

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2019

PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1639 of 2015

and

M.P.No.1 of 2015

Mohan

.. Petitioner

vs

C.Udayachand

.. 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 decretal order dated 05.02.2015 passed in R.C.A.No.515 of 2012 on the file of the IX Court of Small Causes, Chennai reversing the fair and decretal order dated 04.07.2012 passed in R.C.O.P.No.371 of 2010 on the file of XIII Court of Small Causes Court, Chennai.

For Petitioner : Mr.V.Ragavachari

For Respondent : Mr.M.L.Ramesh

ORDER

The petitioner is aggrieved by the impugned judgment and decree dated 5.2.2015 passed by the Rent Control Appellate Court in RCA No. 515 of 2012. By the impugned order, the Rent Control Appellate Court has allowed RCA No. 515 of 2012 filed by the respondent-landlord.

2. Earlier, the respondent-landlord had filed RCOP.No.371 of 2010 against the petitioner and one P.Uma Shankar under section 10 (2)(i) and 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter Referred to as the said Act) for willful default of monthly rent and for requirement of the rented premises for reconstruction.

3. In the schedule to the above mentioned RCOP. No. 371 of 2010, petitioner indicated the rented premises as shop portions in the ground floor property. The petitioner-tenant had earlier filed RCOP.No.2045 of 2009 under Section 8 of the Act to deposit the rent against the petitioner and one R.Padma, the previous owner of the property.

4. The Rent Controller by a common order dated 4th July, 2012 dismissed RCOP. No. 371 of 2010 filed by the respondent-landlord and allowed RCOP No.2045 of 2009 filed by the petitioner. The petitioner was directed to deposit the rent including the future rent leaving the rent already deposit by him the court till June 2012 within 15 days from the date of pronouncement of the said order.

5. Aggrieved by the said common order, the respondent-landlord preferred both the appeals before the Rent Control Appellate Court.

6. By a common order, the Rent Control Appellate Court allowed these appeals. Aggrieved by the said appeals, the petitioner has filed the present Civil Revision Petition.

7. The present Civil Revision Petition is the confined to the order passed By the Rent Control Appellate Court in RCA No. 515 of 2012 against order passed by the Rent Controller in R.CO.P.No.371 of 2010 filed under Section 14(1)(b) of the Act.

8. Heard Mr. V.Raghavachari, learned counsel for the petitioner-tenant and Mr.M.L.Ramesh, learned counsel for the respondent- landlord.

9. On behalf of the petitioner, it was submitted that the description of the property in schedule to the petition filed in R.C.O.P.No.371 of 2010 itself reveals that the property cannot be demolished as it is a part of the building at the ground floor.

10. It was submitted that the Rent Controller had correctly come to a conclusion that the respondent cannot demolish and construct a building on the petition premises as it measures only 410 ft² out of 1280 ft² and it will not be possible for the respondent to get permission from the Chennai Metropolitan Development Authority to demolish and reconstruct a building.

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11. The learned counsel for the petitioner submits that the learned Rent Control Appellate Authority erred in concluding that if the intention of the landlord to demolish and reconstruct is proved to be genuine and not spurious or suspicious, eviction can be ordered under section 14 (1) (b) of the

said Act. It was submitted that the reasoning of the learned Rent Control Appellate Authority is unsustainable as the order was passed on equitable consideration without assessing the facts and therefore unsustainable.

12. Per contra learned counsel for the respondent-landlord submits that the order passed by the Rent Control Appellate Court was well reasoned and requires no interference. During the course of the hearing, the learned counsel for respondent relied on the decision of the following three cases:-

(1) *Harrington House School Vs S.M.Ispahani*, 2002 (2) CTC 549.

(2) *Hindustan Petroleum Corporation Ltd Vs Dilbahar Singh*, 2014 (9) SCC 78.

(3) *Vijay Singh Vs Vijayalakshmi Ammal*, 1996 (6) SCC 475.

13. Explaining these judgments to the facts of the present case, the learned counsel for the respondent submits that as per the decision of the Honble Supreme Court in *Harrington House School* AIR 2002 SC 2268 arising out of an order passed by this court under Section 14 (1) (b), it was held that on plan being sanctioned by the local authority, decree for eviction shall be

available for execution. Thus, if a planning permission is produced before the Execution Court, the execution court can allow a reasonable time for the tenant to vacate the property to deliver the vacant possession of the property to the landlord-decree holder. Till then, the tenant could remain and was held liable to pay charges for the use and occupation of the suit premises at the same rate at which rents were being paid.

14. It was submitted that the above decision was followed by this court by passing its decision in **S.Ramesh and others vs A.Ramakichenane** rendered in CRP (NPD) Nos. 1472, 1487 and 1567 of 2015. The contention is that the respondent-landlord was not in possession of a valid building permit for construction of the building to demolish and therefore the respondent-landlord did not prove his bona fide was negated by this court following the above decision. The decision of this court in CRP (NPD) Nos. 1669-70 of 2015 dated 11.4.2019 (**Ms.Zubaidha Vs K.Ponnusamy**) was also referred to state that in case the landlord does not put up construction, tenant is not without remedy under the Act.

15. Learned counsel for the respondent-landlord further submitted that even though the extent of the property is only 410 ft² out of 1280 ft² , it was

a, property in the economically weaker area and the respondent can get planning permission as per the revised master plan for a lesser extent as well.

16. Countering the above position on facts, the learned counsel for the petitioner submits that the requirement of the respondent landlord was not bona fide as it is not possible to obtain separate planning permission to demolish and reconstruct a portion of the building under the law. If it was a case for improvement, the respondent should have filed an application under section 14 (a) of the Act. In this case neither the respondent has produced any planning permission to demolition and re-construction nor for improvement.

17. I have considered the arguments advanced on behalf of the petitioner and the respondent. The petitioner has questioned the bona fide of the respondent-landlord in their counter to RCOP.No.371 of 2010 that the building was in sound condition and therefore there was no necessity for the respondent to undertake the exercise of reconstruction by demolishing it.

18. As far as the nature of the property is concerned, the petitioner has also admitted that the petitioner is a tenant of a corner shop of the respondent landlord and was running a teashop under the name and style of

“Mani Tea Stall ” for more than 25 years and had originally rented of the premises from Tmt.Karpagvalli and after her demise the arrangement was continued with her son Rajendran and his wife Padma.

19. Since the duo refused to receive rent and were not in the habit of issuing rental receipt, the petitioner was constrained to file RCOP.No.2045 of 2009 to deposit the monthly rent. It is at that stage, the respondent appears to have purchased the property and later filed RCOP No.317 of 2010.

20. In the above background, the issue to be considered is whether the order of the Rent Control Appellate Court can be sustained. Neither the order of the Rent Controller nor the order of the Rent Control Appellate Court are reasoned to deny or grant the relief. The Rent Controller has speculated that even if order is passed, it is not possible for the respondent-landlord to get permission from the Chennai Metropolitan Development Authority to demolish and reconstruct a building.

21. The Rent Control Appellate Court on the other hand has merely allowed the appeal on equitable grounds by stating that when a landlord approaches the court for his redressal that the court has to merely look at the

intention of the landlord and there should not be any acid test for requirement of the landlord and court has to see if the requirement was bona fide or not.

22. The proceeding is of the year 2010. The petitioner himself has stated that he was running a teashop there for last 25 years. According to the petition the shop was in dilapidated condition. However, no documents were filed to substantiate the said contention. Thus, it is evident that the petitioner has not produced any evidence to justify the requirement of the rented premises for re-construction on the ground that the building was to be demolished due to its stability. At the same time, the requirement of the land for fresh construction cannot be denied unless on facts it is established that invocation of section 14 (1) (b) was used as a tool or a ruse to evict a tenant to another tenant to get a better rent.

23. It may be apt to refer to a passage from **Nidhi v. Ram Kripal Sharma**, (2017) 5 SCC 640. The Hon'ble Supreme Court held that, "*the legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; but in the process of doing justice the court cannot be overzealous and forget its duty towards the landlord also as ultimately, it*

is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court."

24. The Honourable Supreme Court in **Vijay Singh vs Vijayalaxmi Ammal** reported in (1997) 1 MLJ (SC) 98 held that for granting permission under section 14 (1) (b) of the Act, the Rent Controller is expected to consider all relevant material for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same premises was bona fide or not. For recording of finding that the requirement for demolition was bonafide or not the Rent Controller has to take into account the following:-

" i. bona fide intention of the landlord far from the sole object only to get rid of the tenants;

ii. the age and condition of the building;

iii. the financial position of the landlord to demolish an indirect the new building according to the Statutory Requirements of the Act."

25. The Honourable Supreme Court in **Harrington House School vs Ispahanini and Another** (2002) 5 SCC 229 held that there was nothing to cast a

shadow of doubt on the bona fide of the landlord pleading an immediate need for demolition followed by reconstruction and that the landlord was a man of means to put up construction.

26. The court there referred also observed that the decision rendered in **P.Orr & Sons case** rendered in (1996) 6 SCC 475 and stated that it had been watered down in **Vijay Singh vs Vijayalaxmi Ammal** referred to *supra*.

27. It may be useful to refer to a profound passage of Hon'ble Mr.Justice V.R.Krishna Iyer in **Kalyani vs Madhavi** 1970 KLT 257 which reads as follows:-

28. "Counsel, however, argues and rightly, that the building must be in such a condition that it needs reconstruction and this ingredient has to be made out apart from the landlord's bona fide intention to reconstruct. Here, it is argued that the stress is upon the physical condition of the building. I do not agree. If eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse, there is no doubt that few buildings could be evicted before they have actually collapsed. Knowing the length of time taken in rent control litigation in Kerala, not unusual to find the period between the institution of an application and its ultimate disposal in the revisional court, lengthening into several years if a building perilously close to sinking alone can justify a petition under Section 11(4)(iv) in a State with heavy monsoons, I do not know what purpose would be served by such a course except to endanger the lives of tenants. It is obvious, therefore, that a wider and more realistic meaning must be given to the expression condition of the building. The social purpose of this provision is to remove the road blocks in the way

of progress in building programmes. Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern constructions is a social necessity, provided existing tenants are not thrown into the streets. The condition of the building is a larger concept which includes considerations of social surroundings and allied factors. Where the building is very old and incongruous with the social setting and the surroundings of the place, the Court has got to take a more liberal view in applying the provisions of law..." (Emphasis supplied)

28. In fact, even if there is a scope for enhanced rental prospect by demolishing the existing building and by putting up a new construction in view of the changes in the locality, even if the building is not old or in a dilapidated condition, bonafide requirement of the landlord can be inferred as long as the the landlord intends to put up new construction and puts of construction. What is frowned upon is the attempt to use Section 14(1)(b) as a ruse to evict a tenant to get higher rents tenants without actually putting up construction.

29. Obtaining permission for proving bonafides is not what is contemplated under the provisions of the Act. In fact, even if the respondent had obtained a planning permit in the year 2010, it would have lapsed under the relevant Building Control Rules in the city of Chennai. Therefore, I am of the view that the landlord need not obtain permission to prove his bona fide.

30. All that is required is a bonafide request from the landlord to the tenant to vacate the premises for demolition and reconstruction. Bonafide of the landlord, can be inferred from the surrounding facts and circumstances and cannot be thwarted merely because the tenant enjoys the privilege to pay an abysmally low rent to the landlord.

31. In case the landlord does not put up construction, the tenant is not remedyless under the Act. He can ask for re-possession.

32. In **Gaya Prasad vs Pradeep Srivastava** (2001) 2 SCC 604 the Hon'ble Supreme Court held that the crucial date for deciding as to bona fide requirement of landlord is the date of his application for eviction.

33. In the light of the above discussion, I am of the view that though the order of the Rent Control Appellate Court is not well reasoned, nevertheless the relief granted to the respondent by the Rent Control Appellate Court cannot be set aside. It is not for the petitioner tenant to stymie the efforts of landlord to put up a new construction by questioning the bona fide of the respondent-landlord unless of course there are adequate proof to show that

attempt was to collect higher rents and the proceedings were initiated in the guise of demolition and re-construction. There is nothing on record to show the same. The bonafide of the respondent will stand established once he procures a planning permission from the planning authority.

34. The interest of the petitioner-tenant is adequately protected the light of the decision of the Honourable Supreme Court in **Harrington house School Case**. The petitioner-tenant can continue to be in possession of the rented premises till the respondent-landlord moves the executing court and produces the necessary planning permit to take up construction. Thereafter, the petitioner can be given a reasonable time to vacate the rented premises as was ordered in **Harrington School case**.

35. In case it ultimately turns out that the eviction was not bona fide, the petitioner can ask for a re-possession and also file a suit for damages for the loss sustained by him on account of wrongful eviction from the property. In case it is demonstrated that RCOP No.371 of 2010 lacked bona fide and was filed to evict the petitioner wrong fully, courts are not powerless to award damages to the petitioner apart from ordering restoration of possession of premises to the petitioner.

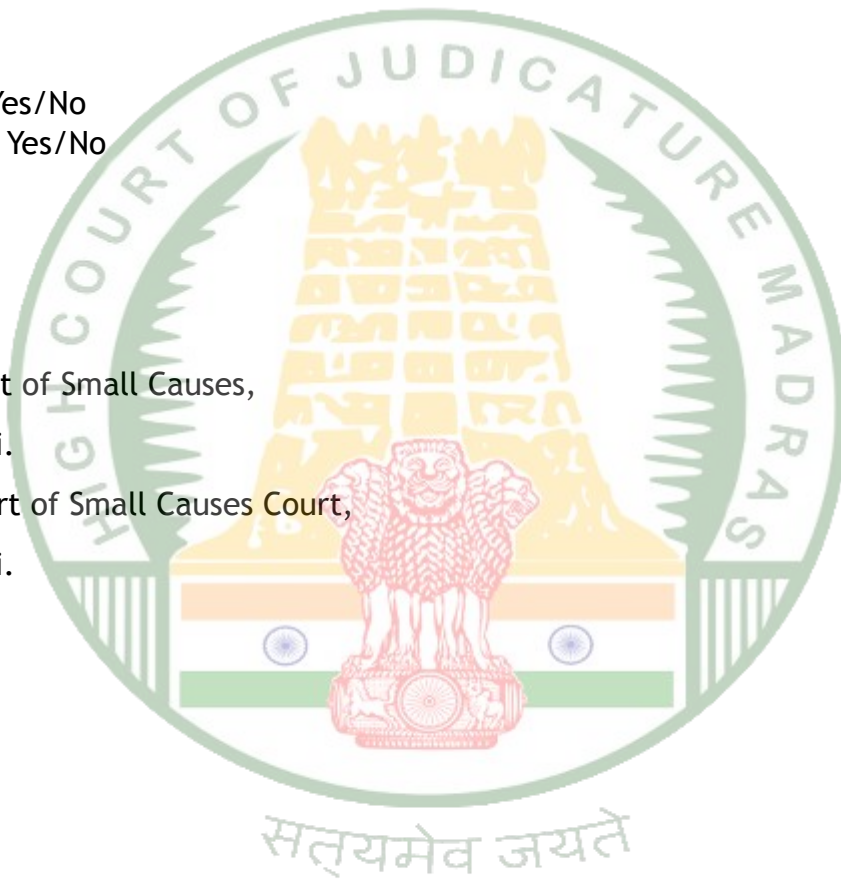
36. In view of the above observation, the above Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

14.08.2019

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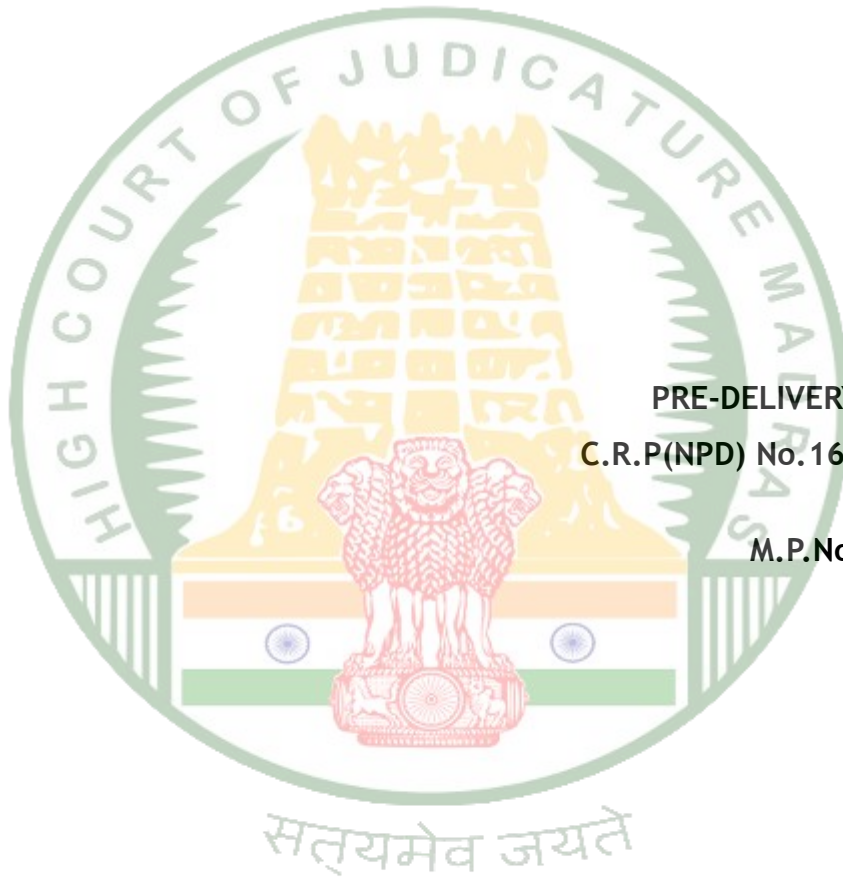
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PRE-DELIVERY ORDER in
C.R.P(NPD) No.1639 of 2015
and
M.P.No.1 of 2015

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