned premises. The said finding arrived at by the learned Appellate Tribunal is not appreciable for the reason that once decree has been passed in the suit, the same is binding on the parties whether it is exparte decree or contested decree.

20.It is seen from Ex.P5 that as against the order passed in C.M.A.No.20 of 1974 dated 02.11.1974 on the file of the Sub-Court, Chidambaram, one of the tenants namely Swami Durai has preferred C.R.P.No.3857 of 1974 before this Court, wherein the petitioners' father has been shown as first respondent. It is also seen from Ex.P5 that the petitioners' father initiated rent control proceedings against Swami Durai for eviction on the ground of wilful default, subletting and acts of waste. In the said case, though the Rent Controller, dismissed the petition, the appellate authority found the ground of wilful default as tenable for eviction of the tenant and allowed the petition for eviction filed by the petitioners father. The aforesaid would clearly show that before the petitioners were appointed as trustees, their father Ponnambala Pillai was the trustee of Sri Mouna Swamigal Madam also known as Manickavasa Swamigal Trust and he was looking after the property owned by the trust.

21.From a reading of the order of the learned Rent Controller, I find that the petitioners have proved that the petition mentioned premises belongs to Sri Mouna Swamigal Madam, also known as Manickavasa Swamigal Trust and the petitioners are the trustees for the same.

22.On a perusal of the additional typed set of documents produced before the Court, I find that the Tahsildar, Chidambaram has issued certificate to the effect that the property measuring to an extent of 26,676 square feet in

S.No.473 and the building constructed thereon (Door No.48B, Pudu street) belong to Thillai Nayagam and Thillai Natarajan, who are trustees of Mounaguruswamigal Madam also known as Manickavasa Swamigal Trust. It is also seen from the records that property tax was raised in the name of Thillai Nayagam and Thillai Natarajan for the property in Door No.48B & 48B/1, Pudu street. Therefore, the learned Rent Controller was right in saying that the petition mentioned premises belongs to the petitioners' trust and the petitioners are the trustees. The Appellate Tribunal has failed to look into the aforesaid material piece of evidence.

23.The finding of the learned Rent Controller that the sole respondent was tenant for the area measuring 90 x 30 = 2700 square feet and had paid rent upto December 1991 and thereafter, he committed payment of rent are based upon the oral and documentary evidence. The learned Rent Controller was also right in holding that without the permission of the petitioners, the respondent has done some construction and therefore, he is liable to be evicted from the petition mentioned premises.

24.It is settled that in order to seek eviction of the tenant under Section 14(1)(b) of the Act, it is not necessary that the building should be in dangerous and dilapidated condition, requiring immediate demolition, though it is necessary to find out the condition of the building.

25.In a number of decisions, it has been held that condition of the building is not so essential and even if the building may not be much dangerous, if it is shown that the building is bonafide required by the landlord for immediate purpose of demolition, eviction could be ordered. Admittedly, in the present case, the requirement of the petitioners is bonafide. But the learned Appellate Tribunal failed to consider the case of the petitioners.

26.In cases where the order passed by the Appellate Tribunal is perverse, which had resulted in miscarriage of justice, the High Court is empowered to exercise its power conferred under the said Act. As stated supra, the approach adopted by the Appellate Tribunal is perverse in law.

27.The findings of the Appellate Tribunal are not in proper appreciation of evidence. On erroneous application of principles, the Appellate Tribunal reversed the order of eviction passed by the Rent Controller. Therefore, the order of Appellate Authority suffers from wrong approach and perversity calling for interference.

28.For the foregoing reasons, the impugned order dated 03.11.2003 of the Appellate Tribunal (Sub-Judge, Chidambaram) in R.C.A.No.16 of 2003 is set aside and this Civil Revision Petition is allowed. The order of Rent Controller (District Munsif, Chidambaram) dated 25.11.2002 in R.C.O.P.No.13 of 1994 is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Chidambaram.

2.The District Munsif, Chidambaram.

3.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.V.Bhiman, Advocate sr.no.30629

C.R.P.(NPD)No.351 of 2004

sj(co)
nr 06/06/2018

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