



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD) No.1347 of 2013

K.E.P.Mohamed Ali : Petitioner / Respondent / Respondent /
Land-owner

vs.

Palaniappan : Respondent / Appellant / Respondent /
Tenant

PRAYER: Civil Revision Petition filed under Section 25 (1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to call for the records pertaining to the judgment and decree dated 26.02.2013 passed in R.C.A.No.2 of 2009 by the learned Appellate Authority / Principal Subordinate Judge at Thanjavur, reversing the well considered and reasoned judgment and decree dated 01.12.2008, passed in R.C.O.P.No.4 of 2008, by the learned Rent Controller / District Munsif at Thanjavur, allow this Civil Revision Petition and set aside the judgment and decree dated 26.02.2013, passed by the learned Appellate Authority / Principal Subordinate Judge, in R.C.A.No.2 of 2009 and consequently restore the judgment and decree dated 01.12.2008, passed in R.C.O.P.No.4 of 2008 by the learned Rent Controller / District Munsif, Thanjavur.

For Petitioner : Mr.R.Devaraj

For Respondent : No appearance

ORDER

The land-lord is the Revision Petitioner in this Civil Revision Petition. Originally, the land-lord filed a petition in R.C.O.P.No.4 of 2008, on the file of the learned Rent Controller / District Munsif, Thanjavur, against the respondent herein, who is the tenant in respect of a premises owned by the land-lord for evicting him on the ground of demolition and reconstruction. Even in the petition filed in R.C.O.P.No.4 of 2008, the land-lord has mentioned that the building is more than 80 years old and that it is in dilapidated condition. The petitioner has also stated about



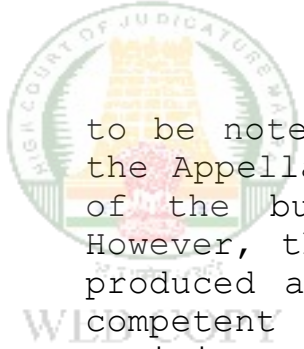
his financial soundness. The petitioner has further stated in the petition that he intends to construct row of shops so as to augment his income. Since other owners of the building who have also have their lands adjacent to the petitioner's building have put up new buildings with a good outlook, the petitioner has stated that the building is *bona fide* required by him for demolition and reconstruction. It is also specifically stated in the petition that the adjacent property comprised in T.S.No.2174 is also owned by the petitioner and that all the five tenants occupying the said property had been vacated from the building and the petitioner had already demolished the adjacent building owned by him. Hence, it is the case of the petitioner that the petitioner's project is stopped because of the occupation of demised premises by the respondent / tenant. It is also stated by the petitioner that the petition mentioned property is a piece of property situated in front of T.S.No.2174 and the petitioner has planned to construct a new building comprised in T.S.Nos.2174 and 2190, which are contiguous.

2.No doubt, the respondent has filed a counter affidavit denying the facts stated in the petition. The petitioner's *bona fide* is also questioned in the counter affidavit. It was the further contention of the respondent that he invested few lakhs in his business apart from decorating the shop with wooden show-cases fitted with glass door and lightings. It is stated in the counter affidavit that if the respondent is forced to vacate the shop he will loose everything. Therefore, the hardship that was likely to be caused to the tenant was raised as a defence in the proceedings. Earlier, the Rent Controller passed an order, directing eviction. Eviction was confirmed in appeal in R.C.A.No.2 of 2009. However, on revision before this Court in C.R.P.(MD) No.742 of 2012, the matter was remanded to the Appellate Authority.

3.After remand, the Rent Control Appellate Authority has allowed the appeal and dismissed the petition for eviction filed by the land-lord. It is against the order passed by the Rent Control Appellate Authority present Civil Revision Petition has been filed by the land-lord.

4.Despite notice to the respondent through Court, the respondent did not appear. Since the service was completed, office was directed to show his name in the cause list and accordingly, his name was also printed in the cause list.

5.The Appellate Authority relying upon the judgment of the Honourable Supreme Court in the case of **Vijay Singh vs. Vijayalakshmi Ammal** reported in **1996 II CTC 586** held that the land-lord has to prove that his intentions are *bona fide* and to prove the other ingredients of Section 14 (1) (b) of Act. It is



to be noted that based on the judgment of Hon'ble Supreme Court, the Appellate Authority accepted the legal position that condition of the building is not relevant for determining *bona fides*. However, the Appellate Authority held that the petitioner has not produced any documentary proof or stability certificate from the competent Civil Engineer. Further, it is also observed that the petitioner has not proved the age of the building. The Appellate Authority found that the petitioner has not stated anything about his financial status for undertaking demolition and reconstruction of a new building. It is also observed by the Appellate Authority that the petitioner has not disclosed anything about his financial stability or financial status to complete the proposed construction. Ultimately, after holding that the petitioner has not proved his financial status and *bona fides* and that the building is not old, the Appellate Authority rejected the contentions on behalf of land-lord relying upon the judgment of the Hon'ble Supreme Court in Vijay Singh's case. Surprisingly, by referring to the evidence of land-lord that the building plan approval was refused earlier for the reason that the land-lord has not left sufficient open space, the Appellate Authority held that the intention of land-lord is not *bona fide*.

6.The learned counsel for the petitioner submitted that the Appellate Authority has categorically found that the building is a old building and in dilapidated condition. Even assuming that the building is not old and does not require immediate demolition, it is always open to the land-lord to seek eviction on the ground of demolition and reconstruction if he is able to satisfy that the demolition and reconstruction is intended and with an object to augment his income. The learned counsel for the petitioner then submitted that the petitioner is the owner of the building which is also adjacent to the building in which the respondent is having his business. The petitioner proposed to demolish not only the building in which the respondent is carrying on his business but also the other building where there were five tenants carrying on business. Pursuant to his decision to demolish the whole building, it is stated that the petitioner had evicted all the tenants from the adjacent building. This fact is not in dispute. As a result, a vast extent of vacant land which is ready for new construction is also unutilized because of the pendency of the proceedings and the stand taken by the respondent that petition for eviction lacks *bona fide* has no substance.

7.The learned counsel for the petitioner pointed out that the petitioner has specifically stated in the petition about his financial strength and the fact that he could afford immediate demolition and reconstruction. The respondent has not specifically denied about the financial position of the petitioner to complete the new construction. His major defence is hardship that is likely to be caused to him on account of eviction.



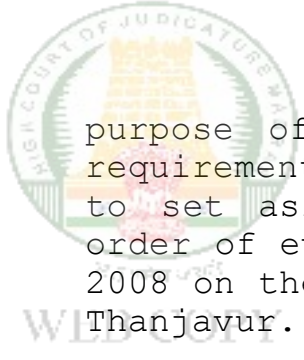
8.The respondent himself has admitted that all the adjacent buildings, which were in the enjoyment of the other tenants, were also demolished. As a matter of fact, the tenant during his evidence has stated as follows:

“இதே நீதிமன்றத்தில் மனுதாரர் 3/2008 மனுவில் மனுச் சொத்திற்கு நியாய வாடகை நிர்ணயம் கோரி தாக்கல் செய்துள்ளார். மேற்படி மனுவிற்கான எதிருரையில் மனுக் கட்டிடமானது 100 வருடம் பழமையானது, மண்ணால் கட்டப்பட்டது என்று சொல்லியுள்ளேன் என்று சொன்னால் சரியல்ல. மேற்படி எதிருரையில் அனுமதிக்கப்பட்ட பகுதி ம.சா.ஆ.5. மனுச் சொத்தை ஒட்டியுள்ள இடத்தில் புல எண்.2174-ல் நான்கைந்து பேர் வாடகைக்கு இருந்தார்கள். 2174-ல் உள்ள வாடகைதாரர் அனைவரும் காலி செய்துவிட்டார்கள். மேற்படி காலியாக இருந்த இடம் இடிக்கப்பட்டு காலியாக உள்ளது.

9.From this, it was suggested that the petitioner's intention to go for demolition and reconstruction cannot be suspected and that the findings of the Rent Control Appellate Authority are perverse. The judgment of the Hon'ble Supreme Court in case of **Vijay Singh vs. Vijayalakshmi Ammal** reported in **1996 II CTC 586** has been wrongly understood and interpreted by the Appellate Authority. In this case, there is no pleading in the counter to test the financial status of the petitioner. Hence, it can be taken that the petitioner has sufficient means and financial resources to carry out the demolition and reconstruction.

10.Admittedly, the age and condition of the building is stated in the petition. A building which is 85 years old cannot be termed as a building, which does not require demolition and reconstruction in the near future. The age of the building is admitted even by the respondent in a petition filed by the petitioner for fixation of fair rent. The intention of the land-lord, after evicting all the five tenants from the adjacent building cannot be termed as one suffers from want of *bona fides*. It is true that in a petition for eviction on the ground of demolition and reconstruction, the land-lord has to prove *bona fides*. From several judgments of the Hon'ble Supreme Court, it is settled that the land-lord can seek eviction on the ground of demolition and reconstruction, if the requirement is *bona fide*, even if it is for the purpose of augmenting the income of the land-lord. What is required to be proved is only *bona fides* and it should be to the subjective satisfaction of the Court. In this case, the findings of the Appellate Authority relying upon the stray sentences in the evidence of P.W.1 and on the misconstruction and misreading of evidence of witnesses is liable to be set aside. Further, the Appellate Authority has not even considered the pleadings in the petition and the absence of denial as to the financial condition of the land-lord. Further, the findings of the Rent Controller are ignored by the Appellate Authority.

11.As a result, this Court is fully convinced that the petitioner / land-lord for *bona fide* purpose of demolition and reconstruction is proved and the respondent is liable to be evicted. The eviction of tenant is warranted for the



purpose of demolition and reconstruction. Since the statutory requirement have been complied with, this Court has no hesitation to set aside the order of Appellate Authority and restore the order of eviction passed by the Rent Controller in R.C.O.P.No.4 of 2008 on the file of the learned Rent Controller / District Munsif, Thanjavur. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Subordinate Judge,
(Rent Control Appellate Authority),
Thanjavur.
2. The District Munsif,
Rent Controller,
Thanjavur.

Copy to:

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

+ 1 cc TO Mr.R.Devaraj , Advocate in SR No. 60078

IA/SRM
AE/SKN RSK/SAR4/30.05.2018/5P/6C

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