



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2018

DELIVERED ON : 28.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD)No.831 of 2016

and

C.M.P. (MD)Nos.3402 & 4015 of 2017

1.Santha Ammal

2.Angalammal @ K.M.Guha Priya

: Petitioners/Appellants/Respondents/Tenants

Vs.

1.Surya Narayanan :1st Respondent/1st Respondent/Petitioner
/ Landlord

2. M/s.Bharath Petroleum Corporation,
Madurai Zone Rep. by its Zonal Manager,
Having Office at Bypass Road, Madurai.

:2nd Respondent /2nd Respondent /
2nd respondent/tenant

PRAYER : Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the judgment, dated 09.12.2015, passed in R.C.A.No.73 of 2014 on the file of the Principal Subordinate Judge (Rent Control Appellate Authority) at Madurai, confirming the Fair Order and Decreetal, order dated 25.09.2014, in RCOP.No.111 of 2007, on the file of the Additional District Munsif (Rent Controller) at Madurai.

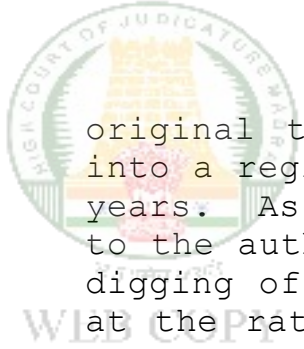
For Petitioners : Mr.R.Narendran

For 1st respondent : Mr.S.A.Ajmalkhan

O R D E R

This civil revision petition has been filed by the petitioners / tenants questioning the correctness of the judgment passed by the Rent Control Appellate Authority / Principal Subordinate Judge, Madurai, in R.C.A.No.73 of 2014, dated 09.12.2015, whereby and whereunder the order of eviction passed by the Rent Controller / Addition District Munsif, Madurai Town in R.C.O.P.No.111 of 2007, dated 25.09.2014, was confirmed.

2. The first respondent / landlord had leased out his premises to one Karuppalah - original tenant viz., the husband and daughter of the petitioners / tenants, for running a petrol bunk. The



original tenant and the first respondent / landlord had entered into a registered lease agreement on 14.07.1995 for a period of 15 years. As per the terms of lease, the original tenant shall apply to the authorities for installation of petroleum product including digging of the land and the tenant agreed to pay an enhanced rent at the rate of 25% at the beginning of every fourth year. The tenant was not regular in paying the monthly rent and not paid the enhanced rent also as agreed. Hence, the 1st respondent / landlord had initiated eviction proceedings in R.C.O.P.No.111 of 2007 before the Rent Controller, Madurai Town under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the original tenant on the ground of wilful default in payment of rent and for demolition and reconstruction. During the pendency of the said RCOP, the original tenant died and therefore, his heirs viz., the petitioners were subsequently impleaded.

3. The Rent Controller, Madurai Town, after considering the facts and circumstances, had allowed R.C.O.P.No.111 of 2007, on 25.09.2014 and directed the petitioners/tenants to vacate the premises and hand over the vacant possession of the same to the landlord within a period of three months, against which, the petitioners/tenants had filed an appeal before the Rent Control Appellate Authority, Madurai. After hearing the arguments of both sides, the Rent Control Appellate Authority, Madurai has dismissed the appeal on 09.12.2015, directing the petitioners/tenants to vacate and hand over the possession of the petition mentioned premises to the 1st respondent/landlord within three months, thereby, confirmed the order, dated 25.09.2014, passed by the Rent Controller, Madurai Town in R.C.O.P.No.111 of 2007. Aggrieved by the same, the present Civil Revision Petition has been filed by the petitioners/tenants.

4. The learned counsel for the petitioners/tenants mainly contended that the first respondent / landlord had leased out only a vacant site and that the buildings and the other amenities in the said land was, subsequently, developed by the petitioners / tenants and therefore, the Rent Control Act would not apply to this case and the RCOP itself not maintainable, but the Rent Controller has erroneously allowed the same on the ground of wilful default and for demolition and reconstruction, and the Rent Control Appellate Authority also has erroneously confirmed the order of the Rent Controller. Thus, he prayed to allow this civil revision petition.

5. The learned counsel for the first respondent / landlord would submit that in the agreement itself it is stated that it is only a landlord and tenant relationship and therefore, the Rent Control Act is applicable to this case and that the original tenant and the petitioners / tenants have failed to pay rent as agreed and therefore, the Rent Controller and the Rent Control



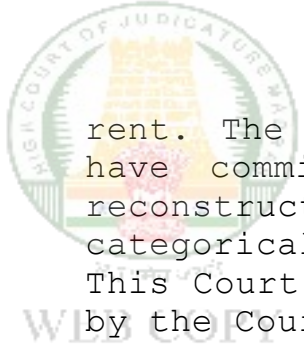
Appellate Authority have rightly ordered for eviction and the same need not be interfered with. Thus, he prayed to dismiss this civil revision petition.

6. Heard the learned counsel appearing for both sides and perused the documents placed on record.

7. The main contention of the learned counsel for the petitioners / tenants is that as the vacant site has been leased out to the original tenant, the Tamil Nadu Buildings (Lease and Rent Control) Act, is not applicable to this case. As per Section 2(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, even a hut can be defined as a building and the same would come under this Act. In the schedule of rental property mentioned in the lease agreement, dated 14.07.1995, it is seen that rental property was within the Corporation limit and assigned in Door No.15, which would go to show that there was a building in existence. A perusal of the lease agreement, dated 14.07.1995, would further go to show that a building along with the vacant site was leased out to the original tenant for a period of 15 years, which came to an end on 31.07.2010 itself.

8. It is not in dispute that the property is situate in the prime locality of the city. It is seen that in the statement of objections, the original tenant has admitted the landlord and tenant relationship. In paragraph No.3 of the objections filed by the original tenant, it is stated that "it is pertinent to note that the respondent was reluctant to hand over the petition mentioned building for installing the petrol pump". He had also stated in the very same paragraph No.3 of his objections that "he had spent huge amount for vacating the trespasser in the petition mentioned property before initiating the business". It would further strengthen the submission of the learned counsel for the first respondent / landlord that there was a building in existence in the leased out property. Further, the petitioners / tenants never pleaded before the Rent Controller that the petition mentioned premise is only a vacant site. From the above, it is clear that the Tamil Nadu Buildings (Lease and Rent Control) Act would apply to this case.

9. It is seen from the record that the petitioners / tenants have not taken any steps under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act to pay the rent to the landlord or to deposit the rent regularly into the Court as per the orders passed under Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act. It is a settled law that unless the tenant calls upon the landlord to adjust the advance amount against arrears, he cannot escape from the consequences of wilful default. In this case, the petitioners/tenants have not requested the landlord to adjust the advance amount towards the arrears of



rent. The Courts below have held that the petitioners / tenants have committed wilful default. So far as the demolition and reconstruction of the building is concerned, the Court below have categorically held in favour of the first respondent / landlord. This Court does not any reason to interfere with the orders passed by the Courts below.

10. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge
(Rent Control Appellate Authority)
Madurai.
2. The Additional District Munsif
(Rent Controller) Madurai Town.
3. The Record Keeper, (2 COPIES)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.A.Ajmalkhan, Advocate Sr.No.64382

GCG

VB/KKR/SAR2/06.06.2018/4P/6C

order made in
C.R.P. (PD) (MD) No.831 of 2016
and
C.M.P. (MD) Nos.3402 & 4015 of 2017
28.04.2018