

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.147 of 2003 &
C.M.P.No.851 of 2003

1. Mr.Liquath Ali
2. Mrs.Fatima Jinna
Represented by their duly constituted
Power of Attorney Agent, Mr.Hamardeen

Cause Title is accepted vide Order dated 23.01.2003 made
in C.M.P.No.851 of 2003 by KSJ

... Petitioners/Respondents

Vs.

1. Mr.Chockalingam Pillai (deceased) ... Respondent
2. Kunjammal
3. Thaiyal Nayaki

RR2 and R3 brought on record as Lrs of the
deceased sole respondent viz Chockalingam
Pillai vide Order dated 06/10/2017 in CMP.No.
500 of 2013 in CRP 147 of 2003

.. 2 & 3 Respondents/Lrs of the deceased Sole Respondent

PRAYER: Civil Revision Petition filed under Section 25 of
Tamilnadu Buildings (Lease and Rent Control) Act 1966 against
the Order and decreetal Order of the Court of the Principal
Subordinate Judge, at Mayiladuthurai in R.C.A.No.2 of 2002 dated
25.10.2002 in reversing the well considered Order and decreetal
Order in R.C.O.P.No.14 of 1999 dated 31.01.2002 on the file of
the Principal District Munsif @ Mayiladuthurai.

For Petitioner : Mr.V.Lakshminarayanan
For Respondents
2 and 3 : No appearance

O R D E R

Aggrieved over the finding of the Rent Control Appellate
Authority in allowing the appeal thereby setting aside the Order

of the trial Court granting eviction of the building on the ground of demolition and reconstruction and also for own use and occupation, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows :

The petitioners are landlords and the first respondent was a tenant on a monthly rent of Rs.750/-. He was a tenant in the premises from the year 1990. Thereafter, the monthly rent was enhanced to Rs.1300/-. The building was let out for residential purpose. But the respondent was doing business in the building.

Even after expiry of the period of tenancy, the respondent has not vacated the suit premises. The building also requires for immediate demolition and reconstruction, to augment income of the petitioner, by utilising entire backyard of the building belonging to the first petitioner. Though the building was not in crumbling stage, in adjoining places, several new buildings have been erected. Hence, the petition for eviction.

3. In the counter, it is the contention of the respondent that the requirement of the landlord is not a bonafide. The plea of own use and occupation is intended to evict the respondent from the premises. Further, it is the contention that the earlier petition filed for eviction has been dismissed for default. Therefore, the petition lacks bonafide.

4. The Rent Controller has allowed the petition and the Appellate authority reversed the finding of the Rent Controller as against which, the present revision has been filed.

5. The learned counsel for the petitioner submitted that the report of the Advocate commissioner clearly establish the fact that the building require immediate demolition and reconstruction. Merely because, plan has not been submitted, the first appellate Court has non suited the petitioner. Sanction of the building plan is not sine qua non for seeking eviction. It is the further contention of the learned counsel that the petitioner also filed a petition under section 10(3) (c) of Tamilnadu Buildings (Lease and Rent Control) Act 1966. Now the landlord is prosecuting the application under section 14 (1) (b) and section 10(3)(a)(I) was now included in the application only with an intention to use the building for use of own occupation. Even after demolition, the building will be used for landlord's own occupation. Hence, submitted that the

finding of the first appellate Court that the building plan was not filed and hence, there is no bonafide cannot be countenanced. Hence, prayed for allowing the revision.

6. There is no representation for the respondent despite the names having been printed in the cause list.

7. The Rent Controller taking note of the fact that the building require immediate demolition and reconstruction and cracks have appeared in the building and further in and around building new construction has already come and the building require new construction, Ordered eviction. The first appellate Court also considered the Commissioner's report and came to the conclusion that there are repairs to be done in the building. However, the first appellate Court has concluded that the building did not require immediate demolition and reconstruction. Though the first appellate Court has also factually found that in and around building new construction has come up, however, non suited the petitioner on the ground that they have not filed any plan from the concerned authorities for reconstruction.

8. To assess the bonafide of the landlord, production of the sanctioned plan alone is not the only ground to assess the bonafide. Various other circumstances have to be kept in mind. Admittedly, the backyard of the building belong to the first petitioner and if the area in which the building is put up is demolished, the total area will be coming to around 100 x 100 ft. When the building was situated in a narrow area and surrounding areas already developed, it is for the landlord to take decision to put up new construction to augment his income. Therefore, merely because plan for reconstruction has not been filed at the time of eviction, it cannot be held that there is no bonafide at all.

9. It is now well settled that without a plan being sanctioned, the construction cannot be carried out. It is for the landlord to obtain necessary plan before starting construction. Even if eviction is ordered and no steps, whatsoever, has been taken by the landlord, the tenant can very well file an application for restoring his possession as per the statute. When such provision is very much available in the Act itself, mere non production of the sanctioned plan at the time of eviction petition is not a ground to decide the bonafide of the landlord.

10. The Commissioner Report clearly indicate that the building require demolition and cracks are appearing. The building is also more than 30 years old. This fact is not in dispute. It is also well settled that now to seek eviction under the ground of demolition and reconstruction, the building need not be in a dilapidated condition as per the decision of this Court in Ammal Pillai and other Vs. M/s.Varadaurajulu Complex by its representatives reported in 1997(1) LW 364. In view of the above, mere non production of the plan will not be ground to decide the bonafide of the petitioner.

11. In another judgment of this Court in C.R.P. (NPD) 5211 to 5214 of 2011, this Court relying upon the above judgment has held that :

"13. In Jagat Pal Dhawan V. Kahan Singh, [2003 (1) SCC 191], this Court had the occasion to consider the provisions of Section 14(3) (c) of the Act and R.C.Lohati, J. writing the judgment for the Court held that Section 14(3)(c) does not require that the building plans should have been duly sanctioned by the local authorities as a condition precedent to the entitlement of the landlord for eviction of the tenant. To quote from the judgment of this Court in Jagat Pal Dhawan V.Kahan Singh, 2003 (1) SCC 191 : (SCC P.194, para 6) "6.... The provisions also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitled to eviction of the tenant. However, still, suffice it to observe, depending on the facts and circumstances of a given case, the Court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bonafides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be a bonafide."

12. In view of the above dictum and further, in this case, the landlord is also not proceeding under section 10(3)(c) of Tamilnadu Buildings (Lease and Rent Control) Act 1966 and

seeking eviction only under section 14(1)(b) of Tamilnadu Buildings (Lease and Rent Control) Act 1966, the Order of the first appellate Court is liable to be set aside.

13. Accordingly, this revision is allowed and the Order of the first appellate Court is hereby set aside and the Order of the trial Court is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The Principal District Munsif,
Mayiladuthurai.
3. The Section Officer,
V.R Section,
High Court, Madras(2 copies)

+1cc to Mr.V.Raghavachari, Advocate sr.19787

CRP.(NPD) No.147 of 2003

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nr 25/09/2019

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