

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 16.03.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN**C.R.P. (MD) .PD.No.1975 of 2019****and****C.M.P. (MD) .No.10146 of 2019**

H.Vasantha Kumar

... Petitioner/Tenant

Vs.

1.A.Jabarulla Khan

2.J.Kamar Nisha

.... Respondents /Landlords

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the fair and decretal order dated 20.07.2018 in R.C.A.No.2 of 2017 on the file of the Rent Control Appellate Authority (Principal Subordinate Court, Madurai), confirming the order dated 18.10.2016 in R.C.O.P.No.98 of 2012 on the file of the Rent Control Tribunal (Principal District Munsif Court, Madurai).

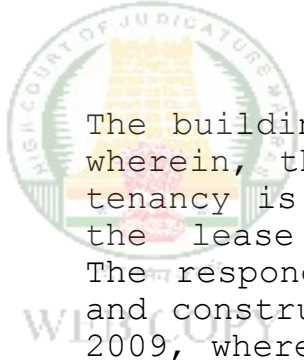
For Petitioner : Mr.D.Nallathambi

For Respondents 1 & 2 : Mr.K.Govi Ganesan

O R D E R

The respondents are landlords. The petitioner is the tenant. The landlords filed a petition against the tenant to evict and hand over the possession on the ground of own use and occupation. That petition was resisted by the petitioner/tenant. The learned Rent Controller, after enquiry, passed an order of delivery on the ground of own use and occupation and that order was challenged by the tenant before the Rent Control Appellate Authority. The Rent Control Appellate Authority, after hearing the appeal, dismissed the same and directed delivery of possession within two months. Challenging the said order, now, the tenant is before this Court by way of this civil revision petition.

2.The learned counsel for the petitioner would submit that first of all, section itself is not properly mentioned in the rent control original petition. The respondents/ landlords filed the said petition under Section 10(2)(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred as Act) on the ground of own use and occupation, whereas for claiming 'own use and occupation', the proper provision is 10(3)(a)(ii) of the Act.

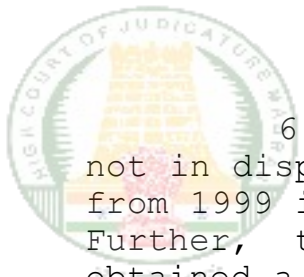


The building was let out for three years by way of oral agreement, wherein, the petitioner in his cross-examination admitted that his tenancy is based on oral agreement and he also admitted that after the lease period, they can extend the same for another three years. The respondents received a sum of Rs.15 lakhs from the petitioner and constructed the second floor and completed the same in the year 2009, whereas the original petition was filed on 30.04.2012 within 3 years. As per Section 30 of the Act, there is an exemption for 5 years. Hence, the Rent Control Act is not applicable. The said fact was not considered by the learned Rent Controller as well as by the learned Rent Control Appellate Authority. Further, the respondents have not shown any proof to show that they have taken effective steps to run the business, even though they sought the eviction to occupy the premises to establish their own business. But there is neither oral evidence nor documentary evidence to show that they have taken effective steps to start the business in the premises. Therefore, in the absence of any proof, both the authorities erroneously passed the eviction order. He would further submit that Section 30 of the Act applies even to a part of a building. Therefore, in support of his submission, he placed reliance on a decision of this Court in the case of **K.S.K.Zafrullakhan Vs. K.Arunachalam and others**, reported in **91 LW. Page 32**.

3. Though sufficient opportunity was given, learned representing counsel for the respondents would seek time stating that the senior counsel would lead the matters only in the Principal Bench. However, considering the fact that the R.C.O.P itself is of the year 2012 and the landlords, who want to start the business, are struggling with the matter from 2012, this Court is of the view that this matter cannot be adjourned.

4. After hearing the learned counsel for the petitioner and carefully gone through the materials available before this Court, this Court is of the view that mere wrong quoting of the provision will not vitiate the proceedings. Further, in the original petition filed before the learned Rent Controller, it is clearly stated that the landlords require the premises for their own use and occupation. Therefore, we have to only see whether the requirement is bonafide or not? Further, even before the expiry of lease period, the landlords filed the petition. Therefore, as per Section 10(3)(a) (ii) of the Act, even before the expiry of lease period, this petition is not maintainable.

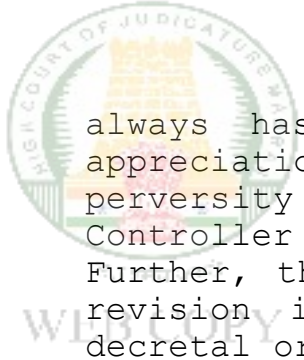
5. Another contention of the learned counsel for the petitioner is that in this case, second floor itself was completed in the year 2009 and eviction petition was filed in the year 2012, within 5 years from the date of construction. Therefore, as per Section 30(i) of the Act, the petition filed within 5 years is not maintainable. But, both the authorities have failed to consider the same. Therefore, he seeks for setting aside the orders of the learned Rent Control Appellate Authority as well as the order of the learned Rent Controller.



6. A careful reading of the petition and materials, it is not in dispute that the ground floor and first floor is old building from 1999 itself. The petitioner was in occupation of the building. Further, the petitioner himself admitted that the respondents obtained a sum of Rs.15,00,000/- as advance from him and constructed second floor in the year 2010 and made all the three floors to occupy for his own use and occupation. Therefore, it is to be seen whether Section 30 of the Act will be applicable or not. Since the respondents themselves admitted that ground floor and first floor is old building and second floor was constructed before 5 years period, the exemption under Section 30 of the Act will not be applicable. Even though partial construction was constructed, then the second floor is also stated as old building. Therefore, the landlords' requirement under Section 30 of the Act is considered as bonafide.

7. Since the first and ground floor admittedly are old building and the respondents have sought the relief of eviction in respect of whole building on the ground of own use and occupation of the premises, the decision relied on by learned counsel for the petitioner is not applicable to the present case.

8. As far as 'own use and occupation' is concerned, the learned counsel for the petitioner would submit that there is no evidence to show that the landlords have taken effective steps to start business on their own in the said building. With regard to the said submission, this Court is of the view that each and every step taken by the landlords need not be shown to the tenants. If the landlords decide to do anything in their premises, that may be done on their own will. In case, the landlords, after taking delivery on the ground of own use and occupation, have not started any business, the tenant can always claim the property and the property was not utilized for the said purpose, the tenant was evicted. However, if they rented out the property to third party, the tenant can question the same. Further, the petitioner has not disputed the financial capacity of the landlords. But, he has only stated that there is no evidence to show what steps so far the landlords taken. Under these circumstances, this Court does not accept the contention of the learned counsel for the petitioner. Further the learned counsel for the petitioner would submit that the respondents themselves admitted in their evidence that once in three years, tenancy period has got to be extended. Even though there is no written agreement, both parties admitted that tenancy is oral. Even though they have admitted that once in three years, they can extend the tenancy, it does not mean that the respondents want to start a business, but for own use and occupation and he has requested the tenant to vacate the premises. Under the said circumstances, the petitioner has not established that the requirement of the respondents/landlords is not a bonafide one, whereas, the respondents/landlord established before the Rent Controller that their requirement of own use and occupation is bonafide. Therefore, as a revisional court, this court need not re-appreciate the entire evidence as sitting in an appellate court. The Revision Court



always has to see as to whether there is any perversity in appreciation of evidence. Hence, this Court does not find any perversity in appreciation of evidence either by the learned Rent Controller or by the learned Rent Control Appellate Authority. Further, this Court does not find any merit in this revision. The revision is liable to be dismissed. Therefore, the fair and decretal order dated 20.07.2018, passed in R.C.A.No.2 of 2017 on the file of the Rent Control Appellate Authority (Principal Subordinate Court, Madurai), confirming the order dated 18.10.2016 in R.C.O.P.No.98 of 2012 on the file of the Rent Control Tribunal (Principal District Munsif Court, Madurai) is liable to be confirmed.

9.Since the first floor and ground floor admittedly are old building and the respondents have sought the relief of eviction on the ground of own use and occupation of the whole premises, the decision relied on by the learned counsel for the petitioner/tenant is not applicable to the facts of the present case.

10.Accordingly, this civil revision petition is dismissed. Consequently, the fair and decretal order dated 20.07.2018, passed in R.C.A.No.2 of 2017 on the file of the Rent Control Appellate Authority (Principal Subordinate Court, Madurai) is confirmed. No costs. The petitioner/tenant is directed to vacate and hand over the possession to the respondents/landlords within one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

To

- 1.Rent Control Appellate Authority
(Principal Subordinate Court, Madurai)
- 2.Rent Control Tribunal
(Principal District Munsif Court, Madurai).

+1 CC to M/s.K.GОВI GANESAN, Advocate (SR-12093[F]
+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-12104[F]

C.R.P. (MD) .No.1975 of 2019
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vs

SDS (19.05.2020) 4P-5C

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