



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)Nos.550 and 551 of 2019
and
C.M.P.(MD)Nos.2725 and 2726 of 2019

Dr.N.Vidyasagar .. Petitioner/Appellant/Respondent/
in C.R.P.(MD)No.550 of 2019

S.K.K.Hakeem .. Petitioner/Appellant/Respondent/
in C.R.P.(MD)No.551 of 2019

Vs.

Moonrumanthai 84 Oor Soliyavellalar,
Community Welfare Sangam, Palani,
(Reg No.25/84)
Through its President,
Ayyar Malai,
Kuzhithalai taluk,
Karur District.

.. Respondent/Respondent/Petitioner
in both C.R.Ps.

Common Prayer: These Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the order dated 11.02.2019 passed by the Sub Court, Palani, in R.C.A.Nos.4 and 5 of 2015 confirming the order dated 23.06.2015 passed in R.C.O.P.Nos.3 and 1 of 2009 by the Rent Controller (District Munsif Court), Palani, respectively.

For Petitioner	: Mr.S.Anand Chandrasekar for
(in both C.R.Ps.)	M/s. Sarvabhauman Associates
For Respondent	
(in both C.R.Ps.)	: Mr.N.Sathish Babu

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the orders passed in R.C.A.Nos.4 and 5 of 2015 dated 11.02.2019 on the file of the Sub Court, Palani, thereby setting aside the order,

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passed in R.C.O.P.Nos.3 and 1 of 2009 dated 23.06.2015, by the Rent Controller (District Munsif Court), Palani.

3.The revision petitioners herein are the tenants and the respondent is the landlord. The respondent herein has filed petitions in R.C.O.P.Nos.3 and 1 of 2009 before the learned District Munsif/Rent Controller, Palani, claiming that the revision petitioners committed willful default in payment of rent and to demolish the building for construction of a new building and to evict the revision petitioners. The Rent Controller allowed the petitions. Against which, these revision petitioners filed appeals in R.C.A.Nos.4 and 5 of 2015 before the Rent Control Appellate Court/Sub Court, Palani. The learned Sub Judge, Palani confirmed the orders passed by the Rent Controller. Against which , the petitioners preferred these revision petitions.

4.The brief substance of the petitions in R.C.O.P.Nos.3 and 1 of 2009 is as follows:

The suit property belongs to the respondent herein and the same was confirmed by the judgment and decree of the Sub Court, Palani in O.S.No.80 of 2005 dated 28.03.2006. The revision petitioners were the defendants 3 and 4 in that suit. The tenants failed to pay the rent and there is willful default from 28.03.2006 onwards. A notice was sent to the tenants by the landlord on 31.08.2006. The tenants sent a reply notice stating that the tenants paid the Municipal Tax instead of six months rent. Further, in the notice, it was stated that the tenants were taking steps to set aside the exparte decree passed in O.S.No.80 of 2005 and the tenants have deposited the rent in R.C.O.P.Nos.2 of 2004 and 1 of 1998 respectively and are ready to pay the rent to the landlord. The tenants filed an application in I.A.No.415 of 2006 to set aside the exparte decree in O.S.No.80 of 2005. The application was dismissed on 09.04.2007. From 28.03.2006 till 09.04.2004, there was willful default in the payment of rent and the old building is to be demolished for constructing a new building and that the tenants are to be evicted.

5.The brief substance of the counters in R.C.O.P.Nos.3 and 1 of 2009 is as follows:

Even before the filing of the suit in O.S.No.80 of 2005, the tenants are running a clinic and doing fruit business in the suit premises respectively. During the year 1980, the tenants entered into tenancy agreement with the then owner Palaniyandi Pandaram for a sum of Rs.200/- (Rupees Two Hundred only) per month with an advance of Rs.20,000/- (Rupees Twenty Thousand only). Palaniyandi Pandaram was receiving the rent and afterwards, Rajathi Ammal was receiving the rent. Then there was some dispute regarding the



ownership of the property and a suit was filed before the learned District Munsif in O.S.No.555 of 1984 and it was subsequently, transferred to the Sub Court and was re-numbered as O.S.No.80 of 2005. To avoid further complications, the tenants filed petitions in HRCOPNos.2 of 2004 and 1 of 1998 respectively before the Rent Controller and they deposited the rent in the Court. The present landlord is also a party to the petitions and there is no willful default.

6.After appreciating the oral and documentary evidence, the trial Court allowed the petitions and ordered eviction within a period of 60 days. Against which, the tenants preferred appeals in R.C.A.Nos.4 and 5 of 2015 on the following grounds:

When there is no pleadings, the lower Court suo moto framed an issue regarding the relationship of landlord and tenants. The trial Court failed to consider that when there is a dispute regarding the title of the property, the tenants filed HRCOP Nos.2 of 2004 and 1 of 1998 respectively for permitting them to deposit the rent amount. On the basis of Exs.A2 and A3, the Rent Control Appellate Court have to set aside the judgment and decree passed in R.C.O.P.Nos.3 and 1 of 2009. The revision petitioners have stated that they have deposited the rent amount before the Court and the landlord is wrong in claiming willful default. The entire extent of land is 5,518 sq. feet and on the western side of the property, the legal heirs of Palaniyandi Pandaram, who was the original owner were in occupation. There is no necessity to demolish the building and the lower court failed to consider that the rent was deposited in Court and gave a finding that there is willful default and the orders of the Rent Controller is to be set aside.

7.The Rent Control Appellate Court dismissed the appeals and confirmed the orders passed by the Rent Controller. Against which the revision petitioners preferred these revision petitions on the following grounds:

The order of eviction on the ground of willful default and for demolishing and for re-construction were not properly appreciated by the Rent Controller and by the Rent Control Appellate Authority. The Rent Controller and the Rent Control Appellate Authority failed to note that the respondent has periodically withdrawn the deposited rent. The landlord has withdrawn the rent amount for the period from 16.03.2004 till 27.02.2008 and the allegation that there is willful default from 28.03.2006 is false. Without considering the fact that the tenants paid the municipal tax and adjusted the amount from the rent from the period February 2006 to July 2006. In the suit property, there are four shops. Except this two shops, the respondent has not taken any steps to evict the occupants of the other shops. The request for demolition and re-construction is not genuine.



8. On the side of the revision petitioners, it is stated that the revision petitioners filed H.R.COP.Nos.2 of 2004 and 1 of 1998 and got the permission of the Court for depositing the rent amount in the Court. Both the Courts failed to consider that the rent was periodically deposited and the landlord was withdrawing the rent amount. It is stated that the revision petitioners paid the municipal tax from out of the rent from February 2006 till December 2006. It is stated that the landlord gave no objection for depositing the rent in the Court and that the landlord cannot claim willful default. It is further stated that the landlord is having 5,518 sq. feet of land and that there are other shops and houses and the landlord did not take any steps to evict them. The landlord has no *bonafide* intention and there is no necessity to demolish the building. The extent of the proposed building and the financial resources for re-construction are not specifically stated in the R.C.O.P. Petition.

9. To substantiate this claim, the judgment of the Hon'ble Supreme Court in the case of **Vijay Singh etcs v. Vijayalakshmi Ammal** reported in **1996 (II) CTC 586** is cited, wherein it is stated as follows:

"Eviction of tenant on ground of demolition and reconstruction of building cannot be ordered on mere asking of landlord - Rent Controller should consider all relevant materials to find out whether requirement of landlord is bonafide or not - Rent Controller should consider (1) bonafide intention of landlord far from sole object only to get rid of tenant (2) age and condition of building (3) financial position of landlord to demolish and erect new building, to render finding on question of bonafide requirement."

10. On the side of the respondent, it is stated that the respondent landlord is a registered society and that there is willful default on the side of the appellant. No evidence for adjusting the rent amount for municipality tax is filed and that no receipt was filed to substantiate this claim. Already the respondent has taken steps for re-construction and the plan is pending for approval. To substantiate this claim, the respondent relied on the judgment passed by the Hon'ble Supreme Court in the case of **P.S.Pareed Kaka and others v. Shafee Ahmed Saheb**, reported in **2004(2) CTC 364**, which reads as follows:

" It is not for the tenants to suggest that there is no need to demolish the existing building and construct the new building.

Even if the building is in a good condition if

it is not suitable for the requirement of the



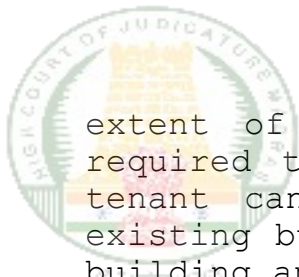
landlord, he can always demolish even a good building and put up a new building to suit its requirements. It is not necessary for the landlord to prove that the condition of the building is such that it requires immediate demolition, particularly when the premises is required by the landlord. Therefore, it has to be held that the finding of the trial Court cannot be sustained and the High Court on re-appreciation of the evidence, rightly so, held that the landlord has established that his need for all the four petition schedule premises is bonafide and reasonable."

11. It is seen from the records, that the suit in O.S.No.80 of 2005 was filed before the Sub Court, Palani, wherein the present revision petitioners are the defendants 3 and 4. It is seen that the defendants 3 and 4 filed an application in I.A.No.415 of 2006 to set aside the exparte order and that petition was dismissed. The judgment and decree passed in O.S.No.80 of 2005 become final. The revision petitioners herein filed petitions in HR.C.O.P.Nos.2 of 2004 and 1 of 1998 respectively for permission to deposit the rent amount in the Court and that petition was allowed and the respondent herein has no objection for such deposit. These facts are admitted by both the sides.

12. The respondent filed R.C.O.P.Nos.3 and 1 of 2009, to evict the tenants on two grounds. One is that there was willful default in payment of rent and the second point is that the landlord has to demolish the existing building and to re-construct the same. The contention of the revision petitioners is that there is no willful default and the revision petitioners have deposited the rent and that the landlord used to withdraw the amount from the Court and that the findings of the Rent Controller and Rent Control Appellate Authority are wrong as the revision petitioners paid the municipality tax from out of rent amount due from February 2006 till December 2006.

13. It is seen that no document was filed by the revision petitioners before the Rent Controller to prove that he has paid the municipality tax and that the revision petitioners did not prove that they were permitted by the landlord to use the rent amount for payment of municipality tax. Hence, the contention of the petitioners is not acceptable. The findings of the Rent Controller and Rent Control Appellate Authority as to willful default is correct.

14. The second contention of the landlord is that the landlord requires the building to demolish the same and for constructing a new building. The contention of the revision petitioners is that the landlord has not taken steps to evict the other occupants in the same premises and that the landlord did not prove that he is having genuine intention of re-construction of the building and that the



extent of the proposed building and the extent of the building required to be demolished were not specified in the petitions. A tenant cannot decide whether there is any need to demolish the existing building. The landlord is having the right to demolish the building and to re-construct the same.

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15.Hence, there is nothing sufficient enough to interfere in the orders passed by the lower Court. The petitioners are directed to vacate the premises within a period of 60 days from the date of this order.

16.With the above direction, these Civil Revision Petitions are dismissed and the order passed R.C.A.Nos.4 and 5 of 2015 dated 11.02.2019 on the file of the Sub Court, Palani is confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

MRN

To

1.The Rent Control Appellate Authority (Sub Judge), Palani.

2.The Rent Controller (District Munsif), Palani.

+1 CC to Mr.N.SATHISH BABU, Advocate (SR-105079[F]dated 16/12/2019)

+2 CC to Mr.SARVABHAUMAN ASSO, Advocate (SR-105098[F] dated 16/12/2019)

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