

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE. N.SATHISH KUMAR

**CRP NPD No.4161 of 2013 and
M.P.No.1 of 2013 and
M.P.No.15536 of 2016**

1. Perumal

2. Nagammal

3. P.Chandrasekar

4. Prakash

... Revision petitioners

Vs.

1. Dr.N.M.Pickthal

2. N.Jammal A.Nassar

... Respondents

PRAYER: Civil Revision Petition filed under Section 26 of the Tamil Nadu Buildings (lease and rent control Act) (Act 18 of 1960) as amended by Act 23 of 1977 and Act 1 of 1980 against the decree and judgment passed in R.C.A.No.156 of 2009 dated 11.07.2013 by the VII Judge, Court of Small Causes at Chennai confirming the decree and judgment passed in RCOP No.1506 of 2003 dated 28.06.2004 by the XI Judge, Court of Small Causes at Chennai.

For Revision Petitioners : Mr.Raja Kalifulla (Senior Counsel)
for Mr.T.K.Suryaprakash
For respondents : Mr.C.Ajithkumar

ORDER

This revision petition has been filed against the concurrent findings of the courts below, ordering eviction under Section 10(3)(a)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960.

2. The facts leading to file the civil revision petition is as follows. The petitioners are the tenants under the respondents and the respondents filed an eviction petition before the Rent Controller. Originally, the eviction petition in RCOP No.1506 of 2003 was filed against the first petitioner herein and since he died during the pendency of the first appeal, his legal heirs, the petitioners 2 to 4 were added as parties.

3. The petitioners in RCOP No.1506 of 2003 have stated that they are the owners of the petition mentioned premises and the respondent is a tenant on a monthly rent of Rs.300/- per month. The first petitioner is a Doctor profession in a government hospital and he requires the shop

portion, which is under the occupation of the respondent, for his own use and occupation for running a clinic of his own and he is not occupying any other property in Chennai and his family members also including his brother, the 2nd petitioner not having any other property in Chennai and his requirement is bonafide one and hence he filed the eviction petition.

3. The respondent/ first appellant herein had admitted the tenancy. However, it was his contention that the application is filed only to harass the respondent and the first petitioner did not require the building for running a clinic and he being a government doctor, he is not suppose to run a private clinic. In the year 1997, a petition in RCOP No.179 of 1997 was filed and the same was dismissed for default. Since the respondent refused to pay more rent, the present application has been filed, without any bonafide reason.

4. In the trial court, the first petitioner was examined as PW1 and no documentary evidence was adduced on the side of the petitioners and one witness was examined as RW1 and two documents were marked on the side of the respondent. After analysing the evidence on record, the trial court allowed the application and order of eviction was passed. The first appellate court has also confirmed the order of eviction passed by the trial

court. Aggrieved over the concurrent findings of the courts below, revision petitioners/respondents came up with the present revision petition.

5. I have perused the materials on record findings of the courts below and heard the learned counsel appearing for both parties.

6. The learned counsel appearing for the revision petitioners would contend that earlier an application filed for eviction in RCOP No.179 of 2007 was dismissed for default. Thereafter, this application had been filed only in the year 2003, which appears that there is no bonafide on the part of respondents to seek eviction. Admittedly, the first respondent is an Government Doctor. There is no material to show that he was permitted to run a clinic. There are other shops occupied by the other tenants, however the petition has been filed only against the petitioners. The trial court not discussed about the bonafideness of the respondent and mechanically passed an order of eviction, which was confirmed by the first appellate court and hence he prayed to allow the revision petition.

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7. per contra, the learned counsel appearing for the respondents/ land lords contended that the first respondent is a government doctor and he sought the portion only for his own purpose for running a

clinic and he has also established that he is not having any other non-residential building within the city. He further contended that when the first respondent established his bonafideness, merely because he has not filed any orders permitting him to run a clinic, he cannot be non suited and hence, he prayed for dismissal of the revision petition.

8. I have perused the pleadings and findings of the courts below. The application in RCOP No.1506 of 2003 had been filed for eviction on the ground that the petition mentioned property is required for own use and occupation of the first respondent to run a clinic in the premises. There is no dispute with regard to the tenancy. The landlord-tenant relationship also admitted. PW1, the first respondent herein has clearly deposed in his evidence that he or his family members are not having any other non-residential property of their own in the city. The tenant also not established any fact to rebut such evidence.

9. It is to be noted that the first respondent being the government doctor, he filed an application under section 10(3)(a)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to evict the tenant, because the tenancy portion is required for his own to run a clinic. He being the government doctor, there is no bar for the doctor in Government service

to run a private clinic, as per the M.C.I. guide lines. Therefore, I am of the view that merely because the first respondent is a government doctor, it cannot be stated that there must be a permission to run a clinic. The land lord being a doctor, he has his choice to choose which building is required for running a private clinic. Merely because other tenants are there, the tenant cannot dictate the landlord that his building is not fit for running a clinic and to choose other building to run a clinic. Therefore, when the land lord has stated that that he required the building for his own to run a clinic and also he is not having any other non-residential building within the city, merely because earlier application in RCOP No.1506 of 2003 was dismissed for default, it cannot be stated that there is no bonafide on the part of the land lord.

10. Admittedly, the land lord is a doctor in government hospital and he has his choice to choose and decide which building is required for starting his own clinic. Therefore, the requirement arose for the land lord only at the time, when he decided to open his private clinic. Merely because earlier application was dismissed for default, it cannot be a ground to hold that there is no bonafide at all. The bonafide has to be decided only on the date of petition and the landlord proved his bonafideness through his

evidence and he also stated that he obtained permission from the government to run a clinic. Therefore, once it is established on record that on the date of application, the land lord required building bonafidely for establishing his own clinic, tenant cannot resist the same and he cannot dictate the terms to the landlord. Hence, I do not find any error or infirmity on the orders passed by the trial court as well as the first appellate court and the same do not warrant any interference by this court.

11. In the result,

(i) The Civil Revision petition is dismissed. No costs. The connected civil miscellaneous petitions are dismissed.

(ii) The order of the trial court as well as the first appellate court are confirmed.

28.02.2019

Index:Yes/No

Internet:Yes/No

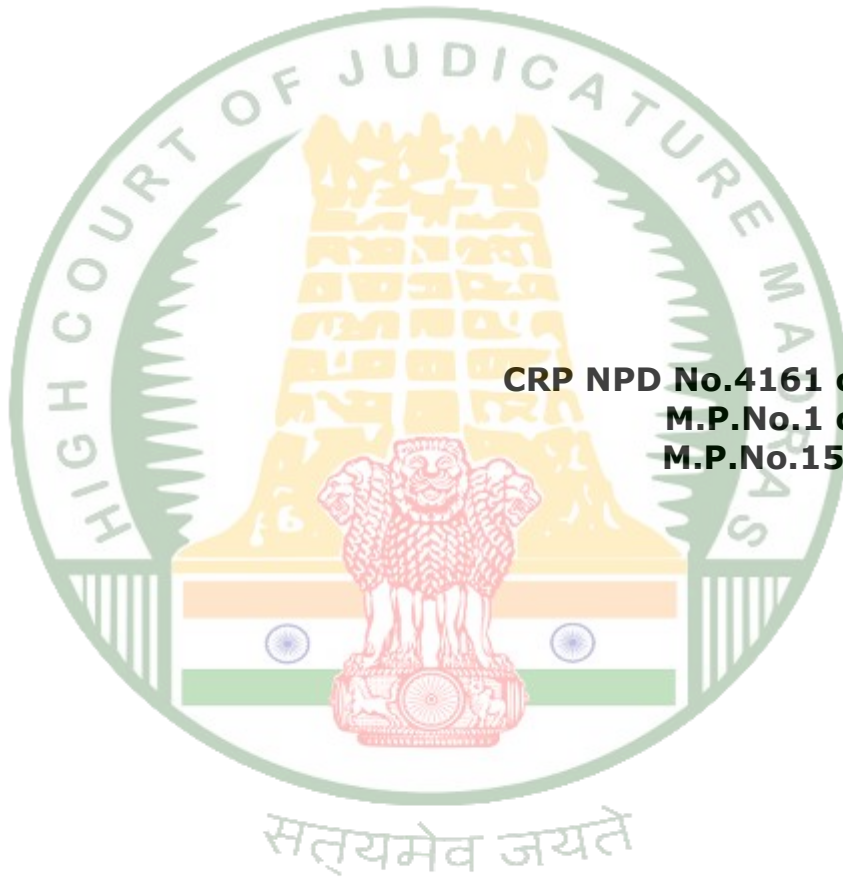
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To

1. The VII Judge, Court of Small Causes, Chennai.
2. XI Judge, Court of Small Causes, Chennai.

N.SATHISH KUMAR, J.,

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