

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.1069 of 2018
and CMP No.5633 of 2018

Mahadeva Mudaliar

... Petitioner

Vs

Bavacharya Satriya Seva Samajam
Tirupattur
Represented by its Secretary No.2,
Jinnah Road, Tirupattur.

... Respondent

Prayer: The Civil Revision petition filed under Section 25 (1) of the Tamilnadu Buildings Lease & Rent control Act,1960, to set aside the decree and Judgment passed in RCA No. 1 of 2013 dated 20.01.2017 on the file of Subordinate Judge, Tirupattur confirming the decree and judgment in RCOP No. 13 of 2011, dated 03.08.2013 on the file of Principal District Munsif Court, Tirupattur.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondent : Mr.V.V.Sathya

ORDER

The tenant who had suffered an order of eviction under section 10 (3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, at the hands of the authorities constituted under the said act, has come up with this revision under Section 25 of the said Act.

2. The eviction petition was filed by the landlord under Section 10(3)(a)(i) of the Act seeking eviction of Shop Premises where the respondent was carrying on business. The requirement was said to be for the purposes of the office of the petitioner Trust to keep the Pooja articles, account books and other valuables belonging to the temple. It was claimed that the petitioner Trust has established a Panduranga Bajanai Koil and it is performing daily poojas in the said temple. It is also claimed that festivals are being conducted on certain special days. It is the further case of the petitioner trust that it has constructed a row of shops, adjacent to the Bajanai Kovil and let them out. The rental income derived there from is being utilised for the activities of the petitioner trust for performance of Poojas in the Bajanai Koil.

3. The respondent, tenant resisted the application contending that

the petitioner being a Religious Charitable Trust, the buildings owned by it are exempt from the provisions of Tamil Nadu Buildings(Lease and Rent Control) Act as per G.O.Ms.No.2000, dated 16.08.1976. It was also claimed that the requirement is not bonafide. The very existence of the Bajanai Kovil was denied by the respondent, tenant.

4. The learned Rent Controller who heard the application rejected the defence contention mainly on the ground that it is open to a landlord to waive an exemption granted under Section 29 of the Act in as much as it is a floating exemption which depends on the executive fiat of the Government.

5. As regards the requirement of the landlord, the learned Rent Controller though found that the application has been filed under Section 10 (3) (a) (i) of the Act which is not the correct provision of law, treated it as one under Section 10 (3) (a) (iii) of the Act and concluded that the landlord's requirement is bonafide. Upon such conclusion, the learned Rent Controller ordered eviction.

6. It will not be out of place to point out that the learned Rent Controller went one step further and ordered eviction on the ground of wilful default and also though the landlord did not seek eviction on the said ground. Aggrieved by the order of the learned Rent Controller, the tenant preferred an appeal in RCA No.1 of 2013 before the learned Appellate Authority.

7. The Appellate Authority concurred with the findings of the learned Rent Controller in so far as the requirement under Section 10 (3) (a) (iii) of the said Act is concerned. The Appellate Authority, however, set aside the order of eviction granted on the ground of wilful default. The eviction order passed was however sustained in view of the other ground that was upheld by the learned appellate authority. Aggrieved, the tenant has come up with this Civil Revision petition.

8. I have heard Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner and Mr.V.V.Sathya, learned counsel appearing for the respondent.

9. Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner would vehemently contend that both the authorities are not right in ordering eviction, overlooking the fact that the building is one covered under G.O.Ms.No.2000 and it is an exempted building. The learned counsel would also point out that once the building is exempted, the landlord cannot seek eviction under the provisions of the Rent Control Act. He would also point out that the landlord is in occupation of the portion of the building and therefore eviction should have been sought for under Section 10 (3) (c) of the said Act and not under Sections 10 (3) (a) (i) or 10 (3) (a) (iii) of the Act.

10. Contending contra, Mr.V.V.Sathya, learned counsel appearing for the respondent would submit that as far as the exemption granted under G.O.Ms.No.2000, dated 16.08.1976 is concerned, this Court had held that it open to the landlord to waive the said exemption. He would also rely upon the Judgment of this Court in ***V.Natarajan Vs Saliyur Mahajana Sangam represented by the President, Maiyiladudurai*** reported in **2004 (3) MLJ 682** and the Judgment in ***Sha Poosaji Mangilal Vs. The South Indian Humanitarian League represented by the Secretary*** reported in **2009 (2)**

CTC 25.

11. The learned counsel would further point out that the plea regarding the fact that the landlord is in possession of a portion of the building and the requirement is one of additional accommodation and therefore the eviction petition ought to have been filed under Section 10 (3) (c) of the act and not under Section 10 (3) (a) (i) or 10 (3) (a) (iii) of the Act was never raised before the authorities under the Act. He would further point out that it is the specific case of the landlord that the building in question namely the demised premises is adjacent to the temple and the requirement of the landlord is to make use of the same as the office of the temple and as a place for keeping valuable belongings of the temple as well as the account books. The purpose therefore is a non-residential purpose. He would also submit that the landlord is not in occupation in any other non-residential premises of its own in Tiruppathur town. The learned counsel would also point out that it is not owning non-residential premises which would disqualify a landlord from seeking eviction under Section 10 (3) (a) (iii) of the said Act, it should be occupation of the non-residential

premises. He would also take me through counter filed by the tenant to point out that there is no such plea that the landlord is in occupation of a premises of its own which is being used as a office of the temple.

12. I have considered the rival submissions.

13. As regards the first submission of the Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner, I am inclined to agree with the contention of the learned counsel for the respondent. In ***V.Natarajan Vs Saliyur Mahajana Sangam represented by the President, Maiyiladudurai*** case, this Court had held that it is open to the landlord to waive the benefit of the exemption.

14. After referring to the Judgment of the Hon'ble Supreme Court in ***Lachoo Mal Vs Radhey Shyam*** reported in ***AIR 1971 SC 2213***, this Court had held that if a particular owner is not willing to avail the benefit of the exemption, there is no bar created by a notification in the way of its waiving or abandoning such exemption.

15. In *Sha Poosaji Mangilal Vs. the South Indian Humanitarian League represented by the Secretary* reported in **2009 (2) CTC 25**, it has been held that a landlord has got a right to waive the exemption granted under the Act. That is the case where the landlord sought for fixation of fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961.

16. Repelling the contention that the Act does not apply to a building owned by a Public Charitable Institution or a Religious charitable Institution, this Court had held that it is open to the landlord to waive the benefit conferred on it by the exempting provisions contained in the enactment. In doing so, Hon'ble. Mr.Justice.V.Ramasubramanian had observed as follows:

“22. On the contrary, the exemptions contemplated under Sections 29 and 30, are meant only for buildings to which the provisions of the Act would otherwise apply, but for those Sections. The purpose of grant of exemption, as seen from the decision in P.J.Irani's case and S. Kandaswamy's case

is to confer a benefit. There are ever so many statutes, providing for exemption, say for example, [Section 11](#) of The Income Tax Act, under which, the income from property held for charitable or religious purposes is not to be included in the total income. But to avail the benefit of the said exemption, an Institution has to comply with the conditions prescribed under [Section 12-A](#). Even an individual, who seeks exemption of the amount paid by way of donations to certain funds, charitable institutions etc., under [Section 80-G](#) of The Income Tax Act, has to fulfil certain requirements.

23. In short, an exemption which is conferred by way of a benefit or privilege, has to be claimed by the person entitled to it. If the exemption is not conferred by way of benefit or privilege, but by way of statutory exclusion, the question of claiming the same may not arise. Consequently, one has to see if the exemption in question is in the nature of a benefit or privilege or in the nature of an exclusion. If it is in the nature of exclusion, it does not depend upon one's likes or dislikes. If it is in the nature of a privilege or benefit, one may avail it or leave it, as in the case of an exemption under [Section 80-G](#) of the Income Tax Act.

24. A benefit or privilege conferred upon a person, can always be waived, unless the statute imposes a bar from contracting out. Some of the Labour Welfare Legislations like

*the Workmen's **Compensation Act**, though confer a benefit, also impose a bar upon persons contracting out of the statute. Therefore a workman cannot waive the benefit conferred by the statute. Looking at the same issue from the point of view of the Rent Control Act, the Supreme Court held in *Lachoo Mal Vs. Radhye Shyam* {AIR 1971 SC 2213}, as follows:-*

*"The essential question that has to be resolved is whether **Section 1-A** was merely in the nature of an exemption in favour of the landlords with regard to the buildings constructed after January 1, 1951 and conferred a benefit on them which they could give up or waive by agreement or contractual arrangement and whether the consideration or object of such an agreement would not be lawful within the meaning of **Section 23** of the Indian Contract Act.*

*6. The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet renuntiare juri pro se introducto*. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 and 376). If there is any express prohibition against contracting out*

a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy."

"7. Now Section 1-A does not employ language containing a prohibition against or impose any restriction on a landlord and a tenant entering into an agreement that they would not be governed by that Section. We concur with the view expressed in Neminath Appayya Vs. Jamboorao Satappa, AIR 1966 Mys 154, that the words "if permitted it would defeat the provisions of any law" in Section 23 of the Contract Act refer to performance of an agreement which necessarily entails the transgression of the provisions of any law. What makes an agreement, which is otherwise legal, void is that its performance is impossible except by disobedience of law. Clearly no question of illegality can arise unless the performance of the unlawful act was necessarily the effect of an agreement. The following observations of Lord Wright in Vita Food Products Incorporated Vs. Unus Shipping Co. Ltd., (in Liquidation) (1939) AC 277 at p. 293 are noteworthy in this connection:

"Nor must it be forgotten that the rule by which contracts not expressly forbidden by statute or declared to be void are in

proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds."

"8. We are unable to hold that the performance of the agreement which was entered into between the parties in the present case would involve an illegal or unlawful act. In our judgment Section 1-A was meant for the benefit of owners of buildings which were under erection or were constructed after January 1, 1951. If a particular owner did not wish to avail of the benefit of that section there was no bar created by it in the way of his waiving or giving up or abandoning the advantage or the benefit contemplated by the section. No question of policy, much less public policy, was involved and such a benefit or advantage could always be waived. That is what was done in the present case and we are unable to agree with the High Court that the consideration or object of the agreement entered into between the parties in June 1962 was unlawful in view of Section 23 of the Contract Act."

Thus the Supreme court held that it was open to the landlord to waive the benefit conferred by the Act, as it was beneficial to him and was not opposed to public policy. Interestingly, the Supreme Court was dealing with Section 1-A of the U.P. Rent Act in the above case, which is similar to Section 30 (i) of Tamil Nadu Act. Thus even the

benefit under Section 30 was held to be capable of being waived, in that case.”

17. It will also be worthwhile to note that a tenant himself had launched proceedings under the Rent Control Act seeking deposit of rents earlier in HRCOP Nos.15 of 1971, 52 of 1976 and 16 of 2003. This conduct of the tenant would also go long way to show that the applicability of the exemption to the petitioner trust was also in doubt at some point of time.

18. In view of the above categorical pronouncement of this Court, I do not think that the first objection of Mr.P.A.Sudesh Kumar, could be sustained.

19. As regards the second objection, as already pointed out by the learned counsel appearing for the respondent there is no such plea in the counter filed by the tenant before the learned Rent Controller. In the petition, a specific averment is made to the effect that a row of shops were constructed adjacent to the temple. The requirement is for the purposes of

the office of the temple and for keeping the valuables belonging of the temple. It is not the case of the tenant that the landlord is occupying or he is in physical possession of any premises for the purposes for which eviction is sought for in the main petition. The language of Section 10 (3) (a) (iii) of the Act is quite clear where it says that the landlord would be dis-entitled to seek eviction under the said Section, only if the landlord is in physical possession of a premises of his or its own for the purposes for which eviction is sought for. Unless it is shown that the landlord is in possession of a premises of its own for the purpose for which eviction is sought for i.e. for the non-residential purpose for which the eviction is sought for, the landlord cannot be debarred from seeking eviction under the said provision. Though the landlord had quoted a wrong provision, the learned Rent controller had tested the requirement of the landlord on the touch stone of Section 10 (3) (a) (iii) and has concluded that the landlord has made out a case for eviction. Both the authorities have considered the requirements of Section 10 (3) (a) (iii) of the Act and have concluded that the landlord has made out the requirement and the requirement is bonafide.

20. Despite his best efforts, Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner, is unable to make out that the findings of the authorities are perverse or that they are based on no evidence.

21. As already pointed out, the learned appellate authority had held that the landlord had made out a ground for eviction under Section 10 (3) (a) (iii) of the Act after considering all the requirements of law. I do not think I can allow Mr.P.A.Sudesh Kumar to raise a plea that the landlord must have sought for eviction under Section 10 (3) (c) of the Act on the ground that the landlord is in occupation of a portion of the premises in the revision in the absence of any such pleading before the authorities below.

22. I have already pointed out that the landlord has come up with the specific case that the building is adjacent to the temple. The occupation by the landlord of the temple cannot deprive or dis-entitle the landlord for claiming eviction of the tenant on the ground that it is required for the purposes of the office of the temple. I therefore do not see any merits in the revision. The Revision therefore fails and it is accordingly dismissed. No

costs. Consequently, connected miscellaneous petition is closed.

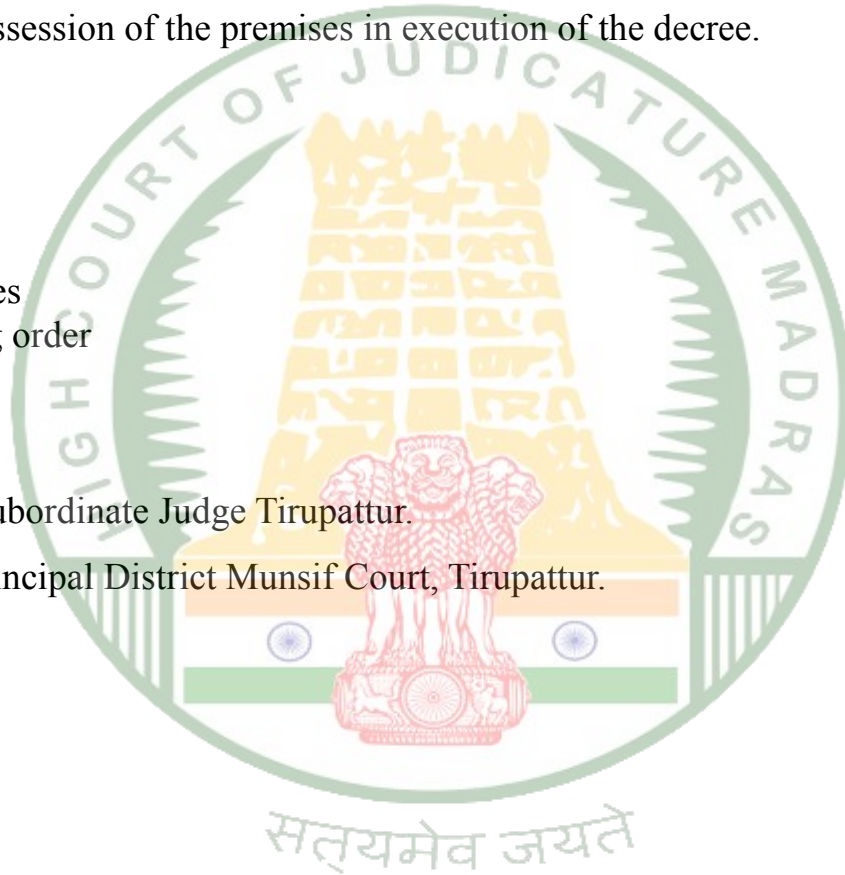
23. It is also stated that the learned Rent controller has ordered delivery in Execution Petition No.34 of 2017 and the landlord has also taken possession of the premises in execution of the decree.

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Index: Yes
Speaking order

To

1. The Subordinate Judge Tirupattur.
2. The Principal District Munsif Court, Tirupattur.



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