

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 06.12.2017
Delivered on : 29.01.2018

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CORAM:**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (NPD) (MD) .No.2033 of 2017****and****C.M.P. (MD) .No.10147 of 2017**

K.Suthan

... Petitioner/Tenant

Vs.

Dr.Malarvizhi

... Respondent/Landlord

PRAYER: The Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings and (Lease and Rent Control) Act against the fair and decreetal order dated 30.06.2017 passed in R.C.A.No.13 of 2015 by the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli, confirming the fair and decreetal order dated 30.04.2015 passed in R.C.O.P.No.24 of 2012 by the Ist Additional Rent Controller (Ist Additional District Munsif), Tirunelveli.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.T.S.R.Venkatramana

O R D E R

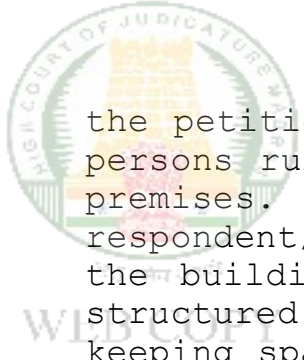
The Civil Revision Petition has been filed against the order passed by the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli in R.C.A.No.13 of 2015, dated 30.06.2017, confirming the order passed by the Ist Additional Rent Controller (Ist Additional District Munsif), Tirunelveli in R.C.O.P.No.24 of 2012, dated 30.04.2015.

2. The respondent herein is the landlady and the petitioner herein is the tenant under the respondent. For the sake of convenience and easy understanding, the parties are referred to as the owner and the tenant in this Civil Revision petition.

3. The brief facts of the case is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

The petition scheduled property is a non-residential building and it belongs to the respondent and it was leased out to



the petitioner/tenant for his own use. But, he along with various persons running the business as Partnership Firm in the scheduled premises. Apart from that, without the consent of the respondent/landlady, the petitioner/tenant demolished a portion of the building, especially the room on the southern side and re-structured it. The petitioner/tenant also constructed a room for keeping spares. Hence, the respondent/landlady filed a petition in R.C.O.P.No.24 of 2012 before the Ist Additional District Munsif, Tirunelveli for vacating the petitioner/tenant in the scheduled property on the ground of own occupation of her daughter, sub lease and act of waste.

4. The petitioner/tenant has filed a counter affidavit stating that the petition scheduled property was a motor vehicle water service station on the bank of Tamirabarani River and originally it belongs to the husband of the respondent Dr.C.Mohandoss. On 28.06.2007, the petitioner/tenant entered into an agreement of lease with the husband of the respondent/landlady for a period of two years up to 30.06.2009. The petitioner/tenant was paying rent regularly by means of cheque of Rohoboth Motors. The said Rohoboth Motors is a partnership firm consisting of the petitioner/tenant, his father and his brother as partners. After the death of said Dr.C.Mohandoss, the respondent/landlady executed another lease deed dated 01.07.2009 for a period of three years. The monthly rent is Rs.13,780/- and the petitioner/tenant is paying the rent regularly. There is no sub-lease in this case. It is denied that the petitioner/tenant has committed the act of waste and from June 2007, the petitioner/tenant is in occupation of the building. Originally, the scheduled property was used as a water service station and the petitioner/tenant converted two water service ramp portion as rooms with upstairs without demolishing any portion of constructions. The respondent's husband permitted the petitioner/tenant for making such improvements for accommodation of 40 staff members. For these improvements, the petitioner/tenant spent Rs.10,00,000/- and he deposited money with TNEB and completed the wiring spending Rs.2,00,000/-. The petitioner/tenant also filed an additional counter affidavit stating that the respondent/landlady and her husband Dr.C.Mohandoss purchased 5.14 cents in the year 2002 and constructed three buildings in Vannarpettai. The above said building is kept vacant and it is fit for running a clinic and the respondent/tenant has suppressed the same and hence, the petition is liable to be dismissed.

5. After detailed enquiry, the Ist Additional Rent Controller (Ist Additional District Munsif), Tirunelveli has dismissed the R.C.O.P.No.24 of 2012, on 30.04.2015, on the ground of own occupation and act of waste. Against which, the petitioner/tenant filed an appeal in R.C.A.No.13 of 2015 before the Rent Control Appellate Authority (Principal Sub Court), Tirunelveli. The learned Principal Sub Judge, Tirunelveli has



discussed the matter in detail and dismissed the appeal, confirming the order passed by the Ist Additional Rent Controller (Ist Additional District Munsif), Tirunelveli in R.C.O.P.No.24 of 2012, dated 30.04.2015 and directed the petitioner/tenant to hand over the vacant possession of the petition scheduled building to the landlady within two months from the date of receipt of the judgment. Against which, the petitioner/tenant has filed the Civil Revision Petition before this Court.

6. The learned counsel appearing for the petitioner/tenant would submit that even though the grounds of own use, occupation and the act of waste were not proved to the satisfaction of the Rent Controller, he went ahead with the matter and dismissed the claim of the tenant. Added further, the appellate Court had erroneously dismissed the appeal by confirming the eviction order passed by the Rent Controller. He would further submit that the respondent/landlady is having another vacant non-residential building located within the jurisdiction of Rent Controller and hence, there is no *bona fide* intention on the part of the landlady seeking the petition scheduled building for her own use and occupation. The learned counsel for the petitioner would also submit that the petitioner/tenant after getting prior permission from the respondent/landlady, spent huge amount to develop his business and it cannot be attributed as an act of waste and the daughter of landlady is working at Chennai and the reason of own use and occupation is flimsy. Hence, he prays for allowing this Civil Revision Petition.

7. In support of his contention, the learned counsel for the petitioner/tenant relied on a judgment reported in **(1988) 2 SCC 513 (Hameedia Hardware Stores v. B.Mohan Lal Sowcar)**, wherein, in para - 13, it is stated as follows:

If the requirement of "claim" being "bona fide" as contained in Section 10(3)(e) is construed to mean that genuineness of the need of the landlady for the non-residential building is not to be considered and the circumstance that the landlady on the date of making the application is factually carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned is to be construed sufficient to make his claim bond fide, the tenancy of no non-residential building will be secure.

8. *Per contra*, learned counsel appearing for the respondent submits that the Court after going through the various documents and evidences available on record passed a detailed manner and there is no interference, whatsoever, required at the hands of the Court. To sum up, he prays for the dismissal of this Civil Revision Petition.



9. Heard the learned counsel for the petitioner and learned counsel for the respondent and perused the materials available on record.

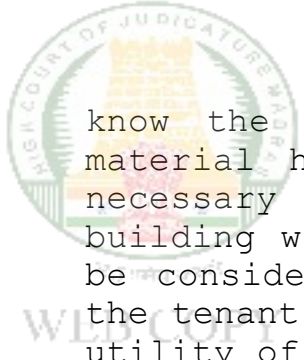
10. Originally, the landlady sued the tenant on the ground of own occupation, sub-lease and act of waste. Regarding sub-lease the Rent Controller disallowed the plea of the landlady and in other grounds, he allowed it. On appeal, the appellate Court confirmed the findings of the Rent Controller. To sum up, the Courts below have concurrently held that the tenant is liable to be evicted from the premises in question. As regards own occupation, there is no dispute that the daughter of the landlady is a house surgeon and she has completed her course and Ex.P.2 is the copy of the medical registration certificate issued to her. The contention of the tenant that the landlady has some other property at Vannarpettai where she can start her business cannot be accepted for the simple reason that the tenant cannot dictate the terms and conditions to the landlady as to where the hospital is to be established. In the case on hand, the landlady, her husband and her daughter are doctors. Admittedly, the premises in question, is a residential area where their business can grow well to meet the present requirements. While establishing an hospital, various factors to be into account, like, the population, availability of water sources, investment, accessibility to the hospital by the public, potentiaity of the people in and around where the hospital is established and so on and so forth. In such circumstance, it is not the choice of the tenant to direct the owner to start the business, but the right is vested with the owner of the building. Further, as contended by the landlady, the property in question is in Tirunelveli Corporation limits and naturally, the establishment of the hospital would yield good result. The tenant would also contend that the landlady and her daughter has another hospital at Manoor and therefore, the premises in question is not required is liable to be rejected. Admittedly, the said place is not within the city limit and he himself admitted in his evidence that it is 14 kms away from the city limit. In this regard, his defence that there are lot of hospitals are available where the landlady would like to start the hospital and therefore, it is not viable for starting the hospital, has no merit basis. The reason is that it is needless to mention that College, Hospital and Schools, wherever we start, it would cater to the needs of the particular locality of the people in and around area where the establishment is started. Therefore, the landlady is having another hospital and she cannot seek for this property cannot be accepted and it is the right of the landlady to start another hospital in the residential area on her own. Therefore, the ground raised by the landlady that it is her own occupation is a genuine one and accordingly, it is confirmed.



10.1. Secondly, the allegation of the landlady is that though the building in question was leased out to the tenant for his own use, he was running a partnership firm to which the tenant did not dispute it, however, he would allege that only the family members of the landlady were partners and therefore, the question of sub-let would not arise, cannot be accepted for the simple reason that no records have been produced neither before the Court below nor before this Court to substantiate the fact that with the consent of the landlady only, the partnership firm was established by the tenant. Therefore, admission is the best form of evidence and on the face of it, it is clear violation that the tenant had used the building in question for the purpose other than it was intended for by having a partnership firm. Though the said ground is negatived by the Court below, this Court is satisfied to the fact that there is sub-letting also in this case.

10.2. Coming to the third point that there is no act of waste as alleged by the landlady and according to the tenant, he himself conceded to the fact that with the knowledge and consent of the landlady he did modification by converting two water service ramp portion as rooms with upstairs without demolishing any portion of constructions. In that modification process, he admitted that 40 staff members could be accommodated. For this modification, he alleged to have spent Rs.10,00,000/- for the improvement of the building and for wiring purposes, he alleged to have spent Rs.2,00,000/-. Here also, he does not dispute the factum of modification of the building. Keeping the amount spent by the tenant, this Court is taken aback that how a huge sum of Rs.12,00,000/- could be spent without the written instruction from the landlady. No prudent man will spend so much amount in modifying the building without the written instruction from the owner of the landlady. One can presume that for accommodating 40 staff members definitely the tenant would have done havoc on the basic structure of the building. The defence that he has taken oral permission for modification of the building will have no legs to stand to support to the case of the tenant. Any modification in the building without the knowledge of the landlady in the form of written instruction will be treated as one against the interest of the owner of the building.

10.3. Further, he would contend that only harmful act which impairs materially the utility of the building will be treated as act of waste and in this case, there is no such act of waste. The said argument also has no basis. The reason behind is that the owner of the building only would know the basic structure of the building as regards which portion of the building can be touched upon for making any changes or any alteration have to be made in the building in question. Further, since the owner is the founder of the building at the time of construction, except him, nobody would



know the history of the building as to whether what type of material has been used, how long the building exists and other necessary details when modification is done. Any change in the building without the knowledge or consent of the owner would only be considered as an act of waste. Therefore, the contention of the tenant in this regard that there was no impairment in value or utility of the building cannot be accepted. That apart, during the cross examination of R.W.1/tenant, he admitted that in the agreement under clause No.10, there is a specific clause to the effect that prior consent is necessary for changes in the building. Admittedly, he did not obtain any permission from the owner before going for modification of the building. Violation of the condition against agreement entered into between the parties is fatal to the defence raised by the tenant.

10.4. To sum up, drafted in the Victorian era, the Act is archaic and not in tune with the needs and value that prevail in a modern and progressive society. No doubt, the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 is enacted with the whole purpose to protect the tenant from unscrupulous landlady. In other words, it is intended to be a shield for the tenant. However, due to passage of time, the tenancy Act is used as a weapon against the owner to exploit them. The tenants who occupy prime property cannot continue to dictate terms and conditions. The act needs urgent amendments to stay in tune with the present times. In the present scenario, most of them invest money in housing. However, the span of litigation takes years together to settle the case. In my humble opinion, this Act needs a rethink and new look. Admittedly, a tenant comes into possession admitting the right/ownership of the owner. However, he is allowed to take up any kind of defence and deny the landlady the fruits of the property he/she holds it. This Court hopes and trust that the legislature will step in and ensure that the Act is made workable in today's climate and the prime object of the Act, should be a beneficial legislation for both the landlady as well as tenant.

10.5. In fine, the Court below after considering various judgments of this Court as well as the Supreme Court has dealt with the each and every point raised by the tenant in a detailed manner meticulously, more particularly, the appellate Court has dealt with the matter lock, stock and barrel with supporting decisions and this Court is of the considered view that there is no interference required whatsoever and the order of the Courts below stand confirmed and this Civil Revision Petitioner has not even made an iota of ground in interfering the judgment of the Courts below and therefore, this Court is of the considered view that civil revision petition is liable to be dismissed and ~~accordingly~~ it is dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs. Since the tenant was scheduled to be vacated in the building in question as



early as on 30.08.2017, time is granted to the tenant to hand over the building on or before 28.02.2018.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Rent Control Appellate Authority,
Tirunelveli.
2. The Ist Additional District Munsif,
Ist Additional Rent Controller,
Tirunelveli.

Copy to:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

- + 1 cc TO Mr.T.S.R.Venkatrama , Advocate in SR No. 44378
- + 1 cc TO Mr.G.Prabhu Rajadurai , Advocate in SR No. 44731

akv/bala

AE/SV MMS/SAR2/21.02.2018/7P/7C

order made in
C.R.P. (MD) .No.2033 of 2017
29.01.2018