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C.R.P.(NPD).No.484 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.484 of 2021

V.V.Mohan

.. Petitioner

Vs.

M.Jothy

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1963, praying to set aside the judgment and decreetal order dated 09.12.2020 passed by the Subordinate Court at Poonamallee allowing RCA.No.21 of 2015 and consequently confirm the order and decreetal order dated 29.07.2015 passed by the Principal District Munsif Court at Poonamallee passed in RCOP.No.2 of 2014.

For Petitioner : Mr.V.V.Giridhar

For Respondent : Mr.M.V.Seshachari



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ORDER

The landlord challenges the order made in RCA.No.21 of 2015 made by the appellate authority in an appeal under Section 23 of Tamil Nadu Buildings (Lease and Rent Control) Act, reversing the order of eviction passed by the Controller in RCOP.No.2 of 2014, a petition filed under Section 14(1)(b) of the said Act seeking eviction for the purpose of demolition and re-construction.

2. The landlord sought for eviction under Section 14(1)(b) of the Act. In the petition filed, the landlord had stated that he has already taken steps to construct a new building by demolishing the building in the 'B' schedule property. However, the landlord has not specifically set out the undertaking as required under Section 14(2)(b) of the Act, to the effect that he will commence demolition within a period of 1 month and complete it within a period of 3 months. This absence of the undertaking as required under Section 14(2)(b) was projected as defence by the tenant. The Rent Controller however rejected the claim of the tenant and allowed the application and ordered eviction. The tenant filed appeal.

3. Pending appeal, the landlord filed an affidavit of undertaking on



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25.02.2020 complying with the requirements of Section 14(2)(b) of the Act.

The appellate Authority, however, concluded that non-compliance with Section 14(2)(b) even at the time of filing of Original Petition is fatal to the claim of the landlord and on the said conclusion, allowed the appeal and dismissed the eviction petition. It will be pertinent to point out at this juncture, that the Appellate Authority concurred with the conclusion of the Rent Controller that the landlord made out a case for eviction under Section 14(1)(b) of Act.

4. I have heard Mr.V.V.Giridhar, learned counsel appearing for the petitioner/landlord and Mr.M.V.Seshachari, learned counsel appearing for the respondent/tenant.

5. Mr.V.V.Giridhar would submit that the Hon'ble Supreme Court and this Court had in various decisions pointed out that non-filing of undertaking as required under Section 14(2)(b) of the Act cannot be held to be fatal to the claim of the landlord. He would also point out that an affidavit of undertaking was filed pending appeal and therefore, the defect



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stood cured. Hence, according to him, the Appellate Authority was not justified in allowing the appeal and setting aside the eviction order passed by the Controller on the technical ground.

6. Per contra, Mr.M.V.Seshachari, learned counsel appearing for the tenant would submit that though the judgment of the Hon'ble Supreme Court in *Harrington House School Vs. S.M.Ispahani and others* reported in (2002) 3 MLJ 130 (SC) is being taken as a lead case for the proposition that non-filing of undertaking is not fatal and it could be filed at any time. The said judgment did not in fact laid down such law. He would also rely upon the judgment of single Judge of this Court in *M.Abu Tahir Vs. M.Rahamathulla* reported in (2005) 4 MLJ 628, Where, Hon'ble Mr.Justice M.Thanikachalam had pointed out that the judgment in *Harrington House School Vs. S.M.Ispahani and others* referred to *supra* cannot be taken as a precedent for the proposition that an undertaking as required under Section 14(2)(b) of the Act can be given at any time.

7. No doubt Hon'ble Mr.Justice M.Thanikachalam in *M.Abu Tahir*



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Vs. M.Rahamathulla referred to *supra*, has observed that the judgment of the Hon'ble Supreme Court in *Harrington House School Vs. S.M.Ispahani and others* referred to *supra* cannot be taken as a precedent laying down the proposition that undertaking can be furnished at any time.

8. He would also draw my attention to the judgment of this Court in *Alamelu Vs.Visalakshi* reported in *1978 (91) LW 423*, wherein, this Court had pointed out that if the landlord has not been favoured with eviction order by the Controller, in the appeal filed by him, he can cure the defect by filing such affidavit of undertaking. But, a landlord who has been favoured with order of eviction, cannot in the tenant's appeal file an undertaking and cure the defect. This position of law as stated in *Alamelu Vs.Visalakshi* was referred upon by Hon'ble Mr.Justice M.Thanikachalam to conclude that the undertaking can be before order of eviction and not after order of eviction.

9. The said position of law turns out on a strict interpretation of the



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provisions of the Act. But, subsequently this Court in various judgments had applied the judgment of the Hon'ble Supreme Court in ***Harrington House School Vs. S.M.Ispahani and others*** referred to *supra* as one laying down law that the undertaking can be given at any point of time before taking possession.

10. In some cases, this Court has gone to the extent of holding that an undertaking as required under 14(2)(b) can be filed even along with the Execution Petition. Even prior to ***Alamelu Vs. Visalakshi*** referred to *supra*, this Court had in ***B.C.Dioceses of Madurai Vs. Ganapathy Iyer and othres*** reported in ***1976 (89) LW 584***, taken a view that an undertaking given pursuant to the direction by the Rent Controller, after eviction order can be taken as a sufficient compliance with the provision of Section 14(2)(b) of the Act. The Hon'ble Mr.Jusitice Gokulakrishnan, while doing so, has observed as follows:-

8. In view of the fact that the undertaking given by the petitioners subsequent to the eviction order passed by the Rent Controller giving them one week's time to file such an undertaking can be taken as sufficient compliance with the provisions



of S 14(2)(b), the orders passed by the Appellate Authority are set aside and the cases are remanded to the file of the Appellate Authority for disposal afresh only on the question of bona fides of the requirements by the petitioners herein.

11. In *S.P.Kasi Viswanathan Chettiar Vs. S.Kalyanaraman* reported in **2001 AIHC 336**, Hon'ble Mr.Justice K.P.Sivasubramaniam had held that the undertaking can be given after the order of eviction. The learned Judge had considered the judgment of this Court in *Alamelu Vs.Visalakshi* referred to *supra* as well as the judgment in *Radhakrishnan Vs. Rajasekaran* reported in **(1990) 2 Mad LJ 319**. In *R.V.E.Venkatachala Gounder Vs. Venkatesha Gupta and others* reported in **AIR 2002 Supreme Court 1733**, a similar question arose before the Hon'ble Supreme Court and the Hon'ble Supreme Court held as follows:-

13. For the foregoing reasons, we are of the opinion that the High Court ought not to have interfered with the decision of the appellate authority. The appeals are allowed. Judgment of the High Court is set aside and that of the appellate



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authority restored. However, in view of the time that has already been lost in the litigation and to protect the interest of the tenants and certainly to allay their fears, it is directed that the executing Court shall, before directing the tenants to be evicted and possession being given to the landlord, direct the landlord to file plans of proposed construction, duly approved by the local authority, and give an undertaking in terms of S.14(2)(b) of the Act. No order as to costs.

12. Same view was reiterated by this Court in ***Lakshmi Vs. M.V.Balamurali and another*** reported in 2007 (2) CTC 518, ***Harikrishnan Daga Vs. Loknath Rao*** reported in 2013 (4) LW 107, ***PL.L.Rajamani Achi Vs. M.Govindaraj and another*** reported in 2017 SCC OnLine Mad 6568 and ***S.Sundararajan Vs.A.Mary Josephine*** reported in 2019 SCC OnLine Mad 10227.

13. No doubt, the language of Section 14(2)(b) requires the landlord to undertake to demolish the building within a particular time, to commence demolition and complete it within a particular time and such undertaking is



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to be furnished prior to the order of eviction. But, the object of the requirement is only to ensure that the landlord does not take an order of eviction under Section 14(1)(b) and retains the building as it is.

14. The power of re-entry is also given to the tenant, in the event the building is not demolished as undertaken, *de horse* the point on time at which the undertaking is given. The right of the tenant is protected. Therefore, I do not think it will be proper, while considering the beneficial legislation, to project an interpretation that it would render the right redundant. The very purpose of the enactment is to protect the tenant from unreasonable eviction. The said enactment cannot be used to unleash unreasonableness on the landlord. However, in view of the preponderance of judicial opinion, which is in favour of the landlord to the effect that the undertaking can be given at any point of time and considering the fact that the landlord has given such undertaking pending appeal, I do not think that the Appellate Authority was right in concluding that the landlord is not entitled to an order of eviction for his failure to furnish an undertaking before the Rent Controller.



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15. The rights of the tenant stand perfectly protected. Hence, I do not think that the order of the Appellate Authority can be sustained. The revision is therefore **allowed**. The order of the Appellate Authority is set aside and the order of the Rent Controller is restored. No costs.

16. Considering the fact that the tenant is carrying on business in the premises, he is given a years time to vacate and handover possession. The tenant shall file an affidavit undertaking to vacate and handover vacant possession by 30.11.2022, such an affidavit shall be filed into this Court by 10th December 2021. If the affidavit is not filed by the said date, the landlord will be entitled to seek execution of order of eviction, as if, no time has been granted by this Court.

24.11.2021

dsa
Index : Yes
Internet : Yes
Speaking order



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To
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1. The Subordinate Judge, Poonamallee.
2. The Principal District Munsif, Poonamallee.



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R.SUBRAMANIAN, J.

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