

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.09.2020	Delivered on 28.09.2020
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 1095 of 2018

Dr.C.Anbarasu ... Petitioner/Appellant/Petitioner/Land Lord

-vs-

1.N.Sathurdeen

2.A.P.Abdul Cader

... Respondents/Respondents/Respondents/Tenants

Prayer: Civil Revision Petition filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act, against the order and decree dated 21.07.2017 made in R.C.A.No.619 of 2015, on the file of the learned IX Judge, Small Cause Court at Chennai (Rent Control Appellate Authority) thereby confirming the order and decree dated 17.04.2015, made in R.C.O.P.No. 653 of 2012, on the file of the XIII Judge, Small Cause Court (Rent Controller), Chennai.

For Petitioner : Mr.T.R.Rajagopalan, Senior Counsel for Mr.N.Ramesh

For Respondents : Mr.P.Anand for Mr.V.Balaji

O R D E R

The landlord, whose petition for eviction under Section 10 (3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent Control) Act in R.C.O.P.No. 653 of 2012 was dismissed upon confirmation of the said order of dismissal in R.C.A.No. 619 of 2015 has come up with this revision.

2. The landlord is the owner of the premises bearing Door No.305, Koonur High Road, Aynavaram, Chennai -23 wherein, he is running a 24 hours hospital. Being a qualified medical practitioner, landlord started the said hospital in the year 1980 and it caters to the people around Aynavaram area and it is a 24 hours clinic. The respondents were inducted as tenants in the year 1997 for an area of 200 Sq.ft., in the ground floor of the premises and they are running a pharmacy in the name of

Aysha Pharmacy in the said portion. It is also claimed that the respondents / tenants were consistently giving trouble to the landlord by initiating various vexatious legal proceedings. Claiming that he requires the portion of the premises occupied by the tenant for establishing a casualty ward, the petitioner sought for eviction. It is also averred in the said petition that he wanted to expand the hospital by putting up a casualty ward. It is stated that because of the absence of separate casualty ward, reception of the hospital is being used as a make shift casualty ward. On the above contentions, the landlord sought for eviction.

3. The eviction petition was resisted by the tenants contending that the tenants had initiated vexatious legal proceedings is false. The tenants had filed a suit for injunction restraining the landlord from interfering with their possession of the property except under due process of law as there was an attempt to illegally dispossess them by the landlord. The original petition in R.C.O.P.No.1137 of 2009 was also filed only because the landlord refused to receive rent and demanded eviction. While admitting the fact that the petitioner is running a clinic and he is having a consulting room measuring 15 feet by 10 feet, it is also claimed that there is another Doctor, who is a visiting Doctor and he has got a visiting hall measuring 10 feet by 10 feet. There are also two rooms measuring about 75 sq.ft., each. There is no in-patient facility in the petitioner's clinic. It is the claimed that there is a 2000 sq.ft., vacant hall in the first floor of the building. During June 2011, the petitioner / landlord has let out the first floor premises to one Jayam Land Promoters and Sri Bhavani Fancy Stores and Tailoring. It is the further case of the tenants that there is 1000 Sq.ft., of vacant land in which the landlord can put up a construction. On the above pleadings, the tenants termed the eviction petition as malafide and sought for dismissal of the same.

4. During pendency of the original petition, the landlord realised that there was a mistake in the provision of law quoted in the petition and sought for amendment in M.P.No. 607 of 2014. The amendment sought for was to correct the provision of law as 10 (3)(c) (Additional accommodation) instead of 10 (3)(a)(iii) (owner's occupation). The said application came to be dismissed by the Rent Controller by order dated 09.02.2015. The original petition namely, R.C.O.P.No.653 of 2012 was taken up for trial. The landlord was examined as P.W.1 and Exs.P1 to P4 were marked. The second respondent was examined as R.W.1 and Exs.R1 to R8 were marked. Upon consideration of the evidence available on record, the learned Rent Controller concluded that the requirement is not bonafide, since the petitioner has admitted he needs an area of 400 Sq.ft., for casualty ward but the tenants are in

occupation of only 250 Sq.ft. The learned Rent Controller did not consider the other aspects while dismissing the RCOP. Aggrieved, the landlord preferred an appeal before the Appellate Authority in R.C.A.No. 619 of 2015.

5. The learned Appellate Authority concluded that the landlord has not disclosed his qualification and it is not known what type of treatment is given in the clinic. The learned appellate authority came to the conclusion that since scanning and X-Ray facilities are not available in the clinic, casualty ward is not required. The learned Appellate Authority also concluded that the petitioner landlord has not proved his qualification. The claim of the landlord is also rejected on the ground that the building consists of three floors and the tenant is in occupation of 250 Sq.ft in the ground floor therefore, the requirement of the landlord is not bonafide. The learned Appellate Authority also faulted the landlord for invoking Section 10 (3) (a) (iii) instead of 10 (3)(c) of the act. On the above conclusion, the learned Appellate Authority dismissed the appeal. Aggrieved, the landlord has come up with this revision.

6. Heard Mr.T.R.Rajagopalan, Senior Counsel for Mr.N.Ramesh for the petitioner and Mr.P.Anand for Mr.V.Balaji, learned counsel for the respondents.

7. Mr.T.R.Rajagopalan, learned Senior counsel for the petitioner / landlord would contend that the Appellate Authority was not justified in doubting the qualification of the petitioner. Drawing my attention to the Para 4 of the counter affidavit wherein, the respondents specifically admitted that the petitioner is running a clinic and there is also a visiting Doctor, who attends the clinic Mr.T.R.Rajagopalan would submit that there was no dispute regarding the fact that the petitioner is a qualified medical practitioner in that area for a long time. He would also point out that the respondents have specifically pleaded that since the clinic does not have a in-patient facility, there is no requirement for a casualty ward. Therefore, according to Mr.T.R.Rajagopalan, the Appellate Authority was not justified in concluding that the petitioner has not proved that he is a qualified medical practitioner or that he is running a hospital in the portion of the demised premises.

8. Adverting to the reasoning of the Appellate Authority that the petition filed under Section 10 (3)(a)(iii) is not maintainable, Mr.T.R.Rajagopalan would vehemently contend that it is only quoting of a wrong provision of law. Merely because the petition filed under Section 10 (3) (a) (iii), when the landlord is in possession of the portion of the premises for

non-residential purpose only, the petition cannot be thrown out. Though the Rent Controller while dismissing the petition for amendment had referred to the judgment of this Court in D.Prema Jhansi Rani and others Vs. N.Srivijayan reported in 2012 (24) CTC 481 to highlight the fact that quoting of a wrong provision of law cannot be fatal to the petition, if evidence is available to establish the requirement under a particular provision of the Tamilnadu Buildings (Lease and Rent Control) Act. Even though the petition for amendment is dismissed, it was still open to the landlord to claim eviction, if he satisfies the requirements under Section 10 (3)(c) of the Tamilnadu Buildings (Lease and Rent Control) Act. The order of the Learned Rent Controller, to say the least is highly unsatisfactory. The learned Rent Controller had not gone into the question as to whether the hardship that is caused to the tenant would outweigh the advantage that would accrue to the landlord as required under Section 10 (3)(c) of the Act, and the learned Appellate Authority has rejected the petition solely on the ground that it has been filed 10 (3) (a) (iii) of the Act instead of 10 (3)(c) of the Act.

9. The law regarding quoting of wrong provision of law is fairly well settled. This Court has considered the question in S. Mohammed Iqbal Vs. M. Padmanabhan reported in 1999 (3) CTC 116 wherein, this Court held that quoting of wrong provision of law would not disentitle the landlord from claiming eviction under Section 10 (3)(c) of the Act. While dealing with the question, the same view was expressed by Hon'ble Justice S.S.Subramani in N. Dakshinamoorthy v. Alphonsea Celestine Kamala Benjamine reported in 2012 (2) MLJ 72 while dealing with the case regarding relative hardship as follows:-

"13. From the above decision it is clear that even if there is any lack of pleadings, if the parties understood the case and have adduced evidence, application is not liable to be rejected merely on the ground of lack of pleadings, or vague pleadings. In this case, tenant volunteered and put a contention that if he is liable to be evicted, he will be put to greater hardship than the landlord and therefore he wanted the petition to be dismissed. For the said purpose he gave evidence that he has invested huge amounts in the business and how far he will be put to great hardship since he cannot collect his dues from the customers, etc. Tenant knew that the relative hardship is a matter which has to be considered by the Rent Controller."

9.(i). In The Nilgiris Co-Operative Marketing Society Vs. C.T.Uthandi reported in (1998) 2 MLJ Page 745, this Court has held that even in the absence of pleadings, if the parties have understood the nature of the proceeding and had let in evidence on the aspect of the hardship, the Courts are not

precluded from ordering eviction on the ground of Additional accommodation. While doing so, this Court had observed as follows:-

"7. In the case on hand also, I find that there is no pleading on the side of the landlord regarding the relative hardship, yet the tenant has chosen to plead in detail on that aspect. Oral evidence is available on both sides on the issue of relative hardship and both the courts below have considered it and come to the conclusion that the relative hardship is in favour of the landlord. Under these circumstances, I am of the opinion that want of pleadings in this case on the part of the landlord regarding the relative hardship does not affect his case and in any event no prejudice to the tenant has been caused. Therefore the argument of the learned Counsel for the revision petitioner that the Rent Control petition has to be dismissed solely on that ground cannot be sustained."

9.(ii). In Poongothai Vs. Zamurth Bibi and others reported in 1995 (2) LW 302, this Court has considered the effect of quoting of a wrong provision of law, where the landlord sought for eviction of a portion of the building. This Court had held that once the purpose is non-residential, quoting of wrong provision would not disentitle the landlord from seeking eviction on the ground of additional accommodation. While doing so, this Court had observed as follows:-

"10. A legal controversy was taken before the learned Rent Controller as well as the Appellate Authority on behalf of the Revision Petitioner to the effect that since the respondents are residing in the rear portion of the building, and even assuming that they are doing some business, they require the portion of the rental premises in the occupation of the revision petitioner, for their own use and occupation, but the present application for eviction under Section 10(3)(a)(iii) of the Tamilnadu Buildings (Lease and Rent Control) Act cannot be allowed to be entertain, and if it is so, the proper Section would be 10(3)(c) of the Act and that therefore, in the absence of any plea that the advantage caused to the landlord would not outweigh the hardship caused to the tenant, in case of requirement of the premises, under Section 10(3)(c) of the Act, the petition should be dismissed. With regard to this aspect, the findings given by the learned Rent Controller as well as the Appellate Authority would clearly demonstrate and provide answer to the said questions and that therefore, I do not traverse the same once again, as it was felt unnecessary. It was also noticed at this stage that

it is a settled principle of law that if a wrong provision of law has been relied in the context of adducing evidence and pleadings, the court cannot reject the relief basing on the question of mere technicality without applying its ratio. I am fully satisfied to accept the findings given by the Rent Controller and the Appellate Authority in this regard. In short, to say with regard to the merits of the revision, in the context of the concurrent findings recorded by both the courts below, I do not come across any legal infirmities of laches to shake the impugned order in any manner."

10. From the above decisions of this Court, it is clear that the misquoting of a provision of law by the landlord when he seeks eviction, actually, for additional accommodation cannot be a ground to reject the eviction petition. If evidence is available before the Rent Controller or the Appellate Authority, they are obliged to go into the question. From the orders passed by the authorities below it is clear that they had not chosen to go into the question of comparative hardship. The tenant had in fact understood the requirement of the landlord. A reading of the counter statement of the tenant makes it clear that the tenant had understood the case of the landlord as one for additional accommodation. A reading of the Paragraphs 4 and 5 of the counter statement of the tenant would clearly show that the tenant had in fact recognised the petition as one filed for additional accommodation and not owner's occupation. Though the evidence is also available, the Appellate Authority had gone on a tangent and questioned the qualification which is an admitted fact while rejecting the application for eviction.

11. Looking at the facts of the case, it is clear that the landlord, who is a medical practitioner is having a hospital in the ground of the premises. He has sought for eviction of a portion, which is run as a pharmacy by the tenants for establishing casualty ward. Availability of the vacant land or the premises cannot be a ground for rejection of the request for eviction by the landlord. The casualty ward is most essential for even a small hospital that is being run by the landlord. It is also seen from the pleadings of the tenants that there are other doctors also, who are visiting hospital. Therefore, the requirement of the landlord for establishing a casualty ward cannot be said to be malafide. On comparative hardship, the tenants cannot dictate as to which portion of the building should the landlord have his casualty ward. The best place for a casualty ward is the ground floor and not the first floor or the second floor. The fact, the landlord has let out the first floor to some other tenant cannot be a ground to reject the claim of the landlord on the ground of the additional

accommodation.

12. From the evidence, I also find that the tenants have understood the petition as one for additional accommodation and claim that the requirement is not bonafide. I am unable to agree with the findings of the learned Appellate Authority where the appellate authority held that the claim of the landlord is not bonafide. The Rent Controller went only by the measurements stated by the landlord to disbelieve his bonafides and the requirement of the landlord. The learned Appellate Authority overlooked specific admissions in the pleadings and faulted the landlord for not adducing enough evidence regarding running of the hospital which was specifically admitted by the tenant in Para 4 of the counter statement.

13. A reading of the evidence shows that the tenant had understood the case of the landlord as one for additional accommodation. A casualty ward is necessary for even a small hospital. The tenant cannot claim a right to be in occupation of the premises of the landlord, even if the landlord is put to certain inconvenience and is unable to expand the activities. There is a specific averment in the petition to the effect that the landlord is looking to expand the activities of the hospital unless space is made available, the landlord cannot provide for speciality equipment or a scanning equipment or X-ray machine. Therefore, the Appellate Authority, in my considered opinion was not right in dismissing the application by doubting the bonafide need of the landlord on the ground that the landlord has not got a scanning equipment or a X-ray equipment. When the landlord is complaining about lack of space, it is unfair on the part of the Courts to fault the landlord for not having the necessary equipment in advance. The comparative hardship is a relative term and it has to be assessed on the status and the requirement of the landlord as well as the tenant. The admitted case is that the landlord is a Doctor and he is running 24 hours hospital. A casualty ward would definitely benefit the cross section of the people in that area. I therefore, find that the advantage that will accrue to the landlord by ordering eviction would outweigh the hardship caused to the tenants. Both the authorities below have not adverted to the requirements of the provisions of the Tamilnadu Buildings (Lease and Rent Control) Act while dealing with the requirement of the landlord. I therefore, find that the conclusions of the authorities below are perverse and are liable to be interfered with.

14. In the light of the above, this civil revision petition is allowed, the eviction petition in R.C.O.P.No. 653 of 2012 will stand allowed, there will be an order of eviction on the ground that the landlord requires the premises for additional accommodation for establishing a casualty ward.

15. Considering the fact that the tenant is carrying on business, the tenant is granted six months time to vacate and deliver vacant possession of the property to the landlord. The tenant shall file an affidavit undertaking to vacate and handover possession on or before 31.03.2021. The affidavit shall be filed on or before 09.10.2020. If the affidavit is not filed by 09.10.2020, the landlord shall be at liberty to execute the eviction order as if no time has been granted by this Court. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

kkn

To:-

1. The learned IX Judge (Rent Control Appellate Authority)
Small Cause Court, Chennai
2. The XIII Judge (Rent Controller)
Small Cause Court , Chennai.

+1cc to Mr.N.Ramesh, Advocate SR.No.31745

+1cc to Mr.V.Balaji, Advocate SR.No.31755

C.R.P.No. 1095 of 2018

SSD(CO)

GMV(05/11/2020)

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