



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2018
PRONOUNCED ON : 21.06.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) Nos.755 and 756 of 2015
and
M.P. (MD) .Nos.1 & 2 of 2015 in C.R.P. (MD) .No.755 of 2015
and
M.P. (MD) .No.1 of 2015 in C.R.P. (MD) .No.756 of 2015

Thanjavur Sarvodaya Sangam,
through its Secretary,
Annadurai S/o.Kannaiyan,
No.8, Kappatta Vishwanathar Koil
Keezha Street,
Kumbakonam.

... Revision petitioner
Appellant / Tenant in both C.R.Ps

Vs.

1.Periyasamy
2.Mallika
3.Vimala
4.Kumar
5.Bhuvaneswari
6.Rasna
7.Harish

... Respondents in all the revision
petitions / Respondents 2 to 4 & 6
to 9 / Landlords in both C.R.Ps

PRAYER: Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973 and 1/1980, against the common fair and decreetal judgment, dated 20.11.2014, made in R.C.A.Nos.12 and 11 of 2003 by the learned Principal Subordinate Court / Rent Control Appellate Authority, Kumbakonam, confirming the common order, dated 07.02.2003, made in R.C.O.P.Nos.9 of 1993 and 2 of 2000 by the learned Principal District Munsif Court / Rent Controller, Kumbakonam.

For Petitioner in both
the petitions : Mr.T.Kumar
For respondents in both
the petitions : Mr.H.Lakshmi Shankar

**COMMON ORDER**

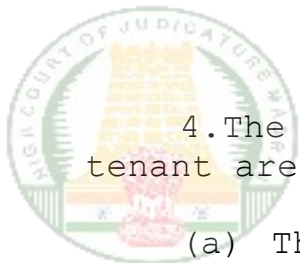
One Seethalakshmi / landlady leased out her property to the revision petitioner / tenant in the year 1981 for 10 years and the rent was fixed at Rs.2750/- per month. After completion of lease period, the said Seethalakshmi had filed R.C.O.P.No.9 of 1993 for fixation of fair rent at Rs.14,000/- p.m. During the pendency of the same, she had filed R.C.O.P.No.2 of 2000 for eviction of the revision petitioner / tenant on the ground of own use and occupation. The learned Rent Controller, vide common order, dated 07.02.2003, had allowed both the petitions and thereby fixed the fair rent at Rs.14,000/- and also directed the revision petitioner / tenant to vacate the premises within two months. Aggrieved by that order, the revision petitioner / tenant had filed R.C.A.Nos.11 and 12 of 2003. During the pendency of the appeals, the said Seethalakshmi / landlady died and the present respondents were impleaded as legal heirs in the appeal. The learned Rent Control Appellate Authority, after hearing both sides, had dismissed both the appeals. As against that concurrent judgments, the present civil revision petitions have been filed by the revision petitioner / tenant.

2. Since the issue involved in both the revision petitions are interrelated to each other, they were heard together and are disposed of by way of this common order.

3. The brief facts of the case of the respondent / landlords are as follows:

(a) The landlady / Seethalakshmi had constructed a new building to an extent of 2658 sq. ft. in the year 1981 and leased out the same to the revision petitioner / tenant on 20.03.1981 for a period of ten years, on a monthly rental of Rs.2750/- and the revision petitioner / tenant has given a sum of Rs.20,000/- as advance. Even after expiry of ten years lease period on 30.09.1991, the revision petitioner / tenant had refused either to vacate the premises or to give fair rent, which, according to the landlady, was Rs.14,000/- p.m. and hence, a petition has been filed for fixation of fair rent at Rs.14,000/- p.m. by her.

(b) During the pendency of the said petition, the landlady had filed R.C.O.P.No.2 of 2000 for eviction of the revision petitioner / tenant on the ground of own use and occupation, as the owner of the building, where the landlady and her husband were running businesses, required that premises and as they owned no other building in the locality. They also required that building in order to expand their businesses. Though the revision petitioner / tenant purchased a building in the same locality, he has been



4. The brief facts of the case of the revision petitioner / tenant are as follows:

(a) The revision petitioner / tenant is a non profit making institution. The revision petitioner / tenant has given a sum of Rs.40,000/- as advance, out of which Rs.20,000/- was permitted to adjust towards rent at the rate of Rs.500/- per month and Rs.20,000/- has to be retained as permanent advance. The rent from 01.10.1981 for the first ten years was at Rs.2,300/- per month and thereafter, it was Rs.2,750 per month. After the expiry of ten years, the landlady demanded excessive rent and therefore, the revision petitioner / tenant refused to accept the demand. The claim of fixation of fair rent at Rs.14,000/- is excessive.

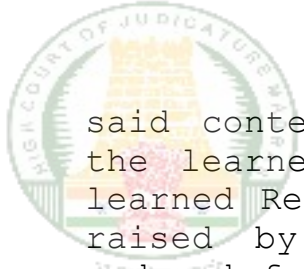
(b) So far as the eviction petition is concerned, it is stated by the revision petitioner / tenant that the revision petitioner / tenant had spent huge amount for interior decoration, show case furniture, fans, lights, etc. and the demised premises is ideal for locating a textile business and not for timber business or Photo studio, which are being run by the landlady and her husband. Only with the *mala fide* intention to evict him, the landlady had filed this petition.

5. The learned counsel appearing for the revision petitioner / tenant would mainly submit that the petitioner / Sarvodaya Sangam / tenant is not an independent body and it depends on Khadi and Village Industries Commission for financial assistance. The Sarvodaya Sangam has to submit its financial requirements to Khadi Village and Industries Commission, which, in turn, is provided with the financial assistance by the Central Government. By virtue of G.O.Ms.No.3185, Home, dated 27.12.1979, it is notified that the Tamil Nadu Khadi and Village Industries Board is engaged in an "essential service" and as the petitioner is a subordinate body of the Khadi and Village Industries Board, in terms of Section 10(1)(4)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the rent control proceedings initiated by the landlady itself are not maintainable. If at all they incline to launch or initiate any proceedings against the revision petitioner / tenant, which is being classified as an essential service in virtue of above G.O., they have to explore other possibilities permissible under law to fix the fair rent or to evict premises except by way of invoking the provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

6. In the alternative, the learned counsel for the revision petitioner / tenant would submit that the learned Rent Controller, without taking note of the methodology adopted by the Advocate Commissioner and PWD Engineer and without appointing a fresh

<https://hccourts.org.in/hccservices>

assessed the value of the property on its own and thereby, fixed excessive rent of Rs.14,000/-. The learned Rent Control Appellate Authority, without going into the merits of the



said contention, has erroneously accepted the valuation made by the learned Rent Controller. He would further submit that the learned Rent Controller, without properly considering the grounds raised by the revision petitioner / tenant, has erroneously ordered for eviction on the ground of own use and occupation and the same was also erroneously accepted by the learned Rent Control Appellate Authority. Thus, he prayed to allow both the revision petitions and to set aside the concurrent judgments.

7. The learned counsel for the respondents / landlords would submit that the revision petitioner / tenant had not raised the issue of maintainability either before the Courts below or in the grounds of the revision petitions and it is raised only during the course of argument before this Court and therefore, the said contention cannot be taken into account at this stage, as it is a question of fact requiring evidence and proof. He would further submit that the revisional power of the High Court is very limited and if the findings of the Courts below are perverse, the High Court can interfere with same.

8. By producing a calculation memo, he would further submit that though the Courts below fixed the fair rent of Rs.14,000/- p.m., the revision petitioner / tenant has been paying only original rent of Rs.2750/- till now and thus, the arrears of rent accumulated to Rs.33,63,750/- as on December, 2017 and on that ground also, he is liable to be evicted. He would further submit that both the Courts below, after having an elaborate discussions, have fixed the fair rent and directed the revision petitioner / tenant to vacate the premises and the same need not be interfered with. Thus, he prayed to dismiss both the revision petitions.

9. Heard the learned counsel appearing for both sides and perused the records carefully.

10. Admittedly, the revision petitioner / tenant and the original landlady entered into lease agreement in the year 1981 and she had leased out the ground floor of the building on monthly rent of Rs.2750/- p.m. for ten years. It is seen that after ten years, the petitioner / tenant had refused to pay the fair rent as per the market value. Therefore, she had filed a petition for fixation of fair rent. During the pendency of the same, after nearly seven years, the landlady had filed another petition for eviction on the ground of own use and occupation. Now, almost 27 years have gone.

11. With regard to the fixation of fair rent is concerned, it is seen that the revision petitioner / tenant himself admitted that he has purchased a building in the year 1993 to the extent of 2620 sq. ft., the cost of Rs.7,70,000/- in the same locality, whereas he has contended that the demised premises, which consists of 2620 sq. ft., could be valued only Rs.4 or 5 lakhs. The



Advocate Commissioner also, based on the guideline value, has reported that the value of the property comes to Rs.3.7 lakhs. Based on the ground reality and also based on the evidence of the revision petitioner / tenant that in the year 1993, he has purchased the property to an extent of 656 sq. ft. at the cost of Rs.7.7 lakhs in the same locality, the learned Rent Controller has held that the claim of the landlady to fix a fair rent of Rs.14,000/- is reasonable and accordingly, fixed the same. This Court does not find any reason to interfere with the same. So far as own use and occupation is concerned, the landlady had clearly proved the said ground through Ex.P5 - notice issued by her landlord, where she and her husband were running businesses and through the evidence of her husband - PW1. The Courts below have also rightly found the same and therefore, the same need not be interfered with.

12. The alternative submission on which the revision petitioner / tenant wants to set aside the concurrent findings of the Courts below is that as the revision petitioner / tenant comes under the purview of "essential service", he is not liable to be prosecuted under the Tamil Nadu Buildings (Lease and Rent Control) Act. Admittedly, as stated by the learned counsel for the respondents, the said ground was not raised either in the affidavit filed before the Courts below or in the grounds of these revision petitions. It is raised only at the time of arguments in these revision petitions. Since there is no pleading before both the Courts below, the present claim amounts to taking a new plea. Admittedly, the revisional power of this Court is very limited, as the revision is confined to the questions that arise out of the pleadings, evidence and judgments on record. In the considered opinion of this Court, if a ground of objection is not stated in the memorandum of appeal or with the permission of the Court not taken in the argument advanced in the appeal, it cannot be taken up in the revision, because the appellate Court cannot be considered to have acted with material irregularity in the exercise of jurisdiction in not considering a ground of objection, which was not urged before it. Further, in the considered opinion of this Court, if a ground is urged in appeal, a new argument in support of that ground can be urged in revision, provided it does not involve new findings of fact.

13. In this case, after 26 years of litigation, now the revision petitioner / tenant raised the issue of maintainability. If this ground is taken into consideration at this stage, it would be great injustice to the respondents / landlords. The revision petitioner / tenant, who failed to urge the ground of maintainability either at the trial stage or at the appellate stage, now cannot be permitted to urge the same. Further, through

<https://hdservices.ecourts.gov.in/hdservices/> memo submitted by the respondents / landlords, which is not disputed by the revision petitioner / tenant, it could be seen that the revision petitioner / tenant is in arrears



of rent of Rs.33,63,750/-, by not paying the fair rent fixed by the Courts below. Though it is submitted by the revision petitioner / tenant that he is being funded by the Central Government, he could have very well paid the fair rent or even deposit the fair rent into the Court. He has failed to do so. Hence, mercy cannot be shown to such person.

14. According to the revision petitioner / tenant, they are doing public service and therefore, they may be retained in the same place. The public service can be done at any place, but it should not be done by riding on any private property, which has been purchased by the individuals by their hard earned money. The revision petitioner / tenant himself admitted that they have purchased a property in the same locality in the year 1993 itself. Even then, they did not choose to vacate the premises, which would go to show that they have abused the process of the Court. Thus, viewing from any angle, these civil revision petitions are liable to be dismissed.

15. In the result, both the civil revision petitions are dismissed and the concurrent judgments of the Courts below are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Munsif,
Rent Controller,
Kumbakonam.
2. The Principal Subordinate Judge,
Rent Control Appellate Authority
Kumbakonam.

Copy to:

The Record Keeper, V.R.Section, Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to Mr.T.Kumar, Advocate SR.No.69129
+1cc to Mr.H.Lakshmi Shankar, Advocate SR.No.69367
gcg
MK/RP/SAR 1/11.07.2018/6P/7C

common order in
C.R.P. (MD) Nos.755 and 756 of 2015
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