

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on : 02.01.2019****Pronounced on : 26.04.2019****CORAM :****THE HONOURABLE MR. JUSTICE M.S.RAMESH****C.R.P(NPD) Nos.897 to 899 of 2015**

N.Elangovan ...Petitioner in CRPs.

Vs

1.S.Sundar ...Respondent in CRP.897/2015

2.S.Mahesh ...Respondent in CRP.898/2015

3.S.Nalachandran ...Respondent in CRP.899/2015

Common Prayer: Civil Revision Petitions filed under Section 25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the order and decree passed in RCA.Nos.11, 12 & 13 of 2014 dated 20.08.2014 passed by the learned Sub-ordinate Judge/Rent Control Appellate Authority, confirming the order and decree in RCOP. Nos.50, 51 & 52 of 2012 dated 20.08.2013 respectively passed by the learned District Munsif cum Rent Controller, Poonamallee.

For Petitioner : Mr.C.Uma Shankar
in all CRPs.

For Respondent : Mr.P.Gopiraja
in all CRPs.

COMMON ORDER

The petitioner herein is the landlord of the property bearing No.261, Indira Gandhi Nagar, Valasaravakkam, Chennai-87, in which, shops measuring extents of 120, 160 & 120 Sq. Feets are the subject properties of the rent control proceedings. The petitioner herein had let out the shops to the respondents herein for commercial purposes, wherein the respondents are carrying on the business in the name and style of "Indian Auto", "Hindu Sweet Stall" and "Lakshmi Provision Store" respectively. Since the petitioner is a heart patient, who has undergone bye-pass surgery and being a driver who was plying tourist vehicles, it was not feasible for him to continue with his employment of driving and therefore, decided to have a travel agency in the aforesaid shops. Since the demised shop was very old and situated very low from the road, the petitioner intended to demolish the structure and build a new building to suit his proposed business. Though the respondents had initially agreed to vacate the demised shops, they refused to vacate, which prompted him to file the petitions for eviction on the ground of 'own use and occupation' under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent control) Act, 1960 (hereinafter

referred to as 'the Act'). The learned Rent Controller as well as the learned Rent Control Appellate Authority dismissed the eviction petitions, as against which, the present Civil Revision Petitions have been filed. Since the issue involved in all the revisions are one and the same, all these revisions are disposed through a common order.

2. Heard Mr.C.Uma Shankar, learned counsel for the petitioner and Mr.P.Gopiraja, learned counsel appearing on behalf of the respondents.

3. The learned counsel for the petitioner submitted that the petitioner herein intends to have his own travel agency for which purpose, he requires the shops. Since he is right now occupying a small portion of 40 sq. feet under the staircase of his own building for his travel agency, he bona-fidely requires the demised shops for his proposed business. According to the learned counsel, the petitioner does not own any other property other than the subject property. Since his requirement is bona-fide, the learned Rent Controller as well as the learned Appellate Authority had erred in rejecting his applications. The learned counsel further submitted that since the petitioner herein has temporarily accommodated

himself in 40 sq. feet portion under the staircase which is not sufficient for his business, the learned Rent Controller cannot cite such a temporary accommodation as a bar and neither can the tenants dictate as to in which portion the petitioner should run his business. In support of his submission, the learned counsel relied upon various decisions.

4. The learned counsel for the respondents, on the other hand submitted that, the eviction petitions on the ground of 'own use and occupation' is bereft of any bona-fide. According to the learned counsel, the petitioner herein had suppressed the fact that he had already constructed a portion of the entire building with an additional shop. Since he is already running his own business of travel agency in the new construction, the requirement of the demised shops for his own use and occupation is not bona-fide. The learned counsel for the respondents also submitted that the petitioner himself has admitted in his evidence that he had constructed a new shop in the entire building and has also initiated steps to evict the shop owners in the building.

5. I have given careful consideration to the submissions made by the respective counsels.

6. One of the main object of the Act is for prevention of unreasonable eviction of tenants from residential and non residential buildings. Section 10(3)(a)(iii) of the Act provides for eviction of tenants when the landlord bona-fidely requires non residential building for his 'own use and occupation', when he is not occupying his own building for carrying on a business. The scope of the said provision has been enlarged to accommodate such landlords or the family members to seek for eviction, even when they propose to carry on a business of their own. One of the essential ingredient to seek for an eviction of tenant on the ground of own use and occupation is that the requirement of the landlord should be bona-fide.

7. In the present case in hand, the petitioner had come out with a clear case that he had heart ailment and since he was a qualified driver, he intended to switch his profession of driving into a business by commencing a travel agency in the demised shops.

Nothing more has been pleaded in the petitions to invoke the ground of his 'own use and occupation'. The respondents herein had come out with a clear defence that the petitioner has no intention to start any business in the demised shops, since after filing of the RCOPs, he had put up an additional construction on the western side of the building and is now running his business in the name and style of 'Om Sakthi Travel Agency' as well as 'Sastha Lubricants'. It is also stated in the counter that there are three other existing shops in the building and that the petitioner has taken steps to vacate all the three shops.

8. The petitioner, who had examined himself as P.W.1, has admitted that even prior to the filing of the eviction petition, he has commenced his construction of a fourth additional shop and in that fourth shop, he is running the travel agency. When the petitioner had already commenced the construction of the fourth shop in the building, even prior to the filing of the eviction petitions, there is no whisper about the same in the eviction petitions. On the contrary, the petitioner had gone to an extent of stating in his petitions that he intends to demolish the building and put up a new construction to suit his business. While deciding the eviction petitions, the

learned Rent Controller had relied upon the construction made prior to the petitions as well as the fact that the petitioner is running the travel agency in the newly constructed shop and thereby rejected the petitions. Such a finding was also confirmed by the learned Appellate Authority and thereby held that the requirement of the petitioner was not bona-fide.

9. When the petitioner himself has admitted that he had commenced his construction and is now running a travel agency in the newly constructed shop, I am not able to view the petitioner's requirement of the demised shops for his 'own use and occupation' as a bona-fide requirement. Such a position has also been ratified by the petitioner himself in his deposition before the learned Rent Controller. When the main ingredient to invoke Section 10(3)(a)(iii) of the Act, with regard to bona-fide requirement, has been disproved, the findings of the learned Rent Controller as well as the learned Appellate Authority cannot be found fault with.

10. The learned counsel for the petitioner, attempted to impress this Court by stating that the present shop, in which the petitioner is running the travel agency is about 40 sq. feet alone and

he is also dealing with the business of oil lubricants therein. It requires to be kept in mind that this Court is exercising its revisional powers under Section 25 of the Act and while acting so, it would not be appropriate to appreciate the evidence to weigh the same and thereby come to a different conclusion and reverse a finding of fact. Both the learned Rent Controller as well as the learned Appellate Authority have not ventured into the submissions made by the petitioner herein and therefore, it cannot be said that there is an illegality and perversity in the findings of the authorities below, which requires interference by this Court by invoking its revisional powers. The learned counsel for the petitioner relied upon a decision of the Hon'ble Apex Court in ***Hukum Chandra (D) through Lrs. V. Nemi Chand Jain and others*** reported in **2019 (1) LW 901** in **Civil Appeal No.3827 of 2014 dated 14.12.2018** and submitted that till the eviction petition is decided on the basis of bona-fide requirement, the landlord cannot sit idle without doing any work. The said decision may not assist the petitioner in any way since this is not a case where the petitioner had bona-fidely commenced his business in the building but had suppressed certain relevant facts that he had already constructed an additional shop in the building and had miserably failed to

substantiate that he intended the demised shops for his bona-fide requirement for running a travel agency.

11. The learned counsel also relied upon the decision of the Hon'ble Supreme Court in **Uday Shankar Upadhyay and others V. Naveen Maheshwari** reported in **2010 (1) CTC 503** and a decision of this Court reported in **2010 (6) CTC 454 [The Regional Manager, Tamil Nadu Handloom Weavers' Co-operative Society Ltd., Thanjavur and 2 others V. V.Natarajan]** to substantiate the ground that the tenant cannot dictate to the landlord as to in which portion he should run his business and that a mere occupation of a portion of the building will not disentitle him to seek for eviction.

12. Here again, insofar as the decision reported in **2010 (1) SCC 503** (*stated supra*) is concerned, the bona-fide need of the landlord in that case was already established and thereafter, the Hon'ble Supreme Court held that the tenant cannot dictate to the landlord as to which floor he should use for his business, when the bona-fide requirement is not disputed. Such is not the position in the present case. Likewise, in the decision reported in **2010 (6)**

CTC 454 (*cited supra*), it was held that the claim of the landlord should be bona-fide. Therein, it was also held that the landlord was only in "possession" of a portion of the building and such "possession" cannot be equated with "occupation". For such a proposition, the present facts of the case cannot be applied. The other decision relied upon by the learned counsel for the petitioner reported in **2011 (5) CTC 591 [A.Dharmaraj (in CRP.2929 & 2930/2009) V. Kasturi (in CrP.2929/2009) & Parasmal Jain (in CRP.2930/2009)]**, is also to the same effect. As such, from the very facts emerging from the instant case and in the absence of any perversity or illegality in the findings of both the learned Rent Controller as well as the learned Appellate Authority, this Court is of the view that no interference is required to the concurrent decisions of both the authorities.

13. In the light of the above observations, I do not find any merits in the present Civil Revision Petitions. Accordingly, the Civil Revision Petitions stand dismissed. No costs.

26.04.2019

Index : Yes/No
Order : Speaking/Non Speaking
DP

To

1. The Sub-ordinate Judge/
Rent Control Appellate Authority,
Poonamallee.
2. The District Munsif cum Rent Controller,
Poonamallee.



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M.S.RAMESH, J.

DP



Order made in

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