

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.07.2021

PRONOUNCED ON: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 2186 of 2019

And

C.M.P.No. 14098 of 2019

1. M/s. Chola Process
by its Partner R.Mustaffa
having office and factory at
No.9, Water House Road,
Vairapalayam
Erode -3.

2. R.Mustaffa

4. A.Boopathi

...Petitioners/Appellants/Respondents/Tenants

-Vs-

Saravanan

... Respondent/Respondent/Petitioner/Landlord

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu (Buildings and Rent Control) Act, against the fair and decretal order dated 23.01.2019 made in R.C.A.No. 4 of 2018 on the file of the learned Rent

Control Appellate Authority/First Additional Sub Court (Full Additional Charge of Principal Sub Court), Erode, confirming the fair and decretal order dated 17.01.2018 made in R.C.O.P.No. 35 of 2015 on the file of the learned Rent Controller/Principal District Munsif Court, Erode.

For Petitioners : Mr. N. Manokaran

For Respondent : Mr. Venkatachari Lakshminarayanan

ORDER

This Civil Revision Petition has been filed by the tenant, who suffered an order of eviction in R.C.O.P.No. 35 of 2015 by order dated 17.01.2018 passed by the learned Rent Controller/Principal District Munsif, Erode, which order of eviction was confirmed by order dated 23.01.2019 in R.C.A.No. 4 of 2018 passed by the learned Rent Control Appellate Authority/First Additional Sub Court (Full Additional Charge of Principal Sub Court, Erode).

2. The respondent herein had filed R.C.O.P.No. 35 of 2015 seeking eviction of the revision petitioners taking advantage of Section

10(3)(a)(iii) of the Tamil Nadu Buildings Lease and Rent Control Act 1960 as amended.

3. It was the contention of the respondent that the revision petitioners had taken possession on lease of the property measuring 8938 sq.ft., at No.9, Water House Road, Vairapalayam, Erode, for non residential purposes for running a dyeing factory.

4. The revision petitioners have been tenants from the year 2002 and it is claimed that the lease period was over by 2011. The respondent demanded vacant possession since they wanted to set up a dyeing factory in the petition premises. The respondent was already running a bleaching factory in the name of SelvaLakshmi Bleaching Factory and a Calendering Mill at Erode. They wanted to expand the business. They claimed that the petition mentioned property was very much suitable for dyeing factory since there was ample supply of water and necessary consent from the Pollution Control Authorities can be obtained by providing effluent treatment equipments as per the requirements. It was stated that the petition mentioned premises was the only available and suitable premises for running a dyeing factory.

5. The revision petitioners filed a counter questioning necessity for requirement by the respondent for the petition premises. They disputed the reasons advanced. They claimed that they have been running a process business in the name of Chola Process by running a dyeing and bleaching factory in the premises. Even after the expiry of the lease, they claimed that there is no default in the payment of rent.

6. It was also claimed that the respondent herein was conducting business in about 2 acres area. The revision petitioners also contended that they had spent substantially towards putting up necessary construction in the premises. They contended that the respondent herein had no necessity to expand their business. They claimed that the rent control petition should be dismissed.

7. During trial, both sides examined witnesses and marked documents. By order dated 17.01.2018, the Rent Controller, Erode, allowed the Rent Control Petition and directed eviction.

8. The Rent Controller relied on **2002 (2) CTC 415** [*S.V.Janardanam V. D.Kivraj Sowkar*] wherein it had been held by this Court that in an application under Section 10(3)(a)(i) and 10(3)(a)(ii), if the requirements of the provisions are satisfied, it is not for the tenants to say that the property is suitable or not suitable for the requirement of the landlord.

9. It was also held that the authorities under the Rent Control Act will have to draw a presumption in favour of the bona fide requirement of the landlord. The learned Rent Controller observed that the respondent herein is doing the same business near the petition mentioned property and is having experience in doing business and wants to expand his business by carrying out allied business of dyeing and therefore, such claim was bona fide. Eviction was therefore ordered.

10. The revision petitioners then filed an appeal in R.C.A.No. 4 of 2018 which came up for consideration before the First Additional Sub Court (Full Additional Charge of Principal Sub Court, Erode/Rent Control Appellate Authority). By Judgment dated 23.01.2019, the appellate authority confirmed the order of eviction passed by the Rent Controller.

11. During the course of discussion, the Rent Control Appellate Authority also examined the cross examination of the revision petitioners/tenants wherein he had admitted that the respondent herein/landlord had been demanding possession of the petition premises from 2010 – 2011 and that the respondent herein was also doing allied business.

12. The learned Rent Control Appellate Authority also examined the ingredients to Section 10(3)(a)(iii), namely that the landlord should have a business and should not own another building of their own. In this case, the respondent/landlord was already running a bleaching factory and wanted to expand his factory by starting dyeing factory and therefore required the petition premises. The Rent Control Appellate Authority therefore confirmed the order of eviction passed by the Rent Controller/Principal District Munsif, Erode, in R.C.O.P.No. 35 of 2015. Challenging that particular Judgment, this Revision Petition has been filed by the tenants.

13. Heard arguments advanced by Mr. N.Manokaran, learned counsel for the revision petitioners and Mr. Venkatachari Lakshmi Narayanan, learned counsel for the respondent.

14. For the sake of convenience, the parties shall be referred as Landlord and Tenants.

15. The revision petitioners are the Tenants and the respondent is the Landlord. The following facts are admitted:-

(i) The Landlord is carrying on business at Door No. 22, Water House Road, Vairapalayam, Erode, under the name of SelvaLakshmi Bleaching Factory and a Calendering Mill at Erode;

(ii) The petition premises is the opposite premises and occupied by the Tenants;

(iii) The premises occupied by the Tenants is Door No. 9, Water House Road, Vairapalayam, Erode; and

(iv) The Tenants are carrying on business in the name of Chola Process by running a dyeing factory.

16. It is the case of the Landlord that he wanted to expand his business by also starting a dyeing factory. The rent control petition was filed in the year 2015 seeking eviction of the Tenants under Section 10(3)(a) of the Act. During evidence, it had been admitted by the Tenants that the Landlord had been demanding vacant possession from the year 2011 onwards. The fact that the Landlord is actually carrying on business by running a Bleaching Factory has been established not only by the oral evidence but also by documentary evidence which have been presented during the course of trial, particularly Ex.P-14 a certificate given by the Department of Industries and Commerce. The fact that the tenants are running a dyeing factory is also not disputed by the Landlord. Documents to that extent have also been filed.

17. Mr.N.Manokaran, learned counsel for the revision petitioners stated that the Hon'ble Supreme Court in *1994 Supp (1) SCC 729 [D.Devaji*

Vs. K.Sudarashana Rao], had held that when a Landlord seeks eviction on the ground of bona fide requirement to commence a business, the Landlord should not be in possession of another non residential building. It was held that if he is so in possession, then, he should not be permitted to recover possession of another non residential building belonging to him by evicting the Tenants.

18. It is the specific contention of Mr.N.Manokaran, learned counsel for the revision petitioners that in the instant case, the Landlord is actually in possession of another non residential building and therefore, the learned counsel stated that the claim for requirement cannot be termed to be bona fide and that the said claim should be rejected by this Court.

19. This contention of Mr.N.Manoharan has been very seriously disputed and challenged by Mr. Venkatachari Lakshminarayanan, learned counsel for the Landlord. The learned counsel was equally prepared with a Judgment of the Hon'ble Supreme Court and he contended that the law as laid down in *D.Devaji* referred supra was revisited by the Hon'ble Supreme Court itself and it had been held that the requirement of the Landlord should

be examined from a plain reading of the statute and not by any interpretation.

20. The learned counsel referred to *1998 (5) SCC 572 [M/s. Boorgu Jagadeshwaraiah & Sons Vs. M/s. Pushpa Trading Co]* and in *(1987) 4 SCC 262 [Saroj Kumar Das (Dr) Vs. Arjun Prasad Jogani]*. This was a reference to a larger three Bench of the Hon'ble Supreme Court owing to conflicting decisions particularly with the ratio laid down in *D.Devaji* referred supra. Even though the Hon'ble Supreme Court was concerned with the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act 1960, it must be pointed that the said enactment is pari materia and similar and as a matter of, exact replication to the enactment in Tamil Nadu, namely, the Tamil Nadu Buildings Lease and Rent Control Act, 1960.

21. The Hon'ble Supreme Court in paragraph No.7 extracted the portion which Mr. N.Manoharan relied in *D.Devaji* referred supra and stated as follows:-

“8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought.”

22. It is thus evident that the Hon'ble Supreme Court was conscious that the possession or ownership of another building would not be a bar to seek eviction of the tenants if that particular building was found to be suitable for the purpose for which the Landlord required the premises.

23. In the instant case, the Tenants were already running a dyeing factory in the leased out premise. The Landlord was running a Bleaching Factory opposite. The Landlord had very categorically stated that he wants to run a dyeing factory and expand his business. Naturally, the factory where the Tenants are running a dyeing factory would be most suitable for this particular purpose. The Landlord had very clearly stated that requisite permission from the Pollution Control Authorities can be obtained since

there was adequate supply of water and consent can therefore be obtained. It had been further stated that effluent treatment equipments can also be put. These specific circumstances have to be taken into consideration.

24. It is the requirement of the Landlord which is to be considered. Once the Landlord comes to Court claiming that a particular premises would be useful for him for running the this particular nature of business which he intends to commence, then, the requirement should be considered bona fide.

25. Both the Courts below considered not just the oral evidence but also the documentary evidence. They have directed eviction and they have given cogent reasons for the same.

26. The reliance placed by Mr. N.Manokaran in **D.Devaji's** case referred supra has to be weighed with the dictum laid down in **M/s. Boorgu Jagadeshwaraiah's** case referred supra and the observations of the Hon'ble Supreme Court in **M/s. Boorgu Jagadeshwaraiah's** case referred supra by a quorum of three Judges would naturally prevail. The fact that the Landlord owns another premises would not be of significant consideration if it is

pleaded and established that the premises under tenancy is most suitable. That has been established in the instant case. I therefore find no reason to interfere with the orders of both the Rent Controller and the Rent Control Appellate Authority.

27. The Civil Revision Petition is therefore dismissed. The orders of the Rent Controller and the Rent Control Appellate Authority are confirmed. The eviction is directed. Time for eviction is two months from the date on which the copy of this order is transmitted to the Rent Controller/Principal District Munsif, Erode. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.07.2021

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Index: Yes/No

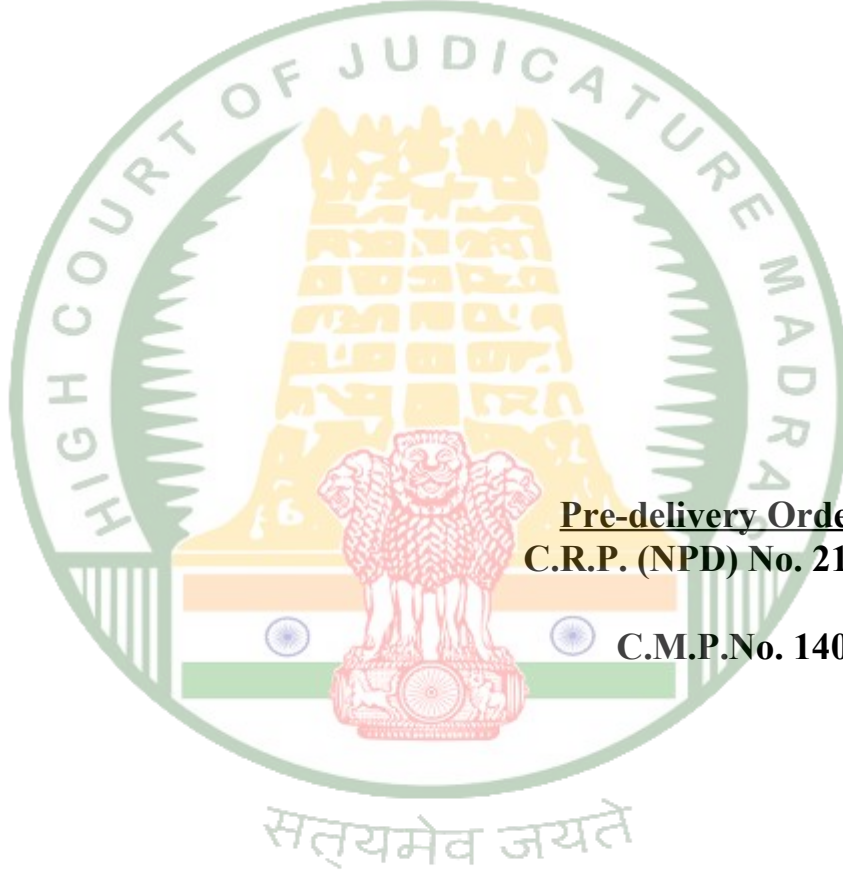
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