

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD)No.1169 of 2018

and

CMP.No.6023 of 2018

R. K. Giridharan

...Petitioner

Vs

K. Baskar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 01.02.2018 passed in M.P.No.310 of 2017 in RCOP No.1266 of 2014 by the learned XII Judge, Small Causes Court, Chennai.

For Petitioner : Mr. L. Dhamodaran

For Respondent : Mr. V. Chandrababu

ORDER

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The above Civil Revision Petition is filed challenging the order passed by the learned Rent Controller (XII Small Causes Court, Chennai) in M.P.No.310 of 2017 in RCOP.No.1266 of 2014 in and by which the learned Rent Controller has dismissed the application filed

by the revision petitioner/tenant in appointing an Advocate Commissioner to note down the physical features of the demised premises with the assistance of a Civil Engineer and to file a report there on.

2. The brief resume of the facts which has ultimately culminated in the filing of the Civil Revision Petition are as follows:

The respondent/landlord had filed a Petition for evicting the tenant from the demised premises on the ground of demolition and reconstruction and he would state that building is in a state of disrepair and that continuous repair-work being carried on has cost a lot of money to the landlord and therefore the building ought to be demolished and a new construction has to be put on. The requisite pleadings under section 14(1)(b) has also been made.

3. The said Petition was objected by the revision petitioner by his counter dated January 2015 wherein he would state that the building is in a stable condition and did not require any demolition whatsoever. He would also submit that the entire application lacks bona fides since earlier the landlord filed an petition RCOP.No.786 of 2008 for fixing fair rent and thereafter this application has come to be filed as counter-blast to the suit filed by the revision petitioner/defendant in O.S.No.3191 of 2014 on the file of the XV

Assistant Judge, City Civil Court, Chennai for permanent injunction. When the petition was posted for the defendant's evidence, the tenant had come forward with the Petition which is the subject matter of this Revision stating that the engineer who was being examined on the side of the landlord had made his inspection with reference to the demised premises has not given his opinion on the entire building which the landlord seeks to demolish and therefore in order to prove his case, the revision petitioner sought for the appointment of an Advocate Commissioner. The landlord had filed his counter inter alia questioning the said application stating that the same is highly belated and moved at the evidence stage. The matter is posted for evidence and further an expert has already been examined and cross examined in the suit and there is no necessity to redo the same exercise.

4. The learned Rent Controller by her order dated 1.02.2018 was pleased to dismiss the said application on the ground that the main criteria while considering the Petition under Section 14(1)(b) of the Act was only to take into account whether the requirement is bona fide or not and there is no necessity to note down the stability of the building. Challenging this order, the tenant is before this Court.

5. Mr.L.Dhamodaran, learned counsel appearing for the revision petitioner would submit that the engineer has accepted that he gave opinion only on a portion of the demised premises, when the respondent/landlord contended that the entire premises is in a state of dis repair and on account of which the respondent/landlord was incurring heavy losses. In the above circumstances, the impugned order has to be set aside.

6. Per Contra, Mr.K. Baskar, learned counsel appearing for the respondent/landlord would submit that there is no necessity in a suit for demolition and reconstruction to prove the condition of the building and it would be suffice if the landlord requires the building bona fidely for demolition and construction of a new building on the same site. In support of the argument, he is relying on the Judgment of the Hon'ble Supreme Court **reported in 2006 (2) CTC page 615 S.Venugopal Vs. A. karruppusami and another** which is a matter that has been emanated from this Court. In the said Judgment, the Hon'ble Supreme Court has held as follows in paragraph 7:

"7. On the question of demolition and reconstruction of the premises in question, much was sought to be made out of the fact that the condition of the building had not been

ascertained and, while according to the tenants it was not in a dilapidated condition, according to the landlord it was in a dilapidated condition. We do not attach much importance to the question as to whether the building was or was not in a dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act') contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site."

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7. Heard the parties. The application has been filed at a stage when the parties had gone to trial and when the respondent's side was to open. The counter has been filed as early as in January 2015. However, no steps have been taken by the revision petitioner/defendant to have the Advocate Commissioner appointed.

8. That apart, considering the issue that irrespective of the

P.T.ASHA, J.,**mrn**

condition of the building, for a Petition filed under the provisions of section 4(1)(b) of the Act, it would be sufficient if the landlord is able to prove that he bona fidely requires the premises to be demolished and reconstructed and he is taking necessary steps towards the same. Therefore I do not find any error in the order passed by the learned Rent Controller (XII Small Causes Court, Chennai) Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.04.2019

mrn

Index: Yes/No

Internet:Yes/No

Speaking order / Non-speaking order

To,
The XII Judge,
Small Causes Court,
Chennai

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