

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

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THE HONOURABLE **Mr.JUSTICE N. SATHISH KUMAR**

C.R.P.NPD.No.1672 of 2013

and C.R.P.No.4130 of 2013

Mohammed Ismail

..... Petitioner in CRP No.1672 of 2013
and Respondent in CRP.No.4130 of 2013

Vs

Govindasamy

..... Respondent in CRP No.1672 of 2013
and Petitioner in CRP.No.4130 of 2013

Prayer in CRP.No. 1672 of 2013 : Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree of the learned Rent Control Appellate Authority (Subordinate Judge, Nagapatinam) in R.C.A.No. 1/12 dated 21.11.2012 reversing the Judgment and decree made in RCOP 7/11 dated 02.01.2012 on the file of District Munsif Nagapattinam.

Prayer in CRP.No. 4130 of 2013 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and docket order passed by Rent Controller authority dt 02.08.2013 and to restore E.P.No.9/2013 in RCOP NO.7/2011 on the file of Rent Controller cum the District Munsiff Nagapatinam and direct to dispose of the E.P. on merits.

For Petitioner in CRP No.1672 of 2013 and
Respondent in CRP.No.4130 of 2013 : Ms.S.R.Sumathy

For Respondent in CRP No.1672 of 2013
and Petitioner in CRP.No.4130 of 2013 : Mr.C.Swamy for
M/s.Senthil Swamy
Associates

COMMON ORDER

CRP.No. 1672 of 2013 is filed against the order of the First Appellate Court in allowing the application filed under Section 10(3) (a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act,1960 thereby setting aside the fair and decreetal order passed by the learned Rent Controller/District Munisif, Nagapattinam dated 02.01.2011 made in RCOP.No.7 of 2011.

2. The petition originally filed by the petitioner/landlord for the eviction of the respondent/tenant on the grounds of personal occupation for running a business on expiry of tenancy. On enquiry, the learned Rent Controller dismissed the petition filed by the landlord.

3. The learned First Appellate Judge on considering the facts and circumstances found that the need of land lord is bona fide and allowed the eviction under Section 10(3)(a)(iii) under Tamilnadu Buildings (Lease and Rent Control) Act and granted two months time

for eviction, against which, the present revision is filed by the petitioner/tenant.

4. The fact allowing to file a petition before the Rent Controller is as follows:

a. The petition mentioned property was rented out to the petitioner/tenant in the year 2002. The rented premises is a two shops and the tenancy period is 11 months. The tenant has paid the rent till 30.10.2008. It is the contention of the respondent/landlord that his son Suseendran was running a partnership hotel business in the name of Lakshmi Villas at Columbo. Since the communal riot is being increased, it is not possible for his son to continue his business at Columbo and now he is settled with his parents/respondent and being experienced in running the hotel, the landlord requires the tenement building for running the hotel business. Hence, the building is required for the petitioner for his son to run the hotel business. Hence, the above petition.

b. The petitioner/tenant denying the contention of the respondent/landlord contented that there is no arrears of rent. The respondent is running a grocery shop in the name and style of Idhayam Maligai who is having a huge outstanding dues from the

customers. If the petitioner is evicted from the tenant, from the premises, he will face serious hardship. There are several places available in the building premises to run the hotel business. The respondent/landlord or his son has not taken any steps for running the business or they obtained any license or given any intimation for running the business. Hence prays for dismissing the petition.

5. The learned counsel appearing for the Revision petitioner would contend that the land owner is having other buildings. Therefore, there is no bona fide on his part, whereas, the tenant was entirely depending on the business run in the building. Further, there is no evidence to show that the petition is filed on bona fide reasons.

6. The Rent Control Appellate Authority without considering the fact that no change in circumstances took place subsequent to the dismissal of the RCOP allowed the appeal, hence prays for allowing the revision.

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7. Heard both sides and perused the orders and the materials available on record.

8. The land lord has originally filed a petition under Section 10(3)(a)(iii) and 10(3)(B) under Tamil Nadu Building (Lease and Rent

Control) Act, 1960. The main contention is that the land lord's son Suseendran doing business at Columbo had left the business due to communal violence. Therefore, the building is required by the landlord for running a hotel business by his son. The land lord himself was examined as P.W.1 and his son was examined as P.W.2. The evidence of P.W.2 clearly indicates that he left Columbo and going to settle in India with his father. The application has been filed for carrying out the hotel business by his son. It is the main contention of the tenant that the landlord is owning other buildings. He can use the other buildings not this premises. Further, no arrangements or what so ever has been made to run the business. It is to be noted that when the counter itself clearly indicates that P.W.2 namely, the landlord's son was in Columbo and doing business.

9. When P.W.2 himself appeared before the Court and narrated that he is going to leave Columbo due to communal violence and now settles in India and spoke out the requirement of the building for running the business on his own. Merely because, some other building is being occupied by some other people, it cannot be said that the tenant cannot be evicted. It is not the case of the tenant that some other buildings of the land lord is kept vacant and suitable for running the Hotel business. In the absence of any such evidence on record, the tenant cannot resist the eviction, merely on that ground.

The land lord has clearly established the bona fide indeed, it is the choice of the land lord to run the business in the particular building. The tenant cannot decide the premises of the landlord about the building in which the business to be carried out. Similarly, the contention of the tenant that no investment has been made or no license were obtained for running hotel business that cannot be raised as a ground by the tenant, it is for the land lord to mobilize the funds and to obtain the license for running the business. In the present scenario, mobilising funds from various financial institutions has become very easy. Similarly, obtaining license is a matter between the P.W.2 and the authorities concern. Therefore, that cannot be a ground to resist the eviction when the evidences of P.W.1 and P.W.2 clearly indicates there is a bona fide requirement for running a hotel business by P.W.2, I do not find any illegality or perversity in the judgment passed by the learned Rent Control Appellate Authority and finds no merit in the revision filed by the petitioner/tenant.

10. In the result, C.R.P(NPD).No.1672 of 2013 is dismissed.

No costs.

11.The learned counsel appearing for the revision petitioner at this stage requested this Court that the one year time may be granted to vacate the premises.

12. Considering the above submission, this Court is of the view that six months time is reasonable to vacate and handover the premises to the respondent/landlord and the same will meet the ends of justice. Accordingly, six months time is granted for eviction, from today. Therefore, the tenant is directed to vacate and hand over the vacant portion of the premises to the landlord/respondent on or before 05.09.2019.

13. In view of the order made in CRP.No.1672 of 2013, the CRP.No.4130 of 2013 filed by the petitioner/landlord as against the order made in E.P.No.9/13 in RCOP.No.7/2011 dated 02.01.2013 passed by the Rent Controller has become infructuous. The petitioner/landlord is at liberty to file a fresh Execution Petition before the Rent Controller.

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05.03.2019

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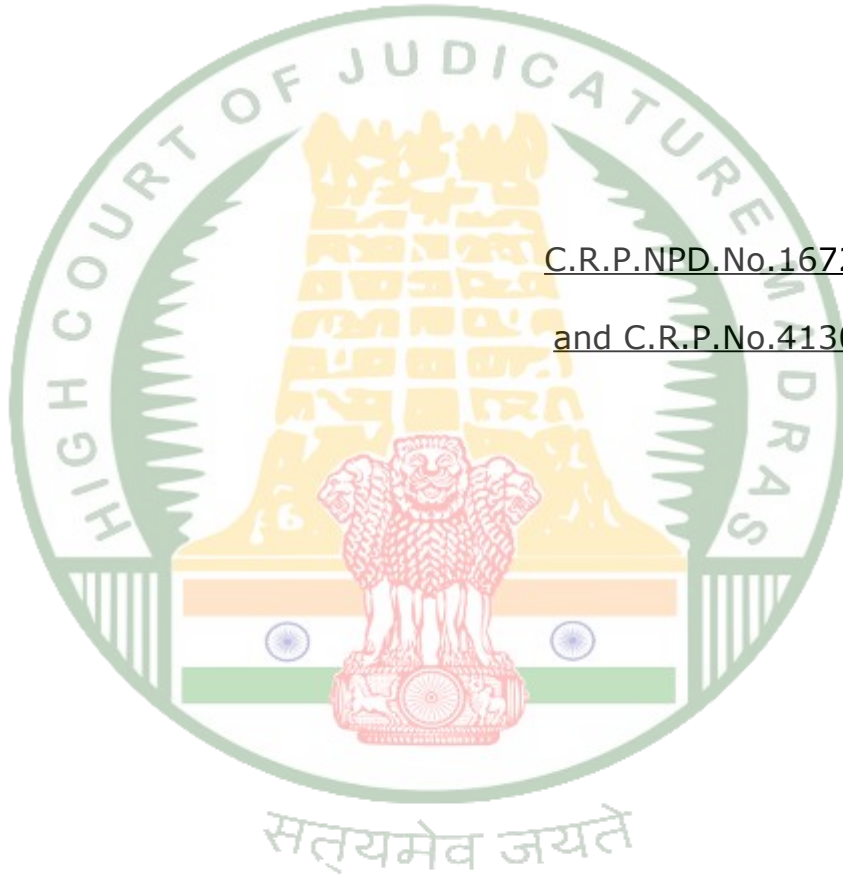
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Speaking order : Non-speaking order

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N. SATHISH KUMAR,J.
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and C.R.P.No.4130 of 2013

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