

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 04.02.2020
PRONOUNCED ON : 08.06.2020
CORAM :
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN
C.R.P. (NPD) No.3184 of 2014

1.K.Balasubramaniam
2.K.Ramanathan (died)
3.K.Rajasekar
4.K.Arunachalam
5.R.Kamalan
6.K.Unnamalai ... Petitioners/tenants
(Appellants 5 and 6 are brought on record as LRs
of the deceased second appellant viz., K.Ramanathan
vide Court order dated 09.07.2019)
made in CMP.No.14104/2019 in
CRP.No.3184/2014

-vs-

Sri Vinayagar Finance, Namakkal
(A registered Partnership firm by its
Managing Partner N.K.Natarajan)
D.No.61, Main Road,
Namakkal Town, Taluk and District. ...Respondent/landlord

PRAYER: Civil Revision Petition is filed under Section 25 of the
Tamilnadu Buildings (Lease and Rent control) Act 18 of 1960 as
amended by Act 23 of 1973 and Act 1 of 1980, against the order
and decretal order dated 13.06.2014 made in R.C.A.No.1 of 2014
on the file of the Appellate Authority (Rent Control)
(Subordinate Judge, Tiruchengode) reversing the order and
decretal order dated 01.12.2011 made in H.R.C.O.P.No.7 of 2010
on the file of the Rent Controller (Principal District Munsif),
Namakkal.

For Petitioners: Mr.P.Anbazhagan

For Respondent : Mr.Krishna Prasad.R
for M/s. Sarvabhauman Associate

ORDER

The tenants are the revision petitioners herein.

2.For the sake of convenience, the parties are referred
to as petitioners/tenants and respondent/landlord.

3.The respondent/landlord filed H.R.C.O.P.No.7 of 2010
before the Rent Controller (Principal District Munsif),

Namakkal, seeking an order of eviction from the petition premises occupied by the tenants on the ground of owners occupation. The said petition was dismissed. Against which, the landlord has filed R.C.A.No.1 of 2014, before the Appellate Authority (Rent Control) (Subordinate Judge, Tiruchengode). After contest, the same was allowed. Hence, the civil revision petition.

4.The brief averments in the petition in H.R.C.O.P No.7 of 2010 reads as follows:-

(i) The petition premises was originally owned by one Ramaiah and others in the year 1975. Even at the time of purchase, the father of the tenants, by name Karuppaiah, had taken the ground floor bearing Door No.60, New No.133 of the building on rent and was running a business in the name and style of "National Javuli Store".

(ii) The building has three floors, one ground floor, first floor and second floor. The ground floor was tenanted by the said Karuppaiah. The first floor is possessed and used by the landlord to run the firm's office and its business carried on now. The second floor is small and not suitable to run a business.

(iii) The said Karuppaiah died leaving behind the petitioners, his sons as his legal heirs and presently, it is only petitioners 1 and 2 are continuing the business and running the shop and also paying the rent. The petitioners 3 and 4 though not running the business, are still heirs of Karuppaiah.

(iv) The first floor is occupied by the landlord and they had been running a finance firm. Now the business has been expanded and another chit firm was established under the name and style of "Sri Panchamukha Vinayagar Chits Namakkal Private Limited". It is functioning on from 07.09.2005. There are a number of subscribers and the partners of the respondent/landlord firm. Because of the age factor and health reason as well as the physically handicapped position of them, they are unable to go up. Further the present premises is found insufficient for the expanded business. Under the above circumstances, the ground floor of the building has become necessary for the business of the landlord and conducting meetings and sufficient space for the subscribers to attend to their transactions. Hence, it is required as additional accommodation.

5.The averments of the counter statement filed by the tenants in nutshell as follows:-

The landlord already filed a petition against them for eviction on the ground of own occupation in R.C.O.P.No.12 of 1985. After contest, the application was dismissed. The respondent/landlord thereupon, filed an appeal before the Rent Control Appellate Authority, Namakkal in R.C.A.No.11 of 1987. By judgment and decree dated 28.08.1992, the said appeal was dismissed. As against the decision of the Appellate Authority, the petitioner filed a revision before the High Court, Madras, in C.R.P.No.32 of 1993, by judgment dated 02.03.1998 that revision petition was also dismissed. After filing of the revision petition, the landlord demanded the father of tenants to pay enhanced rent from Rs.550/- to Rs.3900/- per month. The first floor is already in possession of the landlord and the second floor is also in their occupation. The second floor as the same area as of the first floor is in the occupation of the landlord. The allegation that the second floor is a small one is not suitable for running a business is false.

6.Before the Rent Control Tribunal (Principal District Munsif, Namakkal), on the side of the landlord, PW1 and PW2 have been examined and Ex.P1 to Ex.P4 have been marked. On the side of the tenant, RW1 has been examined and Ex.R1 to Ex.R4 have been marked.

7.On consideration of oral and documentary evidence, the learned Rent Controller has dismissed the said RCOP. Against which, the aggrieved landlord has preferred R.C.A.No.21 of 2014, before the Appellate Authority (Rent Control) (Subordinate Judge, Tiruchengode) and the same was allowed by the Appellate Authority (Rent Control) on 13.06.2014. Hence, the Civil Revision Petition filed by the tenants.

8.After hearing the submissions of both the parties and after perusing the records, it is seen that the petitioners are the tenants in the ground floor and the landlord is running the finance company, which is a partnership firm in the first floor. As the landlord business is enhanced, he wanted ground floor for enlargement of his business and some of the partners of the respondent/landlord are aged and physically handicapped persons and they are unable to climb the first floor and hence, to expand the business, they are required ground floor.

9.In view of the rival submissions made by both the counsel, following two points arises for consideration:-

"(i)Whether the requirement of the landlord is bona fide?

(ii)If an order of eviction is directed whether the tenants put to more hardship than the

landlord?"

10.As stated supra, it could be seen that even in the pre suit notice marked under Ex.P1, the landlord has clearly stated that since there are lot of subscribers joined in the chit and since the partners and Directors of the respondent company unable to climb to the first floor, due to their age and physical condition, they wanted the premises for additional accommodation.

11.From the cross examination of RW1, it is quite clear that he does not know about the day to day function of the landlord's finance and chit firm and even he does not know as to whether the Vinayaga Finance and Panchamukha Vinayaga Finance are running in the first floor. Further, he does not know the strength of the subscribers of the respondent company. When the petitioners are running the textile business in the ground floor for more than 45 years, definitely they must be knowing about the strength of subscribers and the name of finance company running in the first floor. But with a view to conceal the truth, RW1 has simply stated as if he does not know about the same.

12.Further the lower Appellate Authority based on the admission in the cross examination of RW1 has rendered a factual finding that he himself admitted that one PSK Sengodan is the partner and he is aged about 75 years and he further admitted that one Kailasam is also partner and he has seen him. But he has cleverly answered that he does not know as to whether the said Kailasam is affected by polio and he is unable to walk. But he admits that he is also aged about 75 years. Further, he says that he does not know as to whether the height of the steps in the staircase is about 1 feet and so they climb to the first floor with very great difficulty and the said finding does not suffer from any irregularity or illegality. In fact, it reflect the mala fide intention of tenants.

13.Based upon the admission by RW.1(tenant) in the cross examination, the learned Appellate Authority has taken note of the fact that some of the partners of the landlord namely, Sengodan and Kailasam, are aged about 75 even at the time of examination of RW.1 and the evidence of PW.1 and PW.2, who are all partner and the Manager of the Firm respectively, their age is also about 66 years and 60 years at the time of examination as witnesses and has come to the correct conclusion that they will have difficulty in climbing the first floor or the second floor, due to their old age.

14. In view of the admission of RW.1 (tenant) in the cross examination, the appellate authority has rightly come to the conclusion that the said stand of the tenants in respect of avoidance of eviction order on the ground of mala fide is only intended for the purpose of this case and based upon the evidence of PW.1, PW.2 and Ex.P1 to Ex.P7 has rightly come to the conclusion that the requirement of the landlord is bona fide and the said finding is a well considered and well merited and does not warrant any interference in the absence of any defect in analyzing the evidence of the landlord.

15. Furthermore, it is to be stated that it is not for the tenant or the Court to dictate the landlord to occupy a particular portion or particular area of the building for the own occupation of the landlord. In this regard, reliance were placed in the judgment reported in 2010 SAR civil 69 in the case of Sankar Upadhyay and another vs Maheswari and in another judgment reported in 2000(1) LW 608 in the case of N.Andal and four others vs M.Salim and another.

16. On the point of relative hardship in the aforesaid decision of Andal's case, this Court has observed as follows:-

"No presumption that in all cases the tenants are the weaker sections of society- Tenants in many cases are more affluent than the landlord, especially in the case of non-residential premises."

"Relative hardship- Nonavailability of alternative accommodation in the same locality or in same place is not a reason to disallow eviction required by landlord"

"Court will be unjust in holding that landlord must adjust somehow or other in the accommodation available to him- It is too much to direct landlord to do business in some other locality in order to protect the tenant's interest- Rent Control Act has not gone to such an extent."

17. It is to be stated that from the admission made by RW.1 (tenant), it is quite clear that for the past 15 years, the landlord is not at all requested the tenants to vacate the premises and they have regularly receiving the rent from the tenants. While that being so, only in the year 2008, they have terminated the tenancy and requested the tenants to vacate and handover the petition mentioned building under Ex.P1 notice dated 10.11.2008.

18. Further more, it is to be noted that in the cross examination of RW1, he has stated that he will not vacate the premises forever and he cannot shift his textile business to any other place. Further, he has stated that he cannot vacate and handover the possession till he runs the business and he

proposed to run the business at least for further period of 15 years and till then he has no intention to vacate the same. Therefore, the above admission of RW1 would clearly establish his mala fide intention to retain the building forever and he has absolutely no intention to shift his business to any other place. In this regard, the learned counsel for the landlord has cited the judgment of this Court report in 1992 LW 165, wherein it is stated as follows:-

"The contention on behalf of the tenant that the tenant was in occupation of a number of years and that he could not find an alternative accommodation of a similar type elsewhere, would amount are thirteen members in the appellants's family and they are living in three rooms and one verandah with great difficulty. As against that the respondent's family consists of four persons and there are four room in his possession. It is observed by the Courts below that the appellants own other premises. However, details of those premises are not on record. The High Court has rightly noted that this bald resertion is base on conjectures. It is well settled the landlord's requirement need not be a dire necessity. The Court cannot direct the landlord to do a particular business or imagine that, he could profitably do a particular business rather that the business he proposes to start. It was wrong on the part of the District Court to hold that the appellant's case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not a common for a Muslim family to do the business of non-vegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the Courts below."

19. Thus, this Court finds that even on the point of relative hardship the petitioners/tenants cannot get any advantage over and above the landlord and it is to be stated that the intention of the tenants as elicited in the cross examination goes to show that he never has the intention to vacate the premises and this petition has been filed, after fifteen years of dismissal of the earlier application, due to compromise and hence, even at the point of relative hardship and also taking note of the circumstances that sufficient time has already been granted by the landlord to find an alternate accommodation, I hold that both the points against the petitioners/tenants and the civil revision petition is devoid of merits.

20.In view of the above observations, this Civil Revision Petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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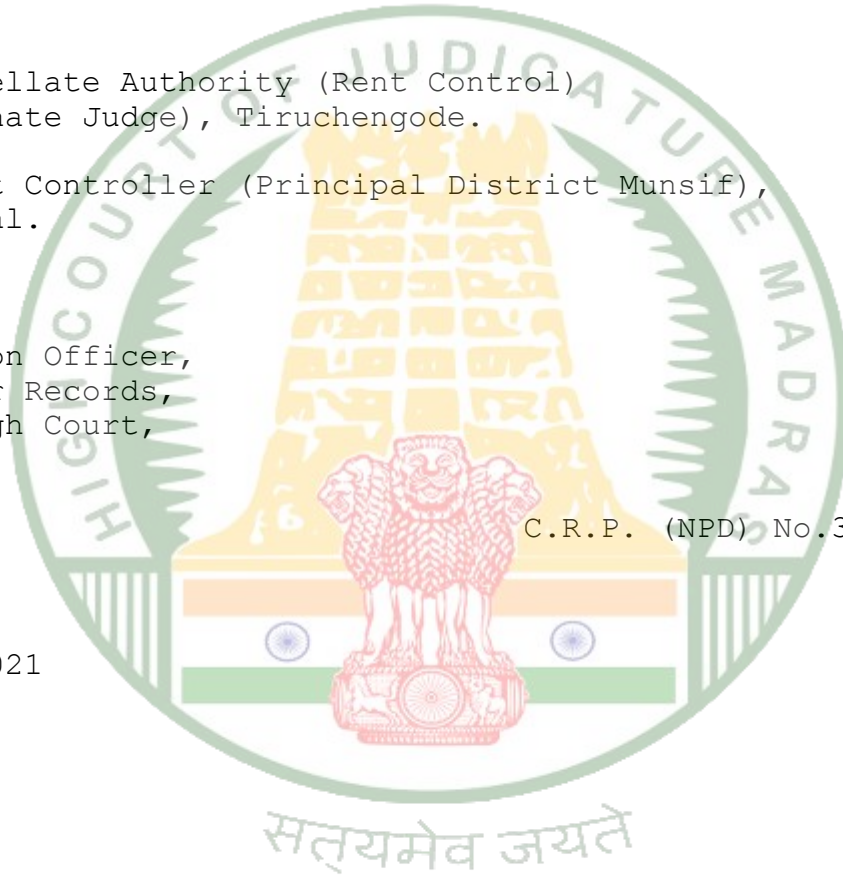
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(Subordinate Judge), Tiruchengode.
- 2.The Rent Controller (Principal District Munsif),
Namakkal.

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C.R.P. (NPD) No.3184 of 2014

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