

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.04.2021

Pronounced on : 20.04.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).No.2201 of 2020

and

C.M.P.No.13891 of 2020

Poomuthu

...Respondent/Appellant/Petitioner (Tenant)

Vs.

- 1.Julaika Nachiya
- 2.Bismalutha
- 3.Anwar Nachiya
- 4.Arafathkani
- 5.Haja Mohideen

... Petitioners / Respondents
/Respondents (Landlords)

Prayer:- This petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended Act 1 of 1960), prayed to set aside the fair and decreetal order passed in R.C.A.No.1 of 2019 dated 21.01.2020 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge) Mayiladuthurai in confirming the fair and decreetal order passed in R.C.O.P.No.5 of 2014 dated 07.12.2018 on the file of the Rent Controller (District Munsif) Sirkali and dismiss the RCOP by allowing this CRP.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.S.Duraisamy

ORDER

The petitioner herein is the respondent / tenant in RCOP.No.5 of 2014 which was on the file of the Rent Controller (District Munsif) Sirkali. R.C.O.P.No.5 of 2014 had been filed seeking eviction on the grounds under Section 10(2)(ii)(a), (ii)(b), 2(iii), 10(3)(a)(i), 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended Act, 1 of 1960 (The Act)

2.The Rent Control Petition was filed with respect to a building in old Door No.97A and new Door No.97/C/2 in North Car Street, Kasba Sirkali, Mailaduthurai, which had been leased out for non-residential purpose under an agreement dated 02.02.2011. The rent was Rs.25,000/- per month and an additional sum of Rs.25,000 per month was payable towards amenities. As stated, the Rent Control Petition had been filed practically under most of the provisions under the Act claiming that the respondent / tenant had put it to different use, had sublet it, had committed acts of waste and also that it was required for owner's occupation and also that the building had to be demolished and reconstructed.

3.Counter was filed and the parties went to trial. An order was passed in the Rent Control Petition on 07.12.2018. Eviction was granted on the grounds that it had been put to different use under Section 10(2)(ii)(b) of the Act and also that the building requires to be demolished and reconstructed under Section 14(1)(b) of the Act.

4.It was specifically observed in the course of the order that the respondent / tenant had actually put the rear portion of the house to residential use and had also admitted that it had been so put to residential use even in the counter to the Rent Control Petition. It was however claimed that it had been put to residential use only after permission had been obtained from the landlord. The learned Rent Controller however held that this particular pleading of the respondent had not been proved.

5.A Rent Control Appeal in R.C.A.No.1 of 2019 was filed before the Appellate Authority (Principal Sub-Court), Mayiladuthurai. By order dated 21.01.2020 the ground under Section 10(2)(ii)(b) of the Act was upheld and the ground under Section 14(1)(b) of the Act was rejected.

6. In the order of the Appellate Authority, it had been again stated that the fact that the respondent / tenant had put the building for different use for residential purpose was admitted even in the counter. It was also pointed out that the respondent in his evidence had admitted during cross-examination also that the purpose of tenancy was only for non-residential purposes and not for residential purpose. He had also admitted during cross-examination that he was residing at the rear portion of the building. Eviction was therefore confirmed under the said provision.

7. Questioning the rationale behind both the orders, the present Revision Petition had been filed.

8. Heard arguments advanced by Mr.A.Muthukumar, learned counsel for the petitioner and Mr.S.Duraisamy, learned counsel for the respondents.

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9. Mr.A.Muthukumar, learned counsel for the petitioner assailed the orders of both the Rent Controller and the Appellate Authority by stating that there has been no finding that by putting the property to residential use, the value or the utility of the building has decreased. The

learned counsel also pointed out that the property is actually situated in a residential area and the landlord had not suffered by the fact that the tenant had used the rear portion for his residence. He also pointed out that the business was being run in the front portion. The learned counsel therefore stated that passing an order of eviction on this particular ground had to be interfered with.

10. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in *Gurdial Batra Vs. Raj Kumar Jain* reported in *AIR 1989 SCC 1841*. In that case the premises was let out for cycle and rickshaw repair, but the tenant also carried on business of selling television sets side by side. The Hon'ble Supreme Court held that there was no change of user within the meaning of Section 13(2)(ii)(b) of E.P. Urban Rent Restriction Act, 1949. In that case, the landlord had also accepted the position that in the rent note, it had not been written that the tenant should not do any business in the shop except cycle or rickshaw repairs. The Hon'ble Supreme Court, had finally opined that carrying on business in the sale of televisions which was only temporarily carried on cannot to be constituted as change of user.

11.However in the very same judgment, reference has been made to a Full Bench Judgment of the Punjab High Court in ***Des Raj Vs. Sham Lal*** reported in ***AIR 1980 P&H 229***. In that Full Bench judgment, the High Court in the course of discussion had drawn a distinction between residential and non residential premises.

12.In the instant case, the tenancy which was only for non residential purpose was converted and put to use for residential purpose. Therefore, the judgment relied on by Mr.A.Muthukumar, may not be applicable to the facts of the present case.

13.Mr.A.Muthukumar, learned counsel for the petitioner also relied on ***Tmt.Janagavalli Vs. R.Baskaran*** reported in ***1998 Suppl. MLJ 227***, wherein, an allegation was made that the respondent / tenant was carrying on a business of preparing and selling eatables and that the hall was used for the purpose of a stall and the kitchen was used for preparing the eatables. The portion was originally let out only for residential purposes. A learned Single Judge of this Court had observed that even if it is to be accepted that the tenant used the pial portion for vending of eatables the order of eviction passed by the two authorities cannot be sustained as it is only a negligible portion of 16 sq.ft when compared to the total extent of 1711 sq.ft of the tenanted premises.

14. In the instant case, the facts are totally different. The entire rear portion had been used for residential purpose.

15. Mr. S. Doraisamy, learned counsel for the respondent relied on ***S. Azeem Vs. M. Natarajan*** reported in (1994) 2 MLJ 455. In paragraph 5 of the said judgment, it had been observed and held as follows:

“5. The next contention of the learned counsel is that there is absolutely no evidence that the building has been used for a different purpose. According to him, the landlord's evidence does not make out the same. There is no merit in this contention. The landlord has stated in his evidence that the building was let out only for non-residential purpose and is used for a different purpose by the tenant. Apart from that, the tenant has admitted in the counter statement that he is using the building both for residential and non-residential purpose ever since the inception of the tenancy and there was no question of conversion in the user of the building at a later stage. In view of the admission made by the tenant, the case of the landlord that the building is used for a different purpose stands proved.”

16.This judgment applies directly to the facts of the present case. Even here the tenant had used the premises for residential purpose when it was actually let out only for non-residential purposes. The fact that the rear portion alone was used for residential purpose is of no significance. There has been conversion and naturally since both the Authorities below had found that as a fact also and which fact was also not denied and as a matter of fact admitted in the counter statement and also during evidence, I have no other option but to uphold the orders of Authorities below, with respect to finding under Section (10)(2)(ii)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended. Eviction therefore follows on that particular ground.

17.In view of the above reasonings, the Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed. Time granted for eviction is two months from the date of making ready this order by the Registry.

20.04.2021

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

C.V.KARTHIKEYAN, J.,

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Pre-Delivery Order made in
C.R.P.(NPD).No.2201 of 2020

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