



CRP (PD) (MD) Nos.1977,1978 of 2010 and 98&99 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :23.04.2019

Pronounced on : 30.07.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) Nos.1977,1978 of 2010 and 98&99 of 2012

1.V.P.C.Subramanian (died)

2.V.P.C.Pitchai (died)

3.P.Sureshbabu

4.P.Balaprasath

(The petitioners 3 and 4 are brought on record as Lrs of the deceased vide court order dated 24.07.2018 and 01.08.2018 made in C.M.P.Nos.2217 to 2220 of 2018 and C.M.P.Nos.2221 to 2224 of 2018 in CRP.Nos.1977 & 1978 of 2010 and 98 & 99 of 2012)

... Petitioners/Respondents/Petitioners
in CRP (NPD) (MD) Nos.1977 and 1978 of 2010 and
98 & 99 of 2012

vs.

Nagarajan

... Respondent/ Petitioner/Respondent
in C.R.P. (NPD) (MD).No.1977 of 2010
and in C.R.P. (NPD) (MD).No.99 of 2012

Muthupandian

... Respondent/ Petitioner/Respondent
in C.R.P. (NPD) (MD).No.1978 of 2010
and in C.R.P. (NPD) (MD).No.98 of 2012

PRAYER: Civil Revision Petitions have been filed under Section 25 of Tamilnadu Buildings (lease and rent) Control Act, against the fair and executable order, in R.C.A.Nos.15,17,16 and 18 of 2008 on the file of Principal Subordinate Judge, Madurai, dated 03.02.2010 reversing the order in R.C.O.P.Nos.23, 24, 42 and 43 of 2004, dated 22.01.2008 passed by District Munsif of Madurai Taluk.

For all CRPs:-

For Petitioner : Mr.M.Rajaraman



For Respondent : Mr.C.Godwin

COMMON ORDER

These Civil Revision Petitions have been filed under Section 25 of Tamilnadu Buildings (lease and rent) Control Act, against the fair and executable order, in R.C.A.Nos.15,17,16 and 18 of 2008 on the file of Principal Subordinate Judge, Madurai, dated 03.02.2010 reversing the orders made in R.C.O.P.Nos.23, 24, 42 and 43 of 2004, dated 22.01.2008 passed by the District Munsif of Madurai Taluk.

2. Since the issue involved in all the Civil Revision Petitions are one and the same, they are all taken up together and a common order is passed.

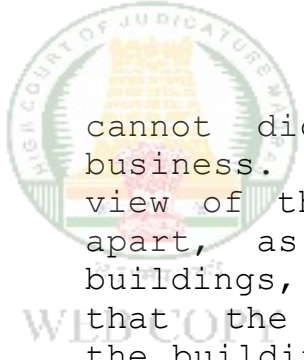
2. The short facts, in a nutshell, are as follows:-

2.1. The petitioners 1 and 2 are the owners of the tenanted premises and the respondents herein are the tenants. Originally, the petitioners instituted rent control original proceedings against the tenants. In this connection, the petitioners filed two R.C.O.P.Nos.23 and 42 of 2004 for vacating the tenants. Similarly, they also filed R.C.O.P.Nos.24 and 43 of 2004 for fixing fair rent against the tenants. The Court below, after considering the evidence available on record allowed all the four R.C.O.Ps in favour of the petitioners by a common order dated 22.01.2008 vide R.C.O.P.Nos.23 and 42 of 2004 and R.C.O.P.Nos.24 and 43 of 2004.

2.2. Aggrieved over the common order passed by the Court below, the tenants filed R.C.A.Nos.15, 17, 16 and 18 of 2008 on the file of Principal Subordinate Judge, Madurai. On contest, the lower appellate Court reversed the orders passed by the Court below and favoured with the tenants. Pending litigation before this Court, the original owners died and thereafter, their legal heirs were brought on record by this Court.

2.3. The only question to be decided by this Court whether the order of the lower appellate Court is sustainable in the eye of law?

3. The learned counsel for the petitioners would submit that despite overwhelming evidence available on the part of the landlords and despite the fact that the building requires for own use and occupation, the lower appellate court without considering the said aspect, has simply reversed the order of the Rent controller which is against law and not sustainable in the eye of law. Further, either the tenants or the lower appellate Court

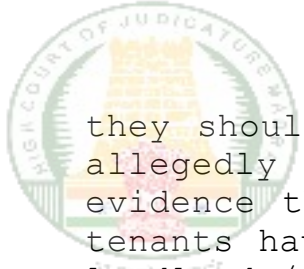


cannot dictate as to where the landlords should start the business. It is the option of the landlords to do the business in view of the business potentiality of that area concerned. That apart, as regards fixing the fair rent for the respective buildings, the learned counsel for the petitioner would submit that the lower appellate Court failed to fix the fair rent for the building on the basis of the market value as per the Act. In this connection, despite producing oral and documentary evidence, the lower appellate Court negatived the contention of the landlords and reversed the findings of the rent controller. To sum up, he prays for allowing the Civil Revision Petitions.

4. *Per contra*, the learned counsel for the respondents would submit that the lower appellate Court after considering each and every point raised by the landlords meticulously and eventually, has come to the conclusion that the contention of the landlords is not a *bona fide* one and ultimately, reversed the findings rendered by the rent controller. Therefore, he would submit that, no interference is required from any quarters to derail the well-considered judgment passed by the lower appellate Court and all the Civil Revision Petitions are liable to be dismissed.

5. Heard the learned counsel for the petitioner/landlords and the learned counsel for the respondent/tenants and perused the materials available on record.

6. A perusal of the records shows that in the Rent Control Original Proceedings, the Rent Controller has specifically found that the owners are doing garment business at Ramanathapuram. In connection with, both the tenants were examined and they specifically admitted that they are doing garment business. They also admitted that if they vacate the business premises occupied by them, it would be bigger and better for doing such business. Despite such vital fact, the lower appellate Court, without appreciating the evidence, has simply reversed well-reasoned order passed by the rent controller. Admission is the best form of evidence, which need not be proved or required to be proved under law. But, in the case at hand, at paragraph No.21, the lower appellate Court has taken hyper-technical view that with the available experience, the landlords can do business in one of the vacant premises available with the landlords. The landlords have specially pleaded that once the premises occupied by the tenant is vacated, then only they can apply for licence and do garment business. In fact, that is the ground reality also. When that being the situation, the lower appellate Court cannot dictate the owners/landlords to do business in some other location which is not viable for doing business. Further, if the version of the tenants and they have been paying the rents without any default,



they should have produced the money order before the Court below allegedly sent to the owners. But, they have admitted in the evidence that they have not produced before the Court below. The tenants have also stated that they sought the bank details of the landlords/owners. However, the same has not been produced before the Court below to substantiate their contention. Without following the provisions of Building Lease and Rent Control Act, the tenants have simply by-passed all the procedures as laid down in the Act and depositing the rent into the Court is unknown to law and it cannot be termed that the intention of the tenants are *bona fide*. Therefore, the wilful default committed by the tenants is proved and their subsequent payment of rent during the pendency of the eviction proceedings will not cure the default committed by them.

6.1. In the case at hand, Balaprasath is the son of V.P.C.Pitchai. He has got his own shop at Ramanathapuram which is admitted by the tenants. Therefore, the building naturally requires for the landlords for personal use and it need not be proved by them. When the business experience gained by the owners is very much proved with evidence, the lower appellate Court has simply reversed the findings of the rent controller, which is not sustainable in the eye of law. Accordingly, the findings arrived at by the lower appellate Court needs to be interfered and it is liable to be allowed.

6.2. Similarly, the lower appellate Court has failed to consider as regards fair rent sought by the landlords/owners. Admittedly, the property is in the heart of the city where people movement will be manifold and there is every possibility that the volume of business would be increased day-by-day. It is also easily connected by the roads and for commuters by two wheelers and by four wheelers. Therefore, the request of the landlords/owners to fix the fair rent should have been fairly considered by the lower appellate Court. The lower appellate Court at paragraph Nos.12 and 13 have simply observed that the Rent Controller has come to the conclusion on the basis of the engineer report alone, but, factually, it is incorrect. At paragraph No.11 of the Rent Control proceedings, it could be seen that along with an Engineer, the Court has also appointed one Advocate commissioner by namely, one M.Kamu and their documents were marked as Ex.c.1 to 3. The landlords have also produced Ex.P.1 sale deed copy in the year 1997 to ascertain the market value. The lower Court, after considering the Full Bench judgment reported in **2006 (2) Law Weekly 297, Sakthi and co Vs Desigachary**, has fixed the fair rent to the landlords(emphasis supplied). In fact, the respondents have also not objected the building value arrived at by the engineer at the time of his cross-examination. Therefore,



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the findings of the lower appellate Court with regard to fair rent also needs to be interfered and it is liable to be allowed.

6.3. In the light of the factual findings of the matter, this Court is of the considered view that the order of the appellate Court made in R.C.A.Nos.15,17,16 and 18 of 2008 on the file of Principal Subordinate Judge, Madurai, is liable to be set aside and accordingly, they are set aside. As a result, the order made in R.C.O.P.Nos.23, 24, 42 and 43 of 2004, dated 22.01.2008 passed by the District Munsif of Madurai Taluk is restored and the Civil Revision Petition is allowed. The tenants are directed to pay the enhanced rent as fixed by the Rent controller upto the date within a period of one month from the date of receipt of a copy of this order. Further, the tenants are granted twelve weeks time to vacate the premises in question. In the light of the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

- (1) The Principal Subordinate Judge, Madurai
- (2) The District Munsif of Madurai Taluk.

Copy to:-

The Section Officer,- 2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.C.GODWIN, Advocate (SR-78676,78675[F] dated 30/07/2019)

+4 CC to M/s.M.RAJARAMAN, Advocate (SR-79040 to 79043[F] dated 01/08/2019)

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