



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.07.2018

DELIVERED ON : 13.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.887 of 2017

V.Ramamoorthy .. Petitioner/Respondent/ Petitioner
vs
T.N.Shankaran .. Respondent/Appellant/Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, against the fair and decretal order dated 01.03.2017 made in R.C.A.No.48 of 2015 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Tiruchirapalli, allowing the appeal filed by the respondent against the fair and decretal order dated 26.08.2015 passed in R.C.O.P.No.100 of 2013 on the file of the Rent Controller (III Additional District Munsif), Tiruchirapalli.

For Petitioner : Mr.K.S.Vamsidhar

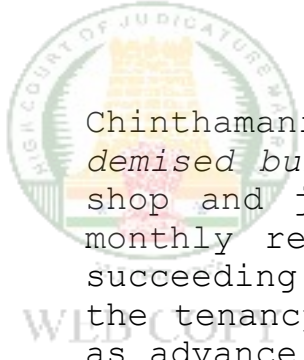
For Respondent : Mr.R.Sundar

ORDER

This Civil Revision Petition has been filed by the petitioner against the order dated 01.03.2007 passed in R.C.A.No.48 of 2015 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Tiruchirapalli, setting aside the order of the Rent Controller (III Additional District Munsif), Tiruchirapalli dated 26.08.2015 passed in R.C.O.P.No.100 of 2013. The petitioner herein is the landlord and the respondent is the tenant.

2. For the sake of convenience, the petitioner and the respondent are referred to as the landlord and tenant hereinafter.

3. Brief facts in a nutshell is as follows: The landlord has filed R.C.O.P.No.100 of 2013 under Section 10(2)(iii) and 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "*the said Act*") alleging that on 01.11.1991, the landlord and tenant entered into a tenancy agreement, under which the ground floor portion of the building in No.7, Karur By-pass Road, near Chinnayya Pillai Chatram Bus Stand,



Chinthamani, Tiruchirapalli Town (hereinafter referred to as "the demised building") was let out to the tenant for his hotel, sweet shop and juice shop business for a period of five years at the monthly rent of Rs.1,500/- payable on or before 5th day of each succeeding English calendar month. On the date of execution of the tenancy agreement, the tenant had paid a sum of Rs.2,00,000/- as advance.

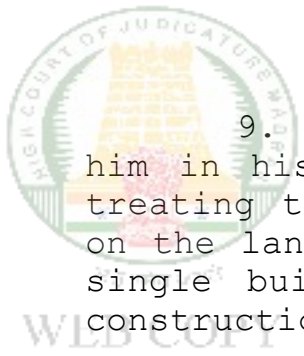
4. Subsequently, the landlord has constructed a second floor and the entire building viz., ground, first and second floors were let out to the tenant. On 13.06.2007, a fresh tenancy agreement was entered into between the landlord and tenant and the rent was enhanced to Rs.40,000/- per month. Pursuant to the tenancy agreement dated 13.06.2007, the tenant had paid additional amount of Rs.6,00,000/- towards advance and thus an amount of Rs.8,00,000/- was available with the landlord as advance.

5. According to the landlord, presently the tenant was paying rent of Rs.44,000/- per month. Since the landlord needed the property for his own occupation, he caused lawyer notice on 23.08.2012 calling upon the tenant to vacate and deliver possession of the property. On 22.09.2012, the tenant issued a reply notice containing false allegations.

6. During the second week of April, 2013, when the landlord visited the demised building, he saw extensive alterations made by the tenant to the superstructure of the building without the consent of the landlord. When the landlord questioned alterations, the tenant asked the landlord to go out of the demised building. Thus, according to the landlord the acts of the tenant have materially impaired the value and utility of the demised building and also the acts of the tenant are 'acts of waste' as defined in Section 10(2)(iii) of the said Act.

7. On 18.04.2013, the landlord issued a legal notice for the damages caused by the tenant, followed by another notice dated 30.4.2013, for which, the tenant had issued reply containing false allegations. Hence, the landlord has filed petition under Sections 10(2)(iii) and 10(2)(vii) of the said Act directing the tenant to vacate the demised building and deliver possession of the same.

8. Resisting the petition, the tenant had filed counter stating that the landlord has raised the building up to foundation level and since the landlord has not made any construction activities, with the consent of the landlord, the tenant started construction and at the time of construction, the landlord was present. It is stated that the landlord did not raise his little finger for the construction put up by the tenant. In fact, the landlord has been present all along and he was consenting party for such construction made by the tenant and he had put up ground floor, first floor and second floor.



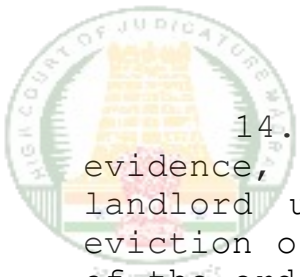
9. According to the tenant, the construction was made by him in his property as well as the property of the landlord by treating the same as one unit. The entire building erected both on the landlord's property as well as the tenant's property was a single building and was enjoying as such from day one of the construction.

10. The case of the tenant is that he had spent heavily not only for construction of the building, but also for doing interior works in the shape of showcase, falls ceiling, decoration etc. The tenant started his hotel business under the name and style of Ragunath Restaurant during 1992. Thereafter at regular intervals the rent has been increased from Rs.1,500/- to Rs.3,000/-, then to Rs.5,000/- to Rs.7,000/-, then to Rs.8,500/- and Rs.10,000/-. According to the tenant, the landlord also borrowed to the tune of Rs.10 lakhs in several bids from the tenant under the guise of celebrating the marriage expenses for his son and daughter and the same was not returned to the tenant. According to the tenant, he alone remitting the property tax.

11. In the counter, it is stated that on 13.06.2007, a fresh lease agreement was entered into and at that time of execution of the lease agreement dated 13.06.2007, an advance of Rs.8 lakhs was paid. A sum of Rs.40,000/- was fixed as rent for a period of three years commencing from 13.06.2007. The lease agreement also provided 10% increase on the said rent of Rs.40,000/- once in three years. Thus, after giving 10% increase periodically, the tenant was paying monthly rent at the rate of Rs.48,400/- from June 2013 and the landlord has also receiving the increased rent. According to the tenant, Rs.48,400/- is not a fair rent and is excessive.

12. It is also stated in the counter that the allegations that the tenant had dug a big pit in the flooring, removed the northern wall of the building, merged the building with the building on the north, drilled a big hole in the ceiling of the building in all three floors, damaged several pillars and also caused damages to the structural stability of the building are all false. It is stated that the landlord was fishing in the troubled water by filing the petition without giving boundaries, dimensions, extent of construction etc. Hence, prayed for dismissal of the petition.

13. Before the Rent Controller, the landlord examined himself as P.W.1 and one Mr.Jawahar was examined as P.W.2. Exs.P1 to P29 were marked on the side of the landlord. The tenant examined himself as R.W.1 and one Mr.Kumar was examined as R.W.2. No documents were marked on the side of the tenant. The Advocate General's report and sketch and also the Engineer's reports were marked as Exs.C1 to C4. One Nagaraja was examined as C.W.1.



14. Upon consideration of the oral and documentary evidence, the Rent Controller, allowed the petition filed by the landlord under Section 10(2)(iii) of the said Act and ordered eviction of the tenant within a period of two months from the date of the order.

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15. Aggrieved by the order of the Rent Controller, the tenant had filed an appeal being R.C.A.No.48 of 2015 before the Rent Control Appellate Authority, Tiruchirapalli. By an order dated 01.03.2017, the Rent Control Appellate Authority allowed the appeal and set aside the order of the Rent Controller.

16. Aggrieved by the order of the Rent Control Appellate Authority, the landlord has filed the present Civil Revision Petition.

17. I heard Mr.K.S.Vamsidhar, learned counsel for the landlord and Mr.R.Sundar, learned counsel for the tenant and also perused the materials available on record.

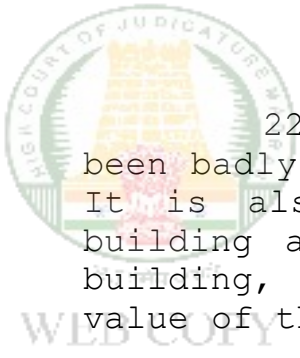
18. The landlord filed petition for eviction on the ground of commission of acts of waste by the tenant and denial of the title of the landlord.

19. The tenant denied both the grounds and the Rent Controller found that the tenant has committed acts of waste, but declined to accept the ground qua denial of the title of the landlord, as the tenant has not denied the title of the landlord in his counter. Consequently, the Rent Controller ordered eviction of the tenant from the demised building.

20. Aggrieved by the order of eviction, the tenant has preferred appeal before the Rent Control Appellate Authority and the Rent Control Appellate Authority set aside the order of the Rent Controller.

21. The building in question is situated at No.7, Karur Bypass Road, near Chinniahpillai Chathiram Bus stand, Chinthamani, Tiruchirapalli Town. According to the landlord, without his consent, the tenant had made the following alterations and the same were seen by him when he visited the demised building:

- (a) Removed the northern wall of the building and merged the building with his own building situated on the north of the demised building.
 - (b) Drilled a big hole through the ceiling of the building in all the three floors.
 - (c) Dug a big pit in the flooring.
 - (d) Few of the pillars of the building were badly damaged
- compromising the stability of the building itself.



22. According to the landlord, most of the building has been badly damaged and the same was in need of urgent restoration. It is also stated that the tenant had totally ravished the building and committed acts of waste without any regard to the building, its utility, stability or safety, totally impairing the value of the property.

23. The demised building originally comprised in two floors viz., ground floor and first floor. Under Ex.P1-lease deed, the respondent became tenant of the ground floor and rent was fixed at Rs.1,500/- per month. On the said date, the tenant has paid Rs.2 lakhs towards advance and the same was not in dispute. Subsequently, the landlord constructed a second floor and leased out all three floors to the tenant under the fresh lease deed dated 13.06.2007 and the rent was enhanced to Rs.40,000/- per month. On 13.06.2007, an additional advance of Rs.6 lakhs was paid and the lease deed provided that rent shall be increased by 10% once in three years. There is no dispute with regard to the execution of fresh lease deed, receipt of Rs.6 lakhs as additional advance and increase of 10% once in three years.

24. According to the tenant, the landlord has raised the building only up to foundation level and since he had no sufficient means, the landlord asked the tenant to put up ground floor, first floor, second floor in the property by annexing the same with his property. In other words, the construction has been made by the tenant in his property as well as the property of the landlord by treating the same as one unit. To prove that the tenant had put up ground floor, first floor and second floor in the property by annexing the same with his property, nothing has been produced by the tenant. In this regard, it is pertinent to extract the schedule of property stated in the lease deed dated 13.6.2007, which reads thus:

"வாடகை சொத்துவிவரம்

திருச்சிராப்பள்ளி ஜில்லா, திருச்சிராப்பள்ளி தாலுகா, திருச்சிராப்பள்ளி
மாநகராட்சி சிந்தாமணி கிராமம் நெ.7 கரூர் பைபாஸ் ரோட்டில்
தென்வடலாக மேற்படி ரோட்டில் கீழ் சரகில் முனிசிபல் பழைய 5-வது
வார்டு டி.எஸ்.நம்பர் 544/1ல் கட்டுப்பட்ட 2008 1/2 சதுர அடி மனையில்
கட்டப்பட்டு இருக்கின்ற ஆர்.சி.சி. கெட்டி மெத்தைக் கட்டிடம்
தரைதளம், முதல் தளம், இரண்டாம் தளம் மற்றும் மேல் தளம் வகையறா
பூராவும் இந்த வாடகை ஒப்பந்தத்திற்கு கட்டுப்பட்டது."

25. Even in the lease deed dated 01.11.1991, the lease property was described as கெட்டி மெத்தைக் கட்டிடம் வகையறா கீழே உள்ள



பூரா ஜாகாவும், which means ground floor and first floor. Therefore, the contention of the tenant that the landlord had only put up foundation and he had put up the rest of the construction is not acceptable and the same was without documentary proof.

26. It is the say of the tenant that for the construction of building he spent huge money and the bills were handed over to the landlord. As rightly held by the Rent Controller, if really, the tenant had put up construction in the property by spending huge money as alleged by him, he would be in possession of the bills etc. Therefore, it is unbelievable that the tenant had put up construction and had handed over the bills to the landlord for accounting purpose.

27. Qua acts of waste done by the tenant in the demised building, in his evidence, the landlord has categorically stated that the tenant had committed acts of waste in the demised building. Even in the report of the Advocate Commissioner, it has been stated that pillars have been damaged.

28. By appreciating the evidence let in by the landlord, the Rent Controller observed that the tenant had damaged the pillars in the demised building. Contrary, the Rent Control Appellate Tribunal held that just because the pillars were strengthened, it cannot be said that the tenant had damaged the pillars and as such the statement of the landlord that the tenant had damaged the pillars is only a presumption. Since the landlord had categorically proved that pillars were damaged by the tenant by way of documentary proof, including the report of the Advocate Commissioner, it cannot be said that the said statement was only a presumption.

29. As far as chimney exhaust pipes erected by the tenant is concerned, since the tenant was running a hotel, there is every chance of erecting the chimney exhaust pipes by the tenant by drilling the ceiling and/or wall.

30. In so far as the drainage sump put up by the tenant is concerned, the Rent Control Appellate Tribunal held that putting up of a drainage line and/or sump will never amount to an act of waste. It is true that it is very essential for draining out the waste water from the kitchen of the hotel. At the same time, any alteration made regarding laying of drainage pipeline and digging sump for draining water should be with the permission of the landlord. Admittedly, in the case on hand, nothing on record to show that with the prior permission of the landlord, the tenant had made alterations in the demised building.

<https://hcservices.ecourts.gov.in/hcservices> 31. It is the say of the tenant that all alterations were made only in the presence of the landlord and at the time of alterations, the landlord has not made any objection and now he



cannot change his mind and say that material alterations have been made by the tenant in the demised building without his knowledge.

32. According to the learned counsel for the tenant, alterations made in the demised building were simple alterations and the tenant had not done alterations deliberately. He would submit that if the tenant done indiscriminate alterations and/or additions to the building such as to reduce the value and utility of the building, then the acts of waste would come within the meaning of Section 10(2)(iii) of the said Act. But in the instant case, nothing on record to show that alterations made by the tenant reduced the value and utility of the building.

33. According to the learned counsel for the landlord, the evidence adduced in this case was sufficient for arriving at a finding that additions and alterations made by the tenant to the demised building are acts of waste, so as to attract the provisions of Section 10(2)(iii) of the said Act. He also submitted that alterations made without the consent of the landlord reduced the value and utility of the demised building.

34. The legislature has clearly intended to prohibit a tenant from causing damage to the building or doing any act which may affect the utility of the building. There may be cases in which acts of the tenant may add to the utility of the building for sometime but they may cause serious damage to the building. There may also be cases where there might not be any damage to the building but the utility of the building might be seriously affected. Therefore, in either of these cases the tenant should be held to have committed acts of waste.

35. Having regard to the object of the provisions in Section 10(2)(iii) of the said Act, that is, to prevent tenants from making indiscriminate alterations and additions without the consent of the landlord affecting the value and the utility of the building, any alteration made by the tenant which is likely to reduce the age of the building or its value, the landlord is entitled to an order of eviction even if the additions and/or alterations have added to the utility of the building.

36. In a catena of decisions, the Hon'ble Supreme Court while dealing with the acts of waste, consistently has taken the view that the acts of waste have to be agitated and determined from the point of view of the landlord and not that of the tenant or anyone else.

37. In *Gurbachan Singh v. Shivalak Rubber Industries*, reported in (1996) 2 SCC 626, the Hon'ble Supreme Court held as

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

"Thus, the ground for eviction of a tenant would be available to a landlord against the tenant under



Section 13(2)(iii) of the Act, if it is established that the tenant has committed such acts as are likely to diminish the quality, strength or value of the building or the rented land has considerably affected its use for some desirable purpose. The decrease or deterioration, in other words the impairment of the worth and usefulness or the value and utility of the building or rented land has to be judged and determined from the point of view of the landlord and not of the tenant or anyone else."

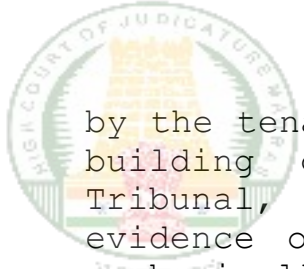
38. In *M. Shanmugam v. C. Kannabiran and another*, reported in 1996-2-L.W. 322, the learned Single Judge of this Court held:

"The other ground of eviction is 'acts of waste' alleged to have been committed by the revision petitioner. Admittedly, some changes have been made by the tenant. He may plead that the changes that have been made have not impaired the utility of the building. He may also contend that what he has done has only added to its value. In this case, the evidence that has been let in is that he has put up a sun-shade, dug holes in the floor and has effected changes for making it convenient to run a watch repairing shop. Even if it is contended that it is only temporary, a big hall has now been converted into small rooms and made use of for different purposes. While considering as to how far these changes have impaired materially the utility and value of the building, the same has to be judged and determined from the point of view of the landlord, and not that of the tenant."

39. In the case on hand, in his petition, the landlord pleaded that the tenant's acts set out have materially impaired the value and utility of the building and the acts are acts of waste as defined in Section 10(2)(iii) of the said Act.

40. As stated supra, material impairment has to be inferred from the proved facts from the point of view of the landlord and the burden of proof is on the tenant to establish that the act of waste committed by the tenant has not impaired materially the value and utility of the building and that such burden will be shifted on the landlord only if the burden is discharged by the tenant.

41. In this case, there is absolutely no evidence on the side of the tenant to establish that the act of waste committed by him has not impaired materially the value or utility of the building. The decisions referred to above are taken into consideration, this Court is of the view that the Rent Controller has rightly come to a conclusion that the act of waste committed



by the tenant has impaired materially the value and utility of the building of the landlord. But the Rent Control Appellate Tribunal, without appreciating the legal position and also the evidence on record, set aside the order of the Rent Controller mechanically and this Court is of the firm view that the order of the Rent Control Appellate Authority is unsustainable in law.

42. Normally, waste will mean a spoil or destruction to houses, gardens, trees, or other corporeal hereditaments and can be broadly divided into two divisions, voluntary waste and permissive waste. Voluntary waste is actual or commissive, as by pulling down houses, or altering their structure and permissive waste is a matter of negligence and omission as by suffering buildings to fall or rot for want of necessary reparations. In addition to the said two broad 'divisions of waste' it is also possible to divide it into 'ameliorating waste' and 'equitable waste'. 'Ameliorating waste' is such voluntary waste as improves the demised premises as a tenant put a new front to his house, 'equitable waste' consists in acts of gross damage, usually the cutting down ornamental timber by a tenant. It has been held by Courts that turning two rooms into one or a hall into a stable, building a new house where there was none before, pulling down a house even though it be rebuilt afterwards are acts of waste.

43. In its order, the learned Rent Control Appellate Authority, held that there is not an iota of evidence on record to suggest that the tenant had indulged in removing the northern wall and the finding of the Rent Controller is only a presumption that both portion of the buildings could not have been made into a single unit without removing the common northern wall. There is no concrete evidence to show that the northern common wall was removed by the tenant and therefore, it cannot be said that the tenant had indulged in an act of waste by allegedly removing the northern wall.

44. On the other hand, upon analysing the oral and documentary evidence, more particularly, the evidence of Advocate Commissioner and his report, the Rent Controller held that the tenant has removed the northern wall in order to unit the building. The aforesaid finding of the Rent Controller, in my view, is based on evidence and the same was also corroborated by the evidence of P.W.2. Therefore, the Rent Control Appellate Authority has committed an error in holding that the tenant had not committed any act of waste qua removing of northern wall.

45. As stated supra, erection of chimney exhaust pipes, construction of sump in the kitchen and damaging the pillars are concerned, those alterations made by the tenant would naturally constitute acts of waste and the Rent Controller, on an overall appreciation and upon analysing the oral and documentary evidence, had rightly arrived at a finding that the



tenant had committed acts of waste. The aforesaid finding of the Rent Controller, in my view, qua the ground under Section 10(2) (iii) of the said Act, appears to be sustainable and only the Rent Control Appellate Authority has erred in reversing the finding of the Rent Controller on flimsy grounds, which cannot be sustained in the eye of law.

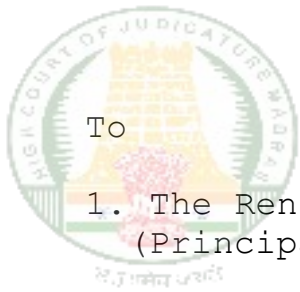
46. As far as the ground for eviction under Section 10(2) (vii) of the said Act is concerned, the Rent Controller, arrived at a finding that since the tenant had not denied the title of the landlord in his evidence and only to screen the act of removal of northern wall, he had stated that he only constructed the building. Thus, the ground for eviction under Section 10(2) (vii) was not proved. Since the landlord and tenant relationship was in existence and in the capacity as tenant, the tenant had made alterations in the building and also was paying the rent, the Rent Controller was right in rejecting the ground for eviction under Section 10(2) (vii) of the said Act. Moreover, the landlord has also not heavily pressed into service the ground for eviction under Section 10(2) (vii) of the said Act in the grounds of the Civil Revision Petition.

47. On an overall analysing of the facts and circumstances of the case, this Court is of the view that the Rent Control Appellate Authority erred in shifting the burden on the landlord, while totally exonerating the tenant and erred in not considering the vital admissions made by the tenant and also erred in looking into the documents produced by the landlord. Further, the Rent Control Appellate Authority has not properly appreciated the legal position while setting aside the order of the Rent Controller. The Rent Control Appellate Authority, in its order observed that the acts of waste pleaded by the landlord were only on presumption. Considering the given facts and circumstances of the case, I am of the view that the finding of the Rent Control Appellate Authority is totally contrary to law and the same cannot be sustained in the eye of law.

48. In the result, the Civil Revision Petition is allowed and the order of the Rent Control Appellate Authority dated 01.03.2017 in R.C.A.No.48 of 2015 is set aside. The order of the Rent Controller dated 26.8.2015 made in R.C.O.P.No.100 of 2013 is restored. The tenant is directed to vacate the demised building and hand over the possession of the same to the landlord within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Records)



To

1. The Rent Control Appellate Authority
(Principal Subordinate Judge), Tiruchirapalli.

2. The Rent Control Authority,
III Additional District Munsif,
Tiruchirapalli.

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VSV

VB/SKN/SAR2/10.09.2018/11P/6C

order made in
C.R.P. (MD) (NPD) No.887 of 2017
13.08.2018