

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2019

Pronounced on : 05.11.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)No.1614 of 2014
and M.P.No.1 of 2014

Kesav Dubey

..

Petitioner /
Respondent

versus

Hasmukh M.Shah

..

Respondent /
Appellant

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decretal order dated 10.03.2014 made in R.C.A.No.283 of 2013 on the file of the learned VII Judge, Court of Small Causes, Chennai, reversing the dismissal order dated 18.12.2012 passed in R.C.O.P.No.576 of 2011 on the file of the Rent Controller / learned XIII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.R.Madanagopal
For Respondent : Mr.Samir S.Shah
for M/s.Shah and Shah

ORDER

This Civil Revision Petition is directed against the order dated 10.03.2014 made in R.C.A.No.283 of 2013 on the file of the learned VII Judge, Court of Small Causes, Chennai.

2. Brief facts leading to the filing of this Petition are that, the revision petitioner is the tenant and the respondent is the landlord. The respondent in this Civil Revision Petition has filed R.C.O.P.No.576 of 2011, seeking the relief of eviction, evicting the petitioner from the leased out premises.

3. The learned XIII Judge, Court of Small Causes, Chennai, by an order dated 18.12.2012, dismissed the petition filed by the respondent. Aggrieved over the same, the respondent has preferred Rent Control Appeal in R.C.A.No.283 of 2011 before the learned VII Judge, Court of Small Causes, Chennai.

4. The learned VII Judge, Court of Small Causes, Chennai, by an order dated 10.03.2014, partly allowed the appeal and passed an order of eviction based on the grounds raised by the respondent under Section 10(3)(ii) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter referred to as "the Act"]. However, he confirmed the appeal in respect to the grounds raised under Section 10(2)(iii) of the Act. In the said judgment, he has granted two months time to the petitioner for vacating the premises.

5. Being aggrieved over the said findings, the petitioner / tenant is before this Court with the present Civil Revision Petition.

6. Brief averments of the petition filed by the landlord/respondent, is as follows;

6.1. The landlord in R.C.O.P.No.576 of 2011 states that the revision petitioner is the tenant under him on a monthly rent of Rs.7,100/-. He had been very irregular in payment of rent. The petitioner has failed to pay the payment of water and sewerage tax to the Chennai Metropolitan Water Supply and Sewerage Board, which is a statutory payment to be made to the Government Department. Further, the respondent/landlord has stated that he does not own other property in the city of Chennai.

7. The brief averments made in the counter affidavit filed by the revision petitioner/tenant, in the above said R.C.O.P., is as follows;

7.1. The petitioner stated that he was inducted as tenant in the petition mentioned property under the lease agreement dated 01.09.1988. He had paid a sum of Rs.15,000/- towards advance under the above lease agreement. Subsequently, in the year 2009, in addition to Rs.15,000/- already paid towards advance, at the request of the respondent another sum of

Rs.35,000/- was paid and thus, totally a sum of Rs.50,000/- has been paid as advance. The tenancy is for non-residential purpose. The lease agreement, which was executed in the year 1988 does not say that the tenant is liable to pay the water tax for the petition mentioned premises. The respondent / landlord cannot seek the petition mentioned premises for his own use and he can seek the petition premises for keeping his vehicle under Section 10(3)(a)(ii) of the Act and therefore, the tenant prayed for dismissal of the said RCOP.

8. Based on the said pleadings, the learned Rent Controller framed the following issues.

- “1. Whether the petitioner is entitled for eviction on the ground of act of waste ?
2. Whether the petitioner is entitled for eviction on the ground of recovery of building for keeping vehicles ?
3. Whether the petitioner is entitled for eviction on the ground of own use and occupation for non residential ?”

9. Before the trial Court, the respondent/landlord has examined himself as P.W.1 and marked 5 documents as Ex.P.1 to Ex.P.5. On the side of the petitioner/tenant, one witness was examined as R.W.1 and two documents were marked as Ex.R.1 and Ex.R.2.

10. Having considered all the materials placed before him, the learned Rent Controller/learned XIII Judge, Court of Small Causes, Chennai, dismissed the petition filed by the respondent / landlord.

11. Aggrieved over the same, the respondent/landlord has preferred an appeal in R.C.A.No.283 of 2013. The learned VII Judge, Court of Small Causes/Rent Control Appellate Authority, Chennai, in its order dated 10.03.2014, partly allowed the appeal and passed an order of eviction, as already stated supra.

12. The contention of the petitioner/tenant is that originally, the petition mentioned property was given on rent to the petitioner herein by the mother of the respondent on 01.07.1988. The tenancy is for non-residential purpose of selling Pan Beeda and Cool Bar. After the demise of his mother, the respondent / landlord is collecting the rent from the petitioner and the tenancy is attorn in favour of the respondent herein.

13. Only in the said circumstances, the respondent issued a notice to the petitioner asking him to hand over the vacant possession of the petition mentioned property as the same is required by the respondent for the purpose of parking his vehicle and also for the purpose of having his office in the day time as he was unable to travel to Godown Street and was asked not to travel by public transport on account of his health.

14. Though the petitioner received the said notice, he failed to hand over the vacant possession to the respondent. Hence, the respondent has filed a Petition in R.C.O.P.No.576 of 2011 before the learned XIII Judge, Court of Small Causes, Chennai, under three grounds, i.e., Section 10(2)(iii) (Act of Waste), 10(3)(a)(ii) (owners occupation) and Section 10(3)(a)(iii) (*bona fide* requirement of the petition mentioned premises) of the Act.

15. The learned Rent Controller while at the time of disposing the petition filed by the respondent came to the conclusion that all 3 grounds raised by the respondent has not proved. On the other hand, the learned Appellate Authority, by a judgment and order dated 10.03.2014 stated that the petition mentioned property needs for owners occupation and the same is the

bona fide requirement of the landlord. Accordingly, partly allowed the appeal and directed the petitioner to vacate the petition mentioned property. In respect to other ground (act of waste), the learned Appellate Authority confirmed the findings arrived at by the learned Rent Controller and dismissed the appeal, which is erroneous in law.

16. On the other hand, the case of the respondent / landlord is the order passed by the Appellate Authority is well considered one.

17. Hence, the only issue to be decided in this Revision is whether the findings arrived at by the learned Appellate Authority under Section 10(3)(a)(ii) (owners occupation) and 10(3)(a)(iii) (*bona fide* requirement) is found correct or not.

18. In this regard, the learned counsel appearing for the petitioner / tenant would contend that a notice sent by the respondent / landlord to the petitioner / tenant dated 10.02.2011, in which, he has stated that he is entitled for vacant possession of the Garage No.9, under the respondent's occupation for the purpose of using the same as Garage in the night hours and as an Office during day time. The said reasons stated by the

respondent is against the agreed terms made between the mother of the respondent and the petitioner.

19. Now, on considering the said arguments, before the learned Rent Controller, the lease agreement made between the petitioner and the mother of the respondent was marked as Ex.R.1. In the said document, in Clause No.5, it was stated that shop no.9 let out by the mother of the respondent to the petitioner for carrying on business of Beeda and Cool Bar and the petitioner/ tenant hereby undertook not to do any other business. In this occasion, the respondent himself admitted before the learned Rent Controller as the petition mentioned premises is used for running Beeda and Cool Bar Shop.

20. In this occasion, the learned counsel for the petitioner has relied on the judgment of our Hon'ble Apex Court in **T.SIVASUBRAMANIAM vs. KASINATH PUJARI** reported in (1999) 7 SCC 275, in which, it has held as follows;

“4. From the aforesaid decisions it is clear that mere desire of the landlord to live separately from his father cannot be attributed to his need for the premises occupied by the tenant. It is often seen

that a desire often takes its origin from what one likes and dislikes and necessarily it is not dependent upon his need. But we cannot lose sight of the fact that sometimes the desire may be the outcome of one's need. So when a landlord desires a premises, the requirement of law is that the landlord must set out his need for the premises in his petition and establish that such a need is bona fide. The need must be bona fide, genuine, honest and conceived in good faith."

21. Further, the learned counsel has relied on the judgment of this Court in **NATHELLA SAMPATHU CHETTY vs. SHA VAJINGJEE BAPULAL** reported in (1967) 1 MLJ 289, in which, it has observed as follows;

"It means in cases under section to (3)(a), that the landlord honestly desires to occupy the premises from which eviction is sought and his claim is not a device to serve an oblique purpose."

22. So, applying the said principles with the case in our hand, it is necessary for the respondent / landlord to prove his *bona fide* requirement of the petition mentioned property.

23. Now, on going through the entire evidence given by P.W.1 with the facts of this case, it is not in dispute that the petition mentioned property is originally constructed as Garage and only at the time of attorning the tenancy, the same was converted. Though there was no document produced on the side of the respondent to prove that he is having the car, the respondent / landlord wanted the same now for parking his vehicle. In this occasion, in the case of **PITCHAIPILLAI vs. DOMINIQUE MARIE IGNACE PROSPER** reported in (1997) 3 LW 106 this Court has held as follows;

“Act does not say that landlord should be owner of vehicle and that landlord must have a place to keep vehicles.”

24. Subsequent to that, after raising the dispute in respect to the tenancy, the Corporation of Chennai had issued a notice for lock and seal of the petition mentioned premises. In this aspect, the petitioner herein has filed a Writ Petition in W.P.No.7064 of 2009 to remove the seal from the petition mentioned premises. The said circumstances established the fact that the petitioner running the shop in the respondent's property is in the violation of the licence issued by the Corporation of Chennai.

25. Hence, denying the claim made by the respondent on hyper technical ground would not amount to a *bona fide* reason. In this occasion, it is relevant to consider the judgment of this Court in **S.V.M.NAGAVAIRAVA SUNDARAM vs. S.BAGEERATHAN AND OTHERS** reported in **MANU/TN/1366/1998**, in which, this Court has held as follows;

"Once ground was made out for eviction, Court could not refuse to grant said relief and hyper-technical arguments could not be taken into consideration in such cases. Ratio Decidendi "Revisional jurisdiction is only part of appellate jurisdiction and shall not be equated with that of full-fledged appeal"."

26. Moreover, the intention of the respondent is to vacate the premises of the petitioner / tenant only for the reason of parking his vehicle. Now a days, all are aware in India majority of the people are having car. As already observed for proving the same, no document is necessary. Further, the intention of the respondent is based on the psychological manner. Since the residence of the respondent is near to the petition mentioned property, the said circumstances creates a presumption that the reason stated by the

respondent is a *bona fide* one.

27. In this regard, it is necessary to consider the judgment of this Court in *S.MOHAMMED JAMAL vs. SUREKA* reported in (2002) 1 CTC 65, in which, it has held as follows;

“10.In Jawanthraj Mehta v. Ramachandra Chetty, 1978 LW 65 (JS) Natesan. J has held that in considering the scope of the Sub-clause 3 (a) (ii), it cannot be contended that only a building which is already used for the purpose of keeping a vehicle could be claimed. The learned Judge did not agree with the contention that the expression “adapted” for such use should mean only that already, at the time of application, the premises was being used for keeping the vehicles. The learned Judge held that the word “adapted” should mean “suitable”. The learned Judge further proceeded to hold that if the premises in question could be re-modelled or converted or made fit for the purpose of keeping a vehicle, it can be said to be “adapted” for such use.”

28. It is necessary to notice a few undisputed facts in this

petition. The purpose of construction is not in dispute that the same is used only as Garage. The petitioner has not proved the fact that the respondent is having another one place for keeping the vehicle. Further, there was no specific denial that the respondent is not having any vehicle. In the case of **C.KUPPUSWAMY NAIDU vs. V.KRISHTAPPA CHETTY** reported in (1986) 99 LW 94, wherein, this Court has observed as follows:

“Under S.10(3)(a)(ii) of the Act, a landlord is enabled to seek an order of eviction with reference to a non-residential building used for the purpose of keeping a vehicle or adapted for such use. No question of adaptation of the building in question for the purpose of keeping a vehicle arises in this case as it is not disputed that the premises is used for keeping cycles. The further requirement of that provision is that the landlord requires it for his own use or for the use of any member of his family and that he or any member of his family is not in occupation of any such building.”

29. So in all aspects, the requirement of petition mentioned property by the respondent for parking the vehicle, is a *bona fide* one. It cannot be said that the eviction order passed by the learned Rent Control Appellate Authority under the said ground is having material irregularity.

30. In the light of the above submissions, this Civil Revision
Petition stands dismissed. However, there shall be no order as to costs.

05.11.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

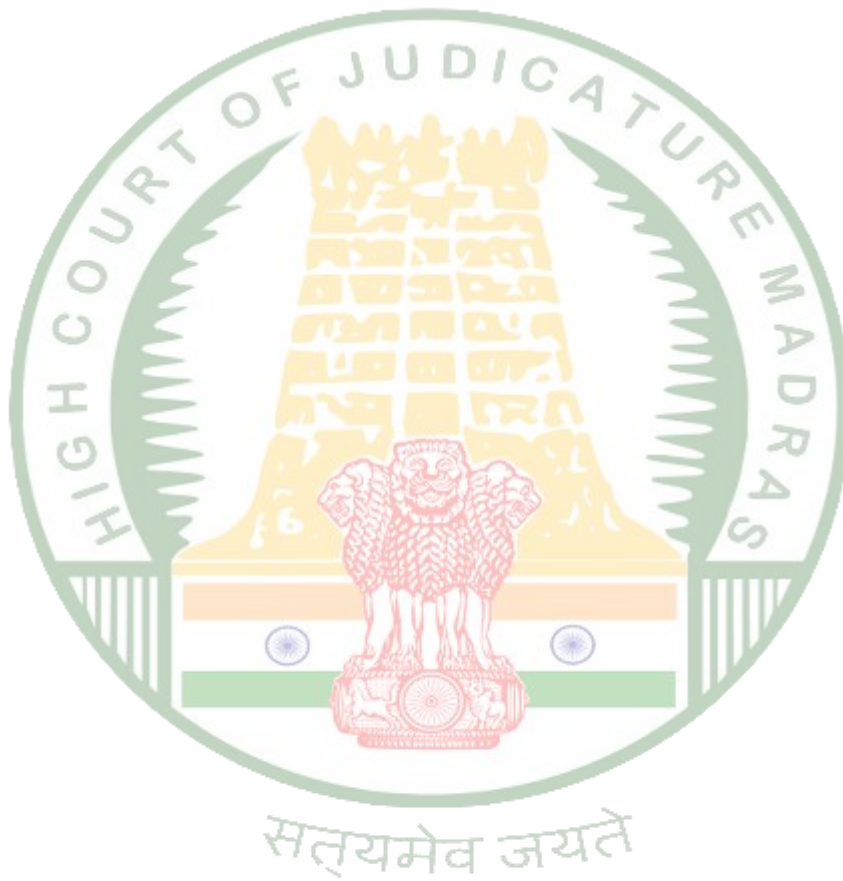
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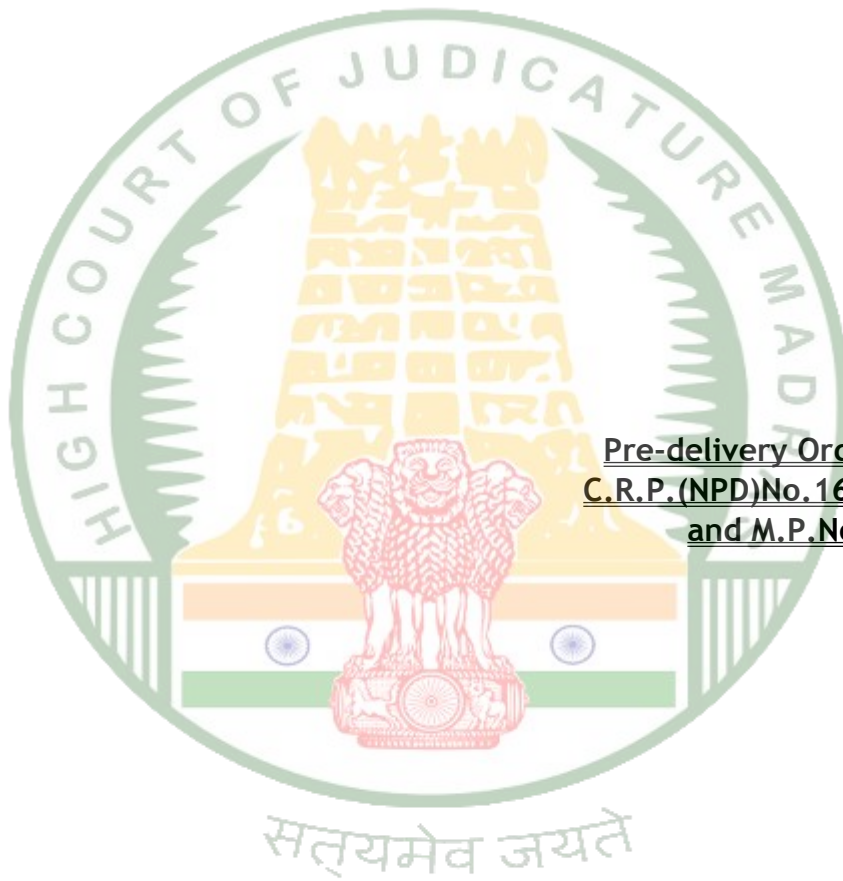
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- 2.The XIII Judge, Court of Small Causes, Chennai.



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Pre-delivery Order made in
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