

CRP No.2492 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.2492 of 2013

1. Shantilal
2. S.Kanthilal
3. S.Lalith Kumar
4. S.Mahaveer Chand
5. S.Balchand
6. S.Veena Anilkumar Katrela ... Petitioners

Vs.

A. Rajan

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the orders dated 10.04.2013 passed in RCA No.17 of 2012 by the Rent Control Appellate Authority/Subordinate Judge, Udagamandalam upholding the orders dated 14.09.2012 passed in RCOP No.10 of 2007 by the Rent Controller / District Munsif, Udagamandalam.

For Petitioners : Ms. AL Ganthimathi

For Respondent : Mr.S.Sabarish
for Mr.S.K.Rukunathan

ORDER

This petition is filed by the legal heirs of the deceased landlord against the fair and decreetal order dated 10.04.2013 in RCA No.17 of 2012 on the file of the Rent Control Appellate Authority/ Subordinate Judge, Nilgiris at Udagamandalam upholding the fair and decreetal order dated 14.09.2012 in RCOP No.10 of 2007 on the file of the Rent Controller/ District Munsif, Udagamandalam.

2. The original landlord Tmt. Mohini Bai filed the said eviction petition in RCOP No.10 of 2007 and after her demise on 16.11.2010, the legal heirs of the deceased landlady were impleaded in I.A.No.58 of 2011 in the RCOP No.10 of 2007 as per order dated 19.07.2011. The RCOP No.10 of 2007 was dismissed and on appeal by the petitioners, the appeal also was dismissed. Hence this present revision petition.

3. The petitioners have contended that they are the owners of the residential building bearing door No.50/116, Glen Villa, Hospital Road, Ward No.14 of Udagamandalam Municipality. The respondent/tenant has been the tenant since 1970 and presently paying a monthly rent of

Rs.2,000/- . The tenant defaulted in paying the rents from March 2006 to December 2006 and therefore, committed willful default. It is also their contention that they had no other property in Udagamandalam except this and that presently are residing in a rented premises, thus necessitating the requirement of the premises for own occupation. They have also cited the dilapidated condition of the building requiring renovation and the nuisance and damage/waste to the building caused by the tenant by rearing cows for his milk business. Thus, the petitioners wanted eviction on the ground of willful default in payment of rents, requirement for own occupation and the damage caused to the building by the tenant.

4. The tenant had defended his case by stating that the rent was never Rs.2,000/-p.m. and was only Rs.300/- p.m and that he had never defaulted in payment of rents and was upto date in payment till 31.03.2007 by supplying milk to the petitioner and adjusting the amount of rent and thereafter through his counsel paying rents to their counsel against proper receipt. As regards the requirement of the premises for own occupation, the tenant had contended that the entire premises had several vacant rooms which could have been occupied by the petitioners and as such the own occupation purpose was invented only to drive him away. The other

contention of the tenant was that even in the legal notice dated 09.03.2006, there was no mention about the default. Moreover, the milk business and rearing of cattle was done by him since 1970 and therefore, the 'new found' objection was again ill motivated. There was no damage to the building as claimed by the petitioners. Moreover, in RCOP No.35 of 2009, for fixation of fair rent, filed by the petitioners, the cow shed was shown as a property rented out to the tenant.

4. The Rent Controller opined that when neither the petitioners nor the tenant could adduce any rent receipt to substantiate the quantum of rent, it was to be decided on the reality of the oral deposition of the witnesses on both sides. The Rent Controller concluded that when the oral evidence substantiated the fact that milk supply was done by the tenant to the petitioners upto 31.03.2007 and except for the one legal notice dated 09.03.2007, there was no demand or notice stating the default to the tenant, the petitioners failed to prove that there was a willful default in payment of rent by the tenant.

5. As regards the own occupation ground for eviction, the Rent Controller was not satisfied stating that the petitioners did not

substantiate that they were presently in a rented accommodation, by way of satisfactory evidence. It was also established through the Advocate Commissioner that the entire building had 10 rooms out of which only 4 were rented out to the tenant and 6 were lying vacant, though in dilapidated condition. When the third petitioner who was the PW1 deposed that he had no intention of demolition and reconstruction and that only repairs were to be carried out. Thus, the Rent Controller felt that own occupation requirement was not genuine.

6. The Rent Controller also concluded that the rearing of cows and the damage caused to the building was also not convincing as the cow shed was away from the building and therefore, could not damage the building.

7. The Rent Control Appellate Authority found the Rent Controller's order very reasonable. Though the lower appellate court agreed that the legal notice dated 09.03.2006 could not have mentioned about any default in rent as the default reportedly was from March 2006 to December 2006, however held that there was no demand or notice claiming arrears of rent by the landlords and that they had also suppressed the

existence of other vacant rooms in the buildings. Thus, the Rent Control Appellate Authority found no reason to interfere with the findings of the Rent Controller.

8. The petitioners have approached for the legal remedy to evict the tenant on three grounds.

- (i) Willful default in payment of rents.
- (ii) Requirement of premises for own occupation.
- (ii) Damage caused to the building by the tenant by rearing cows in the premises.

9. The respondent has been a tenant for decades. His milk business and rearing of cows are also existing for decades. The specific contention of the landlords is that the tenant did not pay rents since March 2006. On the contrary, the contention of the tenant is that the monthly rents were adjusted for supply of milk by the tenant to the landlords. The learned Rent Controller accepted the version of the tenant since the landlord during the course of cross examination admitted that the tenant used to supply milk to him. It is also observed that there is no demand by the landlords for payment of rents from the tenant except for the legal

notice dated 09.03.2006 issued by the landlords.

10. The learned counsel appearing for the revision petitioners contended that the observation made by both the courts below that there is no willful default in payment of rents is erroneous since the landlords never admitted that they used to adjust the rents from the milk supplied by the tenant. She would further contend that the tenant did not pay even the admitted rents till date.

11. It is seen from the records that the tenant in his evidence had categorically deposed that he had paid rents for the months from April 2006 to May 2006 to the landlords and that the landlords did not issue receipt to him. His further contention is that whenever he demanded receipts from the landlady, she used to evade and also would make a note of his payments in a white paper, after adjusting the amount to be paid by her for the supply of milk. However, it is to be pointed out that the contention of the respondent/ tenant that the rents from March 2006 was adjusted towards supply of milk has not been substantiated by him . Mere ipsidixit of the respondent/tenant that the payment of rents was adjusted towards supply of milk is not sufficient to hold that there is no default in payment of rents.

12. Further more, it is settled law that if the landlord refused to issue receipts for the payment of rents, the tenant should issue notice to the landlord to specify his bank account, in which he can deposit the rents. This has also not been done by the tenant.

13. The learned counsel appearing for the respondent/tenant contended that even after filing of RCOP, the tenant did not pay rents to the landlords. On the contrary, the learned counsel appearing for the respondent/ tenant contended that the tenant has been regularly making payments to the landlords even after filing of the present RCOP. The tenant has not substantiated by adducing acceptable documentary evidence in the form of rental receipts to show that he has been paying rents to the landlords regularly, even after filing of the RCOP.

14. The present RCOP is filed in the year 2007 and when the relationship is strained between the parties, the tenant should have been more careful in getting receipts for payments made by him, if at all he had made payment of rents. In the absence of substantial proof for payment, it has to be held that the tenant has committed willful default in payment of

rents. More over, the conduct of the tenant before and after the filing of RCOP clearly shows his supine indifference in paying rents. Therefore, both the courts below were not right in holding that there is no willful default in payment of rents.

15. The landlords had also filed the RCOP for own occupation under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (herein after referred to as "the Act"). Both the courts below had concurrently held that the landlords had not proved that they are in a rented premises. The Rent Control Appellate Authority went one step further by stating that the landlords did not come with clean hands to the court. It is further observed that the landlords had suppressed the actual description of the property and the existence of vacant rooms.

16. In the instant case, the main contention of the landlords is that they are occupying a rental premises and that they require the petition mentioned premises for their own occupation. The landlords did not adduce any evidence to show that the building in which they are presently occupying does not belong to them. In the instant case, an Advocate Commissioner was appointed to note down the physical features of the

property. The Advocate Commissioner in his report had stated that there are 10 rooms in the petition mentioned premises, out of which 6 rooms are lying vacant. The contention of the respondent/tenant is that the landlords can occupy those vacant rooms and that the requirement of the landlords is not bonafide. It is settled law that the tenant cannot dictate terms to the landlords as to which portion they should occupy in the premises. However, it is also to be pointed out that the PW1 in his evidence did not say that the vacant portions in the petition mentioned premises are not suitable for their occupation. In fact, in the petition, the landlords have not indicated anything about the portions which are lying vacant. Had they mentioned in their original petition that though there were other vacant portions in the building, they were totally unfit for occupation their credibility would have enhanced. Instead, by hushing up the truth, they have lost their case under Section 10(3)(a)(i) of the Act. More over, PW1 also deposed that the building did not require any demolition and reconstruction and that it only requires repairs and renovation. Inview of the reasons stated above, I hold that the landlords are not entitled to get the tenant vacated under Section 10(3)(a)(i) of the Act.

17. As regards the damage caused to the building due to the

cattle shed, it was established that the sheds were away from the building and that they have been in existence since the inception of the tenancy. It is also admitted by the landlords that the tenant used to supply milk to them. As already observed, the tenant has been in possession of the buildings for the past 50 years and the landlords had never issued any notice about the damage caused to the building due to the cattle shed till 2007. Both the courts below had concurrently held that no damage is caused to the building as alleged by the landlords and therefore, the tenant cannot be evicted under Section 10(2)(iii) of the Act. The observations made by both the courts below on this count are well founded.

18. In view of the reasons stated above, the respondent/tenant is liable to be evicted on the ground of willful default in payment of rents.

19. In the result, सत्यमेव जयते

(i) The Civil Revision petition is partly allowed in respect of the petition filed under Section 10(3)(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act. No costs.

(ii) The respondent/tenant is directed to vacate the premises within a period of two months from the date of this order.

29.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

1. The the Rent Control Appellate Authority/Subordinate,
Udagamandalam.
2. The Rent Controller / District Munsif, Udagamandalam.



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R.HEMALATHA,J.
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