

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019

DELIVERED ON : 06.08.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.2675 of 2014

- 1.A.R.Sheriff Ahamed (Died)
- 2.Zubeida Banu
- 3.Sheriff Ahmed Ashraf Hassan
- 4.Sheriff Ahmed Azra
- 5.Sheriff Ahmed Altaf Hassan
- 6.Sheriff Ahmed Zehra Jabeen

.. Petitioners

(Petitioners 2 to 6 brought on record as LRS of the deceased sole petitioner viz., A.R.Sheriff Ahmed vide court order dated 04.06.2019 made in CMP.No.8063 of 2019 in CRP.No.2675 of 2014)

..Vs..

G.Balasubramaniam

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 to set aside the fair and final order dated 02.08.2013 passed by the learned Subordinate Judge and Rent Control Appellate Authority of the Nilgiris at Udhagamandalam in RCA.No.20 of 2012 and allow the RCOP.No.2 of 2011.

For Petitioners 2 to 6 : Mr.C.A.Diwakar

For Respondent : Mr.T.Murugamanickam,
Senior Counsel
for Mr.V.Rajesh

ORDER

The instant civil revision petition has been filed under section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, challenging the order dated 02.08.2013 passed in RCA.No.20 of 2012 by the learned Subordinate Judge and the Rent Control Appellate Authority of the Nilgiris at Udhagamandalam reversing the order dated 05.10.2012 passed by the Rent Controller, Udhagamandalam in RCOP.No.2 of 2011.

Brief facts leading to the filing of the instant revision are as follows:

2. One A.R.Sheriff Ahamed was the landlord who filed RCOP.No.2 of 2011 before the Rent Controller at Udagamandalam against the respondent who was his tenant. RCOP.No.2 of 2011 was filed for eviction of the respondent from the petition schedule premises which is a non-residential portion bearing door No.140, located in Commercial Road, Udagamandalam Town, within Udagamandalam Municipality

comprising of the ground and first floor. The tenanted portion consists of one room in the ground floor and half of the first-floor room, with an internal passage, having an area of approximately 450 sq. ft. in all hereinafter referred to as the rented premises. RCOP.No.2 of 2011 was filed on the ground of willful default and owners occupation under Section 10(2)(i) and 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act hereinafter referred to as “the Act”.

3. According to A.R.Sheriff Ahamed, the original landlord/first petitioner, the monthly rent payable by the respondent for the rented premises is Rs.10,500/-. But the respondent is a chronic defaulter in the payment of the rent and as on date of filing of the petition, a sum of Rs.72,000/- calculated up to 31 January 2011 was due and payable by the respondent towards arrears of rent. As regards the owners occupation, A.R.Sheriff Ahamed, the original landlord has stated in the petition that the rented premises is required for his younger son named Altaf Hassan, the fifth petitioner herein who is an Advocate by profession for setting up his law office at Ooty.

4. A counter statement has also been filed by the respondent in RCOP.No.2 of 2011 denying the allegations contained in the affidavit filed in support of RCOP.No.2 of 2011. According to the respondent, he has been paying the agreed rent for the rented premises to the first petitioner without committing any default. As regards the owners occupation claim made by A.R.Sheriff Ahamed, it is the stand of the respondent that the claim is not a bonafide one as the first floor of the same building premises which is also owned by the petitioners and which is exactly above the rented premises has been lying vacant for more than two years and the said premises which is adjoining the first petitioner's brother's advocates office will be ideally suited for the first petitioner's son. According to the respondent, only on account of refusal of the respondent to pay the enhanced rent of Rs.15,000/-, RCOP.No.2 of 2011 has been filed.

5. By order dated 05.10.2012, the learned Rent Controller, Udagamandalam allowed the petition under Section 10(3)(a)(iii) of the act on the ground of owners occupation and dismissed the petition filed

under Section 10(2)(i) of the act on the ground of willful default. The learned Rent Controller gave a finding that there is no arrears of rent payable by the respondent and he is not a defaulter in the payment of rent to the first petitioner. However, while allowing the eviction petition on the ground of owners occupation, the learned Rent Controller has observed that there is a bonafide requirement for the first petitioner for his son to set up his law office at Ooty and further, has observed that the respondent who is a tenant cannot dictate the terms to the petitioners as to which portion of the building premises, the first petitioner's son will have to occupy for the purpose of setting up his law practice at Ooty. Aggrieved by order dated 05.10.2012 allowing RCOP.No.2 of 2011 filed under Section 10(3)(a)(iii) of the Act on the ground of owners occupation, the respondent/tenant preferred an appeal before the learned Subordinate Court and the Rent Control Appellate Authority, Nilgiris under the Rent Control Act in RCA No.20 of 2012.

6. By order dated 02.08.2013, the learned Subordinate Judge and Rent Control Appellate Authority of the Nilgiris, at Udthagamandalam

allowed RCA.No.20 of 2012 by setting aside the order dated 05.10.2012 passed in RCOP.No.2 of 2011 under Section 10(3)(a)(iii) of the act and rejected the owners occupation claim made by the first petitioner. Aggrieved by the order dated 02.08.2013 passed in RCA.No.20 of 2012, A.R.Sheriff Ahamed, the first petitioner has preferred this revision under Section 25 of the Act. During pendency of this revision, A.R.Sheriff Ahamed/first petitioner died leaving behind the petitioners 2 to 6 as his legal representatives who were also brought on record as the petitioners 2 to 6 herein.

Submissions of the learned counsels:

7. Heard Mr.C.A.Diwakar, learned counsel for the petitioners 2 to 6 and Mr. Murugamanickam, learned senior counsel for the respondent.

8. At the outset, the learned counsel for the petitioners 2 to 6 submitted that since the finding as regards willful default in RCOP.No.2 of 2011 has attained finality and has gone against the petitioner and no

appeal has been filed, he is restricting his submissions only for eviction of the respondent on the ground of owners occupation as finding in favour of the first petitioner before the learned Rent Controller got reversed by the learned Rent Control Appellate Authority. The learned counsel for the petitioners 2 to 6 drew the attention of this Court to the exchange of notices between the landlord and the tenant which were marked as Ex.P1, Ex.P2, Ex.P3 and Ex.P4. In particular, he referred to a reply dated 26.11.2010 sent by the respondent's advocate and submitted that the respondent has admitted that the first petitioner's son who is the fifth petitioner herein, is an advocate.

9. The learned counsel for the petitioners 2 to 6 also drew the attention of this Court to the order passed by the learned Rent Controller in RCOP.No.2 of 2011. According to him, as seen from the order dated 05.10.2012 of the learned Rent Controller, he has given a finding that though it is the contention of the respondent that the portion which is kept vacant by the first petitioner is enough for the own use and occupation of the first petitioner's son/the fifth petitioner, the intention

of the first petitioner's son to establish advocate office in the petition premises, which requires enough space has to be taken into account while deciding the requirement whether it is bonafide or not and it is not the case of the respondent that the first petitioner is having some other building of his own other than the petition premises. Therefore, according to the learned counsel for the petitioners 2 to 6, the only building owned by the first petitioner is the building in which the rented premises is located which is ideal for having a law office for his son.

10. The learned counsel for the petitioners 2 to 6 drew the attention of this Court to the order dated 02.08.2013 passed by the learned Rent Control Appellate Authority in RCA.No.20 of 2012. He submitted that despite a categorical finding given by the Rent Controller that the only building owned by the first petitioner is the building in which the rented premises is located and ideally suited for the law office of his son/fifth petitioner herein, the learned Rent Control Appellate Authority reversed the finding of the learned Rent Controller erroneously by observing that since there is a vacant portion in the same building is

available which was lying vacant at the time of filing of the rent control original petition, the requirement of the petitioner is not bonafide. The learned counsel submitted that the tenant cannot dictate terms to the landlord as to which portion of the non-residential building the landlord or his family member will have to occupy for the purpose of his or her business.

11. In support of his contention, the learned counsel for the petitioners 2 to 6 drew the attention of this Court to the following authorities:

(a) A Single Bench Judgment of this Court in the case of ***Mrs. Kubrabai (Deceased) and others vs. M/s.Hydraulics and Prime Movers Agencies Pvt. Ltd.***, reported in **2014-1-L.W.405**

(b) A Single Bench Judgment of this Court in the case of ***M/s.Frauln, Partnership Firm vs. S.Thilagavathy*** reported in **2016 SCC Online Mad 9280**

(c) A Single Bench Judgment of this Court in the case of ***Suresh Kumar Kothari vs. Dr.T.Ramachandran and another*** reported in **2007 (2) CTC 787**

(d) A Single Bench Judgment of this court in the case of ***B.Kishore, proprietor vs. D.Maragathavalli*** reported in ***2007 (2) CTC 797***

(e) A Single Bench Judgment of madurai bench of this court in the case of ***S.Panneerammal & others vs. Ravichandran*** reported in ***2016-5-L.W. 302***

(f) A single bench judgment of this court in the case of ***R.Sakunthala and others vs. K. Chokalingam*** reported in ***2011 (2) MWN (Civil) 465***

(g) A Single bench judgment of this Court in the case of ***K.Abdul Rahman vs. S.S.Vijayakumar and another*** reported in ***2016 SCC Online Mad 32437***

(h) A Full Bench Judgment of Supreme Court of India in the case of ***V.Radhakrishnan vs.S.N.Loganatha Mudhaliar*** reported in ***AIR 1998 (SC) 2696***

12. Per contra learned senior counsel for the respondent submitted that in the exchange of notices viz., Ex.P1, Ex.P2, Ex.P3 and Ex.P4 which was referred to by the learned counsel for the petitioners 2

to 6, there is no admission made by the respondent that the first petitioner's son/fifth petitioner is an advocate and requires the rented premises for setting up his law office. He further submitted that the first petitioner or his son has not produced the enrolment certificate issued by the Bar Council of Tamilnadu to prove that the fifth petitioner is an Advocate entitled to practice in Tamil Nadu. Further he would submit that the petitioners are permanent residents of Mysore and the fifth petitioner is admittedly not having any law practice in Ooty. He would further submit that no documentary evidence was produced before the learned Rent Controller to establish that the fifth petitioner herein has got clients in Ooty.

13. The learned senior counsel for the respondent drew the attention of this Court to the Order dated 02.08.2013 passed by the learned Rent Control Appellate Authority and in particular, he referred to paragraphs 14 and 15 of the said order wherein the learned Rent Control Appellate Authority has held that there is no bonafide requirement of the rented premises for the first petitioner's son/fifth

petitioner herein as during his cross examination, the fifth petitioner has himself admitted that he has not taken steps to get his enrolment registered in the State of Tamil Nadu. Further, it has been observed in the said order that Mr.Altaf Hassan, the fifth petitioner herein does not have any clients or cases in and around Ooty. According to him, the learned Rent Control Appellate Authority has given the right finding by reversing the order of the learned Rent Controller.

Discussion:

14. The ingredients necessary to maintain the petition for eviction on the ground of owners occupation are (a) building should be non-residential in character; (b) landlord or any member of his family should be carrying on business on the date of application for eviction; (c) landlord or any member of his family should not be occupying any building belonging to him; and (d) claim should be bona fide and not found to be indirect or false attempt to evict the tenant to obtain more rent or to harass the tenant.

15. There is no dispute that the rented premises is a non-residential building. A categorical stand has been taken by the landlord in the petition filed in RCOP.No.2 of 2011 that the rented premises is required for own use and occupation of his younger son Altaf Hassan (fifth petitioner) who is an advocate and desires to set up his law practice at Ooty in the rented premises. It has also been pleaded in the petition that the fifth petitioner at the time of filing of the Rent Control Original Petition was working as a junior assistant in M/s.Prime Law Associates, a Legal Firm in Bangalore and that he would like to set up his practice at Ooty, which is his place of birth, schooling and living during his days of youth and he has many friends and contacts there. It has also been pleaded in the petition that the fifth petitioner is confident of having a good practice at Ooty and his initial experience in the profession at Bangalore will serve him in good stead to stand on his own feet and also succeed in becoming a good advocate on his own. It has also been pleaded that the fifth petitioner's prospects in Bangalore are more limited, as it is very difficult for him to meet the exorbitant cost of living, rentals and transport expenses in such a big and expensive city

and his need for the petition premises is genuine and bonafide. Even though the first petitioner has categorically pleaded in his petition that the rented premises is required for his son(the fifth petitioner) to enable him to set up his law practice, the said contention has not been specifically disputed by the respondent in the counter statement filed before the Rent controller.

16. The only defence raised by the respondent is that there is one portion lying vacant in the first floor of the same building which adjoins the petitioner's brother's advocates office and the said portion, according to the respondent is ideally suited for the petitioner's son's lawyers office. As seen from the exchange of notices between the landlord and the tenant viz., Exs.P1 to P4, the fact that the petitioner's son Altaf Hassan is a practicing advocate at Bangalore has not been specifically denied by the respondent. Even though there is no specific denial in the pleadings, in the oral evidence, the respondent has disputed that the landlord's son is a practicing advocate. Even in the legal notice dated 20.11.2010 (Ex.P1) issued prior to the filing of

RCOP.No.2 of 2011, the landlord has sought for surrender of the rented premises only for the purpose of enabling his son who is a lawyer to set up his lawyers office in the said rented premises. Therefore, it is an undisputed fact as seen from counter statement filed by the respondent before the rent controller as well as from the exchange of notices between landlord and tenant which was marked as Exs.P1 to P4 that the petitioner's son is a practicing advocate at Bangalore. Further it is a known fact that a person who practices in Bangalore can also practice in Ooty. There is no necessity for a separate enrolment with the Bar council of Tamilnadu as the landlord has not said that his son will cease practice at Bangalore.

17. The respondent has also not produced any evidence before the learned Rent Controller to prove that the landlord owns any other non-residential building within the town of Ooty. The learned counsel for the petitioners 2 to 6 submitted that the vacant portion in the first floor referred to by the respondent is only 80 sq. ft and is not suitable for a lawyers office. The rented premises is approximately 450 sq. ft. In his

rejoinder dated 20.12.2010 marked as Ex.P3, the landlord has made it very clear that the vacant portion lying in the first floor has been kept vacant only because the said room is neither fit nor suitable to establish an advocate office. A specific statement has been made in the said rejoinder that it is a known fact that a law office requires enough space to have a waiting room, Advocates chamber and a room for staffs/juniors and space to accommodate library and computer system etc. The extent of 80 sq. ft. will certainly not be sufficient to have all the facilities required for a regular Advocates office.

18. The Hon'ble Supreme Court in the case of **V.Radhakrishnan vs.S.N.Loganatha Mudhaliar** reported in **AIR 1998 (SC) 2696** has held that a landlord is entitled to evict a tenant if his son did not occupy any non-residential building of his own. The facts of the said decision are identical to the facts of the instant case.

19. A single bench of the Madras High Court in the case of **B.Kishore, proprietor vs. D.Maragathavalli** reported in **2007 (2) CTC**

797 has also held that it is open to the landlord to choose a portion of the non-residential building for his son's requirement and the tenant cannot dictate or compel such business to be run in small or insufficient portion. In the instant case, the portion lying vacant is only 80 sq. ft. and the rented premises is 450 sq. ft. which is ideally suited for a lawyers office.

20. A single bench of the Madras High Court in the case of ***Thirunavukkarasu vs. Vasantha Ammal*** reported in **1997-2-L.W. 607** has held that if a step is taken with intent to do actual business in future that will mean “carrying on business” and will be sufficient compliance of the section 10 (3) (a) (iii) of the Act. In the instant case, from the evidence available on record viz., the exchange of notices Exs.P1 to P4 as well as the counter statement, it can be undisputedly inferred that the first petitioner's son, the fifth petitioner herein is a practicing advocate who desires to set up his practice in the rented premises at Ooty which is his place of birth, schooling and living during his days of youth and he has many friends and contacts there. The son has himself

deposed as PW2 in RCOP.No.2 of 2011. Being a practicing advocate and having expressed in unequivocal terms that the landlord's son desires to set up practice at Ooty, it will certainly amount to a step being taken with intent to set up law office at Ooty in the rented premises in the near future. The judgment referred to supra is squarely applicable to the facts of the instant case.

21. For the foregoing reasons, the petitioners 2 to 6 have satisfied all the ingredients required for eviction under Section 10 (3) (a) (iii) of the Act and their requirement is a bonafide one. This court has perused and examined the order dated 02.08.2013 passed by the Rent Control Appellate Authority in RCA.No.20 of 2012. The Rent Control Appellate Authority has given an erroneous finding and has not considered the fact that the portion lying vacant is only 80 sq. ft. and is not suitable for a lawyers office. The Rent Control Appellate Authority has also not considered the decisions of this Court that the tenant cannot dictate terms to the landlord as to which portion of the non-residential building he has to occupy. Therefore this court is of the considered view

that the order dated 02.08.2013 passed by the Rent Control Appellate Authority in RCA.No.20 of 2012 is an erroneous one and has to be set aside.

Conclusion:

22. In the result, the Civil Revision Petition is allowed and the impugned order dated 02.08.2013 passed by the learned Subordinate Judge and the Rent Control Appellate Authority of the Nilgiris at Udhagamandalam in RCA.No.20 of 2012 is hereby set aside and the order dated 05.10.2012 passed by the Rent Controller, Udhagamandalam in RCOP.No.2 of 2011 shall stand confirmed. Time for eviction is one month from the date of receipt of a copy of this order. No costs.

06.08.2019

Note: Issue Order Copy on 07.08.2019
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Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking orders

ABDUL QUDDHOSE, J.

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To

1. The Subordinate Judge and the Rent Control Appellate Authority,
Nilgiris, Udhagamandalam.
2. The Rent Controller, Udhagamandalam



**Pre-Delivery order in
C.R.P.(NPD).No.2675 of 2014**

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