



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2018
Delivered on : 28.03.2018

WEB COPY

CORAM:
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

CRP(NPD) (MD) .No.968 of 2011,
M.P(MD) .No.1 of 2011 and
C.M.P(MD) .No.11399 of 2017

Dr.Agnes

... Petitioner

Vs.

Pameela Matha

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order passed in R.C.A.No.36 of 2010 dated 25.03.2011 on the file of the Rent Control Appellate Authority (Principal Sub-Court), Tirunelveli, confirming the fair and decreetal order passed in R.C.O.P.No.5 of 2008 dated 30.09.2010 on the file of the Principal District Rent Control Tribunal (Principal District Munsif Court), Tirunelveli, by allowing this Civil Revision Petition.

For Petitioner	: Mr.H.Arumugam
For Respondent	: Mr.S.Mani

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in R.C.A.No.36 of 2010 dated 25.03.2011 on the file of the Rent Control Appellate Authority (Principal Sub-Court), Tirunelveli, confirming the fair and decreetal order passed in R.C.O.P.No.5 of 2008 dated 30.09.2010 on the file of the Principal District Rent Control Tribunal (Principal District Munsif Court), Tirunelveli.

2.The brief facts of the case is that respondent/petitioner/Land lord has filed the R.C.O.P.No.5 of 2008 against the petitioner/respondent for eviction of the petitioner/respondent who is the tenant, from the property and hand over possession. The same was allowed in favour of the petitioner on 30.09.2010. Aggrieved over the same the respondent has filed R.C.A.No.36 of 2010 before the Principal Sub Court, Tirunelveli.

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

3.The learned counsel for the respondent/petitioner submitted that since the petitioner is in need of the property for his



business, by way of constructing new building by demolishing the present building, he demanded the same from the petitioner/respondent. Since, he refused to vacate the premises he filed the R.C.O.P. and the same was also allowed.

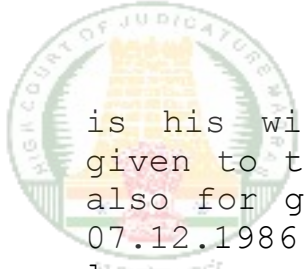
4. After perusal of records available on record, the 1st appellate Court has dismissed the R.C.A and confirmed the order passed in R.C.O.P.No.5 of 2008.

5. The learned counsel for the revision petitioner submitted that the lower Court came to a wrong conclusion that the premises is kept locked for a long period. The Court below has not appreciated Ex.R5 filed by this petitioner. The lower Court failed to consider that the building does not require any immediate demolition. Hence, he prays to set aside the order passed in both the R.C.O.P and R.C.A.

6. Heard both sides and perused the documents available on record.

7. The civil revision petition has been preferred against the judgment and decree passed in R.C.A.No.36 of 2010 dated 25.03.2011 on the file of the Rent Control Appellate Authority (Principal Sub-Court), Tirunelveli, confirming the fair and decreetal order passed in R.C.O.P.No.5 of 2008 dated 30.09.2010 on the file of the Principal District Rent Control Tribunal (Principal District Munsif Court), Tirunelveli, which was filed under Sections 10(2) (vi) (vii) and 14 (1)(b) of the Tamil Nadu Buildings Lease and Rent Control Act, for delivery of possession. The rent control authority, after verifying the documents and evidence, and also the commissioner's report filed on two occasions regarding the schedule property, gave a finding that the building is required for owner's occupation. The petition was allowed and delivery was ordered to be given within one month. Against the order passed in the R.C.O.P, the respondent preferred an appeal and the appellate Court also has sustained the judgement passed by the rent control authority and confirmed the order of the rent controller and dismissed the appeal. Further, the rent control authority has also found that visit charges was not paid for certain attempts and only after filing of the R.C.A.No.36 of 2010, meagre amount was paid. Hence, the occupation and revisit of the respondent in the petitioner's property was very much observed by the rent control authority and eviction was ordered and the same was confirmed by the appellate Court and appeal was dismissed.

8. The Rent Control authority, after analysing the evidence placed by both the petitioner and respondent and also the documents on the side the petitioner Ex P1 to P5, has allowed the ~~petition~~ ^{petition} on the side of the petitioner, the petitioner was examined before the Rent Control Authority who has stated that the suit property belongs to the father of his wife and the respondent



is his wife's relative and the petition schedule property was given to the respondent on lease for the purpose of residence and also for giving medical consultants and the agreement was made on 07.12.1986 and the monthly rent was fixed at Rs.4,500/- in the lease agreement. It is the contention of the petitioner that on January 2000 itself the appellant/tenant has vacated the suit property and the tenant was neither residing in the schedule property nor doing any medical consultancy and nearly for 8 years the petition schedule property was kept under lock. It is also the evidence of the respondent that the petitioner tenant has constructed a nursing home near the petition mentioned property and a house is also built in the same campus and the respondent is residing in the said house. It is also the evidence of the respondent that in the newly constructed Joseph Hospital there are 40 rooms and including the ground floor there are four floors constructed in the building. The petitioner/tenant also admitted his signature in the notice that was issued by the commissioner for the inspection of the suit property. It is also observed that the commissioner has inspected the petition mentioned property and Exs.R1 and R2 are the Plan and Report filed by the commissioner. The commissioner has mentioned in the report that the chairs in the schedule property was covered with dust and at the northern side there are old materials and broken wooden locks were also stored and that there is an identification that the hospital is not running in the petition schedule property. But the petitioner/tenant has deposed before the Rent Control Authority that arrangements were made for cleaning the schedule property for celebrating pongal festival. But the same fact was not disclosed to the commissioner by the petitioner/tenant. Further the petitioner/tenant was not also available in the petition schedule property. The witness examined on the side of the respondent also deposed before the Court that he only opened the petition schedule property for the purpose of inspection by the Commissioner and he has not stated anything that only for the purpose of white washing the building, the things were taken and kept outside of the building.

9.It is also observed that the petition before the Rent Controller was filed under Section 14(1)(b) of the Rent and Lease control Act. It is also the evidence of the petitioner that the petition schedule property is the old building and the area in which the property lies is a commercial area and it is an important place and hence the petitioner wants to demolish the old construction and construct a multi-storeyed building and for the said purpose he is also financially very much equipped and he can complete the building within the time specified by the Rent Control Authority. The evidence of PW1 is also supported by PW2. The respondent also admitted the fact that if the old petition schedule property is demolished and a new building is constructed, his income will be more. Hence, it is observed that the requirement of the building by the petitioner is a bonafide one



considering the area in which the petition schedule property lies and also the condition of the petition mentioned property and the newly constructed building found in that locality and also the evidence of the petitioner as well as the respondent that the petitioner will earn more income if he constructs a new building.

WEB COPY

10. It is also the clear evidence of the petitioner that he is financially sound and he has also assured that he will complete the building within the time specified by the Court. The evidence of the respondent and the Commissioner's report also reveals the fact that the petition schedule property is kept unused for a very long time and the Civil Revision Petitioner/tenant has also constructed a multi storeyed building in the same locality by keeping the petition schedule property unused which is very much proved by the commissioner report, the requirement of the petition mentioned property by the petitioner and the purpose can also be served by his financial position, there is no other reason for denying the prayer of the petitioner. The Rent Control Authority has also allowed the petition and the aggrieved tenant preferred appeal. The appellate authority also analysed the same also that there is no electricity bill produced by the respondent for huge amount which also proves the non use of the petition schedule property by the tenant.

11. The respondents has quoted the following case laws

1. J. Kubendran and Others reported in (2015) 8 MLJ 341
2. Kalpesh Hemantbhai Shah Vs. Manhar Auto Stores through its Partner & Ors reported in 2014 SAR (Civil) 647 and
3. M.M. Mohamed Ali rep. By his power agent A.H. Mohammed Ismail Vs. Elic Electronics and others reported in 2013-5-L.W.649

and argued that when the intention of the landlord has been found to be bonafide, the land lord is entitled for order of eviction and the petitioner also need not prove his financial capacity for making such construction. Hence, considering the necessity of the building and the nature of the building and the bonafide intention of the petitioner, which are all proved by evidence by both petitioner and respondent and also the Commissioner's report, the requirement of the petition mentioned property is bonafide one. The appellate authority also confirmed the order of the rent control authority which requires no interference .

12. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar (CO)

/True copy/



To:

1.The Principal Subordinate Judge, Tirunelveli.

2.The Principal District Munsif, Tirunelveli.

3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.S.MANI, Advocate, SR.No. 58528

+1cc to Mr.H.ARUMUGAM, Advocate, SR.No. 59191

CRP(NPD) (MD) .No.968 of 2011,
M.P(MD) .No.1 of 2011 and
C.M.P(MD) .No.11399 of 2017
28.03.2018

KK/VB/SV MMS/SAR-1/18.05.2018/5P-7C