



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. (MD) .No.2554 of 2018 (NPD)
and
C.M.P. (MD) .No.11240 of 2018

K.Palaniappan ... Petitioner/Respondent/Respondent

Vs.

V.Sudhakar ... Respondent/Appellant/Petitioner

PRAYER: This Petition filed under Section 25 of Tamil Nadu Building (Lease and Rent Control) Act, 1960, to set aside the order and decree dated 09.10.2017 in R.C.A.No.8 of 2012, on the file of the Rent Control Appellate Authority cum Subordinate Judge, Ramanathapuram, by reversing the order and decree dated 13.09.2012, in R.C.O.P.No.3 of 2010, on the file of the Rent Controller cum District Munsif Court, Ramanathapuram.

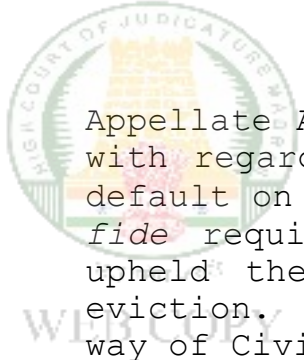
For Petitioner : Mr.S.Ramesh

For Respondent : Mr.J.M.Hassanul Bazari

O R D E R

The petitioner challenges the order of eviction passed by the Rent Control Appellate Authority in R.C.A.No.8 of 2012.

2.The respondent, who had purchased the property had sought for eviction on two grounds viz., willful default and owners occupation under Sections 10 (2) (i) and 10 (3) (a) (i) of the Tamil Nadu buildings (Lease and Rent Control) Act, 1960. The said petition was resisted by the tenant contending that there is no default on his part. The requirement of the landlord under Section 10 (3) (a) (i) of the Tamil Nadu buildings (Lease and Rent Control) Act, 1960, is not bonafide and he would also contend that the petitioners' vendor had sought for demolition and re-construction prior to filing of the Rent Control Original Petition. The Rent Controller, who tried the application, dismissed the same, upholding the contentions of the Tenant / petitioner herein. on Appeal, the



Appellate Authority agreed with the findings of the Rent Controller with regard to the willful default and concluded that there was no default on the part of the tenant. However, on the question of *bona fide* requirement for owner's occupation, the Appellate Authority upheld the claim of the landlord, allowed the appeal directing eviction. Aggrieved by that, the petitioner is before this Court by way of Civil Revision Petition.

3.I have heard Mr.S.Ramesh, learned counsel appearing for the petitioner and Mr.J.M.Hassanul Bazari, learned counsel appearing for the respondent.

4.Mr.S.Ramesh, learned counsel appearing for the petitioner would contend that the Appellate Authority erred in ordering eviction on the ground of owner's recent occupation. He would rely on the fact that the landlord in his evidence as P.W.1 has deposed that the demised premises is in a dilapidated condition and unfit for occupation. He would submit that there is a inconsistency between the pleadings and the evidence of the landlord, which disentitle the landlord from seeking possession on the ground of owner's occupation. The learned Appellate Authority has considered this aspect and has concluded that the said evidence alone cannot amount to inconsistency in the case pleaded by the landlord.

5.The learned Appellate Authority had relied upon the decision of this Court in **1989 2 MLJ 469-(Nandan Brothers and Others Vs. Kamaladevi Chandak and others)**.

6.I do not find any reason to disagree with the conclusion of the learned Appellate Authority and I am in agreement with the conclusions arrived at. Hence, I see no merit in the Civil Revision petition and the Civil Revision Petition stands dismissed.

7.Mr.S.Ramesh, learned counsel appearing for the petitioner seeks time to vacate the building and to hand over the possession of the property. Considering the said request and the fact that the tenant has been in possession of the premises for a considerable time, time is granted till 31.05.2019 to vacate the premises in question and hand over the possession to the landlord without driving the landlord to execution proceedings.

8.The petitioner shall file an affidavit undertaking to vacate by 31.05.2019. The said affidavit shall be filed on or before 20th January 2019. If no affidavit is filed before 20th January 2019, the landlord will be free to execute the decree for eviction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)



Sub Assistant Registrar (CS-IV)

To

1. The Rent Control Appellate Authority
cum Subordinate Judge, Ramanathapuram.
 2. The Rent Controller
cum District Munsif Court, Ramanathapuram.
 3. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
- + 1 CC TO Mr.J.M.HASSANUL BAZARI, ADVOCATE IN SR No. 95840
+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 95621

TSG

TE/BK/SAR-4 : 03/12/2018 : 3P/7C

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