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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018

(Reserved on 29.11.2017)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.1625 of 2017

and

CMP(MD)No.9165 and 10058 of 2017

S.Mohammed Nizar

... Petitioner

vs.

1)Ganesan

2)G.Palaniammal

... Respondents

Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the fair and decreetal order passed by the Rent Control Appellate Authority/Sub Court, Ramanathapuram in RCA.No.18/2013 dated 21.06.2017 confirming the fair and decreetal order of eviction passed by the Rent Controller/District Munsif Court, Ramanathapuram, in RCOP.No.19/2008 dated 04.10.2013.

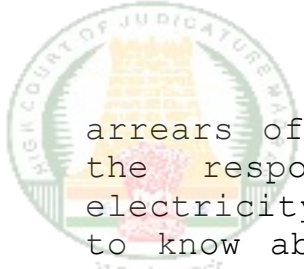
For Petitioner : Mr.P.Senthurpandian

For Respondents : Mr.K.P.S.Palanivel Rajan

ORDER

This revision petition has been filed against the fair and decreetal order passed by the Rent Control Appellate Authority/Sub Court, Ramanathapuram in RCA.No.18/2013 dated 21.06.2017 confirming the fair and decreetal order of eviction passed by the Rent Controller/District Munsif Court, Ramanathapuram, in RCOP.No.19/2008 dated 04.10.2013.

2.The revision petitioner is the tenant and the respondents are landlords. The petitioner/tenant stated that the petition mentioned property originally belonged to one Mary Sahaya Josephin and he was inducted a tenant for the monthly rent of Rs.8,000/- and he is running a hotel in the demised premises under the name and style of 'Kurinji'. Thereafter, the demised premises was sold to one Kulanthairaj and the petitioner became tenant under him and the rent was paid to the said Kulanthairaj and also through his brother, for which, no receipts were issued. Though initially monthly rent was fixed as Rs.1,000/-, subsequently it was raised to Rs.3,000/- and there was no default in payment of rent and the petitioner paid rent to Kulanthairaj till September 2006 and thereafter, no one had come to receive the rent. The rental amount for October and November 2006 sent through money order was returned and therefore, the petitioner deposited the

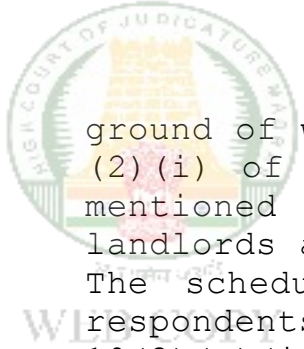


arrears of monthly rent in his Savings Bank Account. While so, the respondents herein illegally tried to disconnect the electricity service connection and only then, the petitioner came to know about the sale of the petition property and thereafter, the petitioner offered monthly rent to the respondents which was refused and that the monthly rent from the month of October 2006 till July 2007 sent through Demand Draft was returned. Therefore, the petitioner filed RCOP.No.6/2008 to deposit the rent and contended that there was no wilful default and the demand of the respondents was not bonafide and therefore, prayed for dismissal of the eviction petition.

3.The respondents would contend that they purchased the petition mentioned property from the said A.S.Kulanthai Raj by a sale deed dated 03.11.2006 and they informed the revision petitioner about their desire to start a textile shop and they demanded the petitioner to vacate the building. According to the respondents, the revision petitioner promised to vacate the petition building within one month, but he did not do so. Hence, the respondents filed a petition for eviction in RCOP.No.19/2008 before the Rent Controller/District Munsif Court, Ramanathapuram, contending that the petition mentioned building is an old one and located in the prime commercial area and that the respondents are running a textile showroom at Salai Street, Ramanathapuram in a rental building and they are not having any other non residential building and that they are also having sufficient means to demolish the petition building and reconstruct a new building to start business.

4.The Rent Controller, after enquiry, allowed the eviction petition in RCOP.No.19/2008 on the ground of own use and occupation of the landlords, against which, the tenant/petitioner herein filed appeal in RCA.No.18/2013. As appellant in the said appeal, the tenant would contend that the plea of demolition and reconstruction raised by the respondents was not bonafide and they had attempted to disconnect the electricity service connection illegally to evict the appellant from the petition property. He would also contend that the respondents/landlords own many other properties in Ramanathapuram and for demolition and reconstruction, the respondents do not have sufficient means. The appellant would also state that on the one hand, the landlords stated that they want the petition premises for own use and occupation and on the other hand, they want petition premises for demolition and reconstruction which are contradictory. However, the learned rent control appellate authority without appreciating the above contentions, dismissed the appeal, against which, the tenant as revision petitioner is before this Court.

5.Learned Counsel for the revision petitioner/tenant would submit that as the respondents/landlords sought eviction on the



ground of wilful default, petition is to be filed under Section 10 (2) (i) of the Act and the abovesaid provisions had rightly been mentioned by the respondents in the petition. However, the landlords also sought eviction for carrying on their own business. The schedule building being non residential in character, the respondents/landlords ought to have filed petition under Section 10(3)(a)(iii) of the Act. But the landlords have mentioned Sections 10(3)(A)(i)(ii)(iii). However, the learned appellate authority dismissed the appeal stating that correct provision of law has also been stated and mere quoting irrelevant provisions would not make the petition invalid in the eye of law. Therefore, the learned counsel prayed to set aside the impugned orders.

6. Learned counsel for the respondents/landlords would submit that the respondents are very much in need of the petition property for doing their own business namely, textile business and therefore, they want the petition property to be demolished and reconstructed, for which, they have also sufficient means. Therefore, even quoting of Section 14(i)(b) of the Act may not be found fault with and all the more, wrong quoting of irrelevant provisions is not fatal to their case.

7. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8. Perusal of the record shows that the respondents/landlords sought eviction on the ground that the demised premises is bonafidely required for carrying on his own business. As per Section 10(3)(a)(iii) of the Act, the following ingredients are necessary to allow the petition for eviction:-

- (i) Building should be non residential in character.
- (ii) Landlord should be carrying on business on date of application for eviction.
- (iii) Landlord should not be occupying any building belonging to him in this town.
- (iv) Claim should be bonafide and not found to be indirect or false attempt to evict the tenant to obtain more rent or to harass the tenant.

Therefore, what has to be seen is whether the landlords have proved the above ingredients.

9. Perusal of the record further shows that the petition building is non residential in character. The landlords have produced Ex.P3 certificate of registration issued in the name of 'TVL Shanthi Tex' in favour of the 1st respondent and Ex.P4 certificate of registration issued in the name of 'TVL Shanthi Tex' in favour of the 2nd respondent. Ex.P5 is the receipt issued for payment of rent in respect of Shanthi Tex shown in Ex.P3



certificate and Ex.P6 is the receipt issued for payment of rent in respect of the shop Shanthi Tex and Ex.P11 is the lease agreement in respect of Shanthi Trader.

10.From the above documents, it is clear that the respondents are carrying on textile business under the name and style of 'TVL Shanthi Tex' in a rental building which is also admitted by the revision petitioner/tenant in his evidence. It is the argument of the revision petitioner/tenant in RCOP that evidence of PW1 reveals that the respondents/landlords own many other houses and vacant plots and therefore, his requirement cannot be considered to be bonafide. It was also the contention of the revision petitioner that the respondents on the one hand sought for eviction on the ground of own use and occupation and on the other hand sought eviction on the ground of demolition and reconstruction which are mutually inconsistent. Perusal of the record shows that the respondents do not have any other building which is non residential in character.

11.In my considered opinion, the question of bonafide requirement has to be decided only based on the available circumstances. The respondents/landlords is seeking the petition property to carry on textile business and on reading of the petition, it is seen that the respondents have sought to demolish and reconstruct the petition property to run their textile business and they would rely on the decisions reported in 1999 (II) CTC 606, R.Rajendran vs. E.M.Kuthurathullah, Nadan Brothers and others vs. Kamaladevi Chandak and others reported in 1989 (II) MLJ 469 and S.Periyasamy Nadar vs. T.M.P.N.Singaravel reported in 1997-3-L.W 731 to reiterate the principle that combining two purposes of the requirements by the landlords for own use and for demolition and reconstruction are complimentary to each others and therefore, the learned Judge has rightly applying the above principle had dismissed the appeal filed by the revision petitioner/tenant which does not warrant interference from this Court.

12.Accordingly, this Civil Revision Petition is dismissed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>
1) The Rent Control Appellate Authority/Sub Judge,
Ramanathapuram.



2) The Rent Controller/District Munsif,
Ramanathapuram.

+1cc to Mr.P.Senthurpandian, Advocate Sr.No.61732

+1cc to Mr.K.P.S.Palanivel Rajan, Advocate Sr.No.62345

BALA

VB/JC/SAR1/24.04.2018/5P/5C

order made in
CRP (NPD) (MD) No.1625 of 2017
17.04.2018