

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2021

PRONOUNCED ON : 23.03.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD)No.2415 of 2016

Sriram

... Petitioner

Vs.

Chidambarakani

... Respondent

Prayer :- Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the judgment and decree dated 22.01.2016 passed in R.C.A.No.10 of 2015 by the learned Principal Subordinate Court (Rent Control Appellate Authority) Salem.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel
For M.Sivavarthan

For Respondent : Mr.A.K.Kumarasamy,
Senior Counsel
For Mr.S.Kaithamalai Kumaran.

ORDER

This Civil Revision Petitions is directed as against the fair and decreetal order dated 22.01.2016 passed by the learned Principal Subordinate Judge, Salem, (herein after called as Rent Control Appellate Authority) in R.C.A.No.10 of 2015, confirming the order dated 07.11.2014 passed by the learned I Additional District Munsif, Salem, (herein after called as Rent Controller) in R.C.O.P.No.62 of 2013, thereby dismissing the petition for eviction on the ground of owners occupation.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the petitioner/landlord in brief is as follows :-

3.1. The landlord filed petition for eviction on the ground of owners occupation. The case of the landlord is that the petition premises is a commercial premises and the same was let out to the tenant by his grandmother viz., Padmavathi to run automobile spares parts selling shop in the name and style of "Palaniappa Motor Cycle Parts". Originally the

petition premises was owned by the landlord's grandmother and the same was purchased by her by virtue of sale deed dated 08.09.1993. Thereafter by the settlement deed dated 21.04.2011, the petition premises was settled in favour of the landlord registered vide document No.2587 of 2011. From the date of settlement deed, the landlord is an absolute owner of the petition premises and the tenant continuously paying rent to the landlord herein.

3.2. The landlord is running business in the name and style of "Palaniappa Automobiles" at No.28, C1 M.M.Road, Salem Town, Salem-6 and having godown at B-15, A.A road, Salem Town, Salem-1. Both the buildings are rental premises and the landlord is paying huge amount as rent for the shop and godown. Therefore, the landlord decided to shift his business to the petition premises which is rented to the tenant. The petition premises consists of three floors and it would be feasible for running his business. After exchange of notices, the landlord filed petition for eviction on the ground of owner's occupation.

4. Resisting same, the respondent filed counter stating that the petition premises originally belonged to one Padmavathi, who is none other than the mother of the tenant. The petition premises rented to the tenant from the date of its construction in the year 1995. Initially the respondent paid a sum of Rs.4,000/- as monthly rent and subsequently enhanced to Rs.5,000/- and from the year 2007 it was enhanced to Rs.9,000/- per month. In fact, the tenant has paid rent to his mother including Rs.1,000/- for her miscellaneous expenses.

4.1. While being so, the said Padmavathi issued notice dated 13.01.2011 to the tenant to vacate and deliver vacant possession of the petition premises, since she decided to sell the property to third person. It was properly replied by the respondent. Thereafter, the property was settled in favour of the landlord on 21.04.2011 by the said Padmavathi. Thereafter, the landlord and his father issued notice in the month of December, 2011 called upon the tenant to vacate and deliver the first floor of the petition premises, since they decided to let out the first floor of the building to third person.

4.2. Finally, the landlord issued notice dated 11.07.2012 demanding the tenant to vacate and hand over the vacant possession of the petition premises for the reason that the landlord has proposed to shift his business to the petition premises. It was also duly replied by the reply notice dated 25.07.2012. Therefore, it is seen from the notices issued by the grandmother of the landlord and the present landlord, their intention is only to vacate the tenant and not to shift his business to the petition premises. Therefore their requirement is not bonafide one. In fact again, in the year 2013, the landlord issued notice demanding the tenant to pay a sum of Rs.2,50,000/- as rental advance and also demanded to pay the enhancement rent of Rs.25,000/- per month. Therefore, the landlord requirement is not bonafide one and prayed for dismissal of the eviction petition.

5. On the side of the landlord, he examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.8. On the side of the tenant, he himself examined as R.W.1 and marked Ex.R.1 to Ex.R.12. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the learned Rent

Controller dismissed the petition filed by the landlord. Aggrieved by the same, the landlord filed appeal before the learned Rent Control Appellate Authority and the same was also dismissed, as against which the present Civil Revision Petition.

6. Mr.V.Ayyadurai, learned Senior Counsel appearing for the landlord would submit that the landlord is running his business in the rental premises. He is paying huge rent for the shop as well as the godown premises which are located at No.28, C1 M.M.Road, Salem Town, Salem-6 and at B-15, A.A.Road, Salem Town, Salem-1, respectively. Whereas the petition premises is consisting of three floors in which the tenant is running his business in the name and style of "Palaniappa Motor Cycle Parts". Originally, the petition premises owned by the landlord's grandmother and subsequently it was settled in his favour by the settlement deed dated 21.04.2011 and registered vide document No.2587 of 2011.

6.1. There is absolutely no quarrel that the petition premises owned by the landlord and the tenant is paying rent to the landlord. The erstwhile

landlord issued notice to tenant demanding to vacate the petition premises, since she decided to sell the property to third person. Subsequently, the landlord's father also issued notice to vacate the first floor of the petition premises to let out the same to third person. Thereafter, the landlord issued notice to enhance the rent of Rs.25,000/- per month and also advance of Rs.2,50,000/-. Finally, he issued notice by demanding the tenant to vacate the petition premises, since he intended to shift his business to the petition premises.

6.2. Admittedly, the landlord is running his business in the rented premises and except the petition premises, the landlord has no other property at Salem city to shift his business. This eviction petition has been filed on the ground of owner's occupation under Section 10(3)(a)(iii) of Tamil Nadu Building (Lease and Rent Control) Act, 1960. Therefore, the landlord need not to prove that his requirement is bonafide one. He further submitted that the learned Rent Controller dismissed the eviction petition only on the ground that the landlord's business premises is already located in the main commercial area of the Salem City and the petition premises is located at less commercial business area and it is not feasible for doing

automobile business. The landlord is running his business in the place which is having more mechanic workshop. Further the learned Rent Controller stated that when the landlord issued notice to enhance rent, he can very well file petition for fixation of fair rent for the petition premises and dismissed the petition.

6.3. He further submitted that the same was also confirmed by the learned Rent Control Appellate Authority by completely wrong assumption. The learned Rent Control Appellate Authority went ahead one step and stated the reason that though the landlord was settled with the petition premises by his grandmother, there is no proof to show that he had taken possession as per the settlement deed and whether the settlement deed was acted upon or not, there is no evidence to prove the same. Further stated that there is no rental agreement between the erstwhile owner of the petition premises and the tenant. Therefore, the landlord failed to prove the landlord and tenant relationship between them. On those grounds, the learned Rent Control Appellate Authority dismissed the appeal and confirmed the order passed by the learned Rent Controller.

6.4. He further submitted that it is an admitted fact that the petition premises settled in favour of the landlord by his grandmother by the registered settlement deed dated 21.04.2011. Thereafter, the tenant also is paying rent to the landlord. In fact, the tenant marked the notices issued by the erstwhile landlord as well as the present landlord along with his father. Therefore there is absolutely no dispute in respect of the landlord-tenant relationship and also attornment of tenancy after the petition premises settled in favour of the present landlord. The Court below need not to go into the fact that whether the settlement deed executed in favour of the landlord is acted upon or whether the landlord proved that there is a relationship of landlord-tenant. The only point for consideration is that whether the landlord is having any other premises on his own to shift his business and whether the landlord is running business in the rental premises. Both are proved and admitted by the tenant that the landlord is running his business in the rental premises and he has no other property on his own in the Salem City, except the petition premises. Therefore, the landlord categorically proved his claim and the tenant is liable to be vacated from the petition premises. In support of his contention, he relied upon the following

judgments :-

- 1. 1984-97 LW 516 - M.Abdul Rahman Vs. S.Sadasivam**
- 2. CDJ 1999 MHC 813 - M/s.Akthars, rep by its Proprietor Vs. Hitesh V.Shah**
- 3. 2004 (3) LW 693 - P.S.Janakavalli Ammal Vs. The Regional Manager Tamilnadu Hand-loom Weavers Co-op Society ltd.,**
- 4. 2017 (2) LW 844 - R.Ranga Babu and ors Vs. A.R.Devandran**
- 5. 2018 (1) MWN (Civil) 802 - Abdul Kadar Vs. Packiyaraj (died) and ors.**

7. Per contra, Mr.A.K.Kumarasamy, the learned Senior Counsel appearing for the tenant would submit that there is no quarrel that the petition premises settled in favour of the landlord by the settlement deed dated 21.04.2011 registered vide document No.2587 of 2011. The tenant is paying rent to the landlord. Even before the settlement deed dated 21.04.2011, the erstwhile landlord viz., the mother of the tenant herein issued notice dated 13.01.2011, which is marked as Ex.R.1, thereby called upon the tenant to vacant and deliver the vacant possession of the petition premises, since she decided to sell the petition premises to third party. On receipt of the same, the tenant issued reply through his counsel on 04.02.2011.

7.1. After the settlement deed the landlord and his father issued notice on 21.12.2011 thereby called upon the tenant to vacate the first floor of the petition premises, since they proposed to let out the first floor of the petition premises to third person which is marked as Ex.R.4. Thereafter on 11.07.2012, again the landlord issued notice thereby call upon the tenant to vacate the petition premises and also hand over the same on the ground that the landlord is proposed to shift his business to the petition premises, which is marked as Ex.R.5. It was also duly replied by the tenant by the reply notice dated 25.07.2012, which is marked as Ex.R.6.

7.2. While being so, again the landlord sent letter dated 25.06.2013, thereby demanding the monthly rent of Rs.25,000/- and also demanded to pay advance of Rs.2,50,000/- for the petition premises. Therefore, the intention of the landlord is very clear that the tenant would be vacated from the petition premises and there is absolutely no bonafide requirement for the landlord to shift his business to the petition premises. More over, already the landlord is running his business in the commercial location where there are so many two wheelers mechanic shops. Whereas, the petition premises

is not situated in the commercial area and it is not feasible for the landlord to run his automobile spare parts business. Though the learned Rent Control Appellate Authority stated other reasons, finally concluded that the requirement of the landlord is not bonafide one and as such rightly dismissed the eviction petition.

7.3. He further submitted that the petition premises owned by his own mother of the tenant and thereafter it was settled in favour of the landlord who is none other than her own grandson. Both are running automobile spare parts business in the name and style of of "Palaniappa Motor Cycle Parts" and "Palaniappa Automobiles". He further submitted that the landlord is never carrying his business at No.28, C1 MM.Road, Salem. Whereas his father is running his business in the said premises as such, the landlord is nothing to do with the business conducted by his father. That apart the place of business is in the heart of Salem city where several two wheeler workshops are situated, as such the place in which the landlord running his business is very much feasible for him. Therefore, the petition for eviction on the ground of owner's occupation is not

maintainable and both the Courts below concurrently dismissed the petition for eviction and prayed for dismissal of this Civil Revision Petition. In support of his contention, the learned Senior Counsel appearing for the tenant relied upon the following judgments :-

i) 1974 (2) SCC 365 - Muttu Lal Vs. Radhe Lal

ii) 1994 (2) LW 152 - A.Sankaran and anr Vs. S.K.Balasundaram and anr

iii) 2010 (12) SCC 740 - Dinesh Kumar Vs. Yusuf Ali

iv) 2019 (4) CTC 890 - Prabhakaran Vs. Muthulakshmi

8. Heard, Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioner/landlord and Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the respondent/tenant.

9. The petitioner is the landlord and the respondent is the tenant. Admittedly, the petition premises originally owned by one Padmavathi, who is none other than the grandmother of the landlord. It was rented out to the tenant by the erstwhile landlord and by settlement deed dated 21.04.2011, vide document No.2587 of 2011, it was settled in favour of the present

landlord. The tenant is paying rent regularly to the landlord. Even before the settlement deed, the grandmother of the landlord issued notice dated 13.01.2011 to the tenant thereby called upon the tenant to vacate the petition premises and handover the vacant possession for the reason that she intended to sell the petition premises to third party. Thereafter she settled the petition premises in favour of the present landlord. The present landlord and his father also issued notice to the tenant to vacate and handover the first floor of the petition premises for the purpose that they intended to let out the portion to third party. Thereafter the landlord issued notice to the tenant thereby called upon the tenant to vacate and handover the petition premises for the reason that the landlord intended to shift his business to the petition premises.

10. Admittedly, the landlord is running his automobile business in the name and style of Palaniappa Automobile at door No.28, C1 M.M.Road, Salem Town, Salem-6 and also having godown at door No.B-15, A.A.Road, Salem Town, Salem-1, separately. Both the premises are rented premises and the landlord is paying rent for the said premises to his landlord. On

perusal of the finding of the learned Rent Controller revealed that landlord is running his business in the commercial area and it is situated in the heart of the Salem City, in which several two wheeler workshop are situated and it is feasible for the landlord to run his business. Whereas the petition premises is located far away from the place in which the landlord is doing his business and dismissed the petition for eviction.

11. The learned Rent Control Appellate Authority went ahead one step and concluded that the settlement deed dated 21.04.2011, itself is not acted upon and no evidence produced by the landlord that he has taken possession of the petition premises and no agreement was produced to prove the landlord-tenant relationship between the petitioner and the respondent herein. As rightly pointed out by the learned Senior Counsel appearing for the landlord, there is absolutely no dispute over the landlord-tenant relationship and also ownership of the petition premises. The tenant admitted the landlord-tenant relationship and also landlord's ownership of the petition premises and continuously paying rent to the landlord. The only question is that whether the landlord is entitled to shift his business from the

rented premises to the petition premises and his requirement is bonafide one or not.

12. In this regard, the learned Senior Counsel appearing for the landlord relied upon the judgment reported in **1984-97 LW 516** in the case of **M.Abdul Rahman Vs. S.Sadasivam**, as follows :-

"9. In the case on hand, already stated, the facts are more or less similar to the facts that give rise to the decision of Mohan, J, in Mahalakshmi Metal Industries v. Suseela Devi (1982) 2 M.L.J. 333. I am inclined to agree with the view taken by Mohan, J., in that case. Section 10(3)(a)(i) of the Act uses the expression "if the landlord requires" and naturally, in cases Coming under that subsection, the Rent Controller has to see whether the requirement is bona fide. But the expression 'require' does not occur in Section 10(3) a) (iii) of the Act and it merely enables the landlord to apply to the Controller for an order of eviction in case the landlord is not occupying for purposes of business which he is carrying on, any non-residential building in the city, which is his own.

Therefore, in respect of a claim made under Section 10(3)(a)(iii) of the Act, the Rent Controller had no justification to go into the question whether the requirement of the landlord is bona fide. When the provisions under Section 10(3)(a)(iii) and 10 (3) (a) (i) use different expressions, it should be taken that the Legislature intended these provisions to have different expressions, it should be taken that the Legislature intended these provisions to have different operations. Thus, once the landlord establishes that he is carrying on business in a premises, which is not his own, and that he has no other residential premises of his own in the city, except the building in respect of which eviction is sought, the Rent Controller has to find whether the claim made by the landlord is true and the claim is not for any oblique purposes. In such cases, it is not for the Rent Controller to go into the question as to whether the requirement of the premises is bona fide or not. If the conditions set out in Section 10(3)(a)(iii) of the Act are found to be satisfied on enquiry by the Rent Controller then, unless the application filed by the land' lord

under that section is found to be for any oblique purpose, the Rent Controller cannot reject that application.

10. In this case, as already stated, the Rent Controller rejected the landlord's claim under Section 10(3)(a)(iii) on the ground that the landlord, as a prudent business man, would not shift from a spacious place where he is carrying on the business at present to a small place like the premises, in respect of which eviction is sought. Thus according to the Rent Controller, the landlord will not be acting in a prudent manner, if he shifts the premises from the rented premises to his own. Whether the act is a prudent one or not, to a certain extent may be a factor for determination of the question whether the requirement of the landlord is bona fide. But that cannot be a relevant matter for considering the question whether the true conditions set out in Section 10(3)(a)(iii) have been shown to exist and whether the claim of the landlord is made for an oblique purpose. The Appellate Authority also has dealt with the question as to whether it will be

prudent on the part of the landlord to shift his business from the rented premises which is more spacious than the premises in question, which is too small for carrying on the business of the landlord. The appellate authority has also referred to the fact that on some earlier occasion the landlord had demanded a higher rent from the tenant. The mere fact that at an earlier stage the landlord had demanded enhanced rate of rent, will not show that the claim of the landlord that he wants the premises for his own occupation is either mala fide or oblique. It may be proved that the claim of the landlord is true and bona fide for in cases where the landlord is not able to get suitable or higher rate of rent for his premises, he may think it worth while to shift his business from the rented premises to his own premises. Therefore merely because there was at some stage, a demand by the landlord for higher rent, the application seeking his own premises for carrying on his business, cannot be said to be either mala fide or that the application for eviction is filed for an oblique purpose. In this view of the matter, the orders of the authorities

below holding that the landlord's requirement is not bona fide, cannot legally be supported. Therefore . the orders of the learned Rent Controller as well as the appellate authority, which in turn confirms the order of the Rent Controller, are set aside and there will be an order of eviction against the respondents on the ground that the landlord is entitled to occupy the premises in question for the purpose of carrying on his own business as admittedly he has no non-residential premises of his own in the city for the purpose of carrying his business. No order as to costs. The respondent, is however, granted three months time for vacating the premises.

This Court held that the expression 'require' does not occur in Section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act and it merely enables the landlord to apply to the Rent Controller for an order of eviction in case the landlord is not occupying for purpose of business which he is carrying on, any non-residential building in the City which is his own. Therefore, the learned Rent Controller need not to go into the question whether the requirement of the landlord is bonafide or not.

13. In the case on hand, admittedly the landlord is running his business in the rental premises and he has no other non-residential building in the Salem City. Though erstwhile landlord and his father issued notice to the tenant to vacate and handover the vacant possession of the petition premises on various grounds, finally the present landlord issued notice thereby called upon the tenant to vacate and handover the petition premises for his own occupation to shift his business from the rental premises to his own premises, which rented out to the tenant. The mere fact that at an earlier stage, the landlord demanded enhanced rate of rent, will not show that the claim of the landlord that he wants the premises for his own occupation is either malafide or oblique. It cannot be said to be either malafide or that the application for eviction is filed for an oblique purpose.

14. He also relied upon the judgment reported in **CDJ 1999 MHC 813** in the case of **M/s.Akthars, rep by its Proprietor Vs. Hitesh V.Shah**, which reads as follows:-

"14. Here in this case, the fact that there was a demand for higher rent and it has been

complied with, are not disputed. The demand was made by the father of the landlord, when the petitioner was a minor. It is not the case that the petitioner after attaining majority, made any demand. Further merely from the factum of demand of higher rent, one cannot jump to a conclusion that there is nay lack of bonafide in the application. If the landlord feels that the rent paid by the tenant is not commensurates with the market rate of rent, it is always open to the landlord to ask for more. Just because the property has been rented out to a tenant, it does not follow that the landlord can never ask for high rent. Therefore, asking for higher rent is not a sum nor it can be equated to any unreasonable demand. Nor from that an inference of malafide can be drawn. It may be case of genuine demand for higher rent. Therefore, from the mere fact of earlier demand of higher rent, one cannot conclude, much less to hold that there is lack of bonafide in the application filed by the landlord. A similar view has been taken by a single judge of this Court reported in A.Gopalakrishna Chettiar V.T.K.A.Yakub Hussain AIR.1988 Mad. 253."

15. He also relied upon the judgment reported in **2004 (3) LW 693** in the case of ***P.S.Janakavalli Ammal Vs. The Regional Manager Tamilnadu Hand-loom Weavers Co-op Society Ltd.***, in which this Court held as follows:-

"25. In view of the above finding based on evidence, this Court is of the considered view that the ratio laid down in 2004 (1) C.T.C. 668 cannot be made applicable to the facts of the present case for the simple reason that P.W.1 has established by both oral and documentary evidence that the requirement of the petition premises is not based on mere desire to carry on a business, but based upon materials to show that he was actually engaged in the wholesale business. Hence I am unable to accept the contention of the learned counsel for the respondent that the petitioner has not proved the imminent necessity and requirement of the landlady for her own possession of the petition premises. As has been rightly contended by the learned counsel for the petitioner, the requirement of the landlady for and on behalf of

her grandson, P.W.1 herein, who does not own any other non-residential building in Madurantakam Town is proved to be genuine and bona fide.

.....

27. Hence, it goes without saying that the petition was not filed for mere enhancement of the rent in respect of the petition premises and in view of the ratio laid down in *M/S.AKTHARS -vs- HITESH V. SHAH* (2000(1) M.L.J. 413), mere demand of higher rent by the landlord will not be a factor to hold back bona fide requirement of the premises and therefore the contention of the learned counsel for the respondent regarding enhancement of the rent demanded by the petitioner long back is no ground to resist the claim of the landlady. For the reasons stated above, this Court is inclined to accept the contentions of the revision petitioner. In any view of the matter, the respondent has not succeeded in establishing the various contentions put forth in this proceedings."

16. In all the above judgments, this Court held that mere from the factum of demand of higher rent, one cannot jump to a conclusion that there is any lack of bonafide in the application. If the landlord felt that the rent paid by the tenant is not commensurates with the market rate of rent, it is always open to the landlord to ask for more. Therefore, the demand of the landlord whether bonafide or malafide is not a criteria to decide the petition for eviction on the ground of owner's occupation. More over it is the choice of the landlord to choose the building for doing his business and it is not for the tenant to dictate terms as to where the landlord should choose building for non-residential purpose. Further a person who is occupying the landlord's tenanted portion of the property as tenant must alway bear in mind that the tenant is only licensee to occupy and will have to handover the possession, whenever on demand made by the landlord.

17. Per Contra, the learned Senior Counsel appearing for the tenant relied upon the judgment reported *1974 (2) SCC 365* in the case of **Muttu Lal Vs. Radhe Lal**, in which the Hon'ble Supreme Court of India held as follows :-

"10.....It is now well settled by several decisions of this Court including the decision in Sarvate T.B.'s case(2) and Smt. Kamla Soni's case(1) that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be 'an element of need and the landlord must show the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business....."

18. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2010 (12) SCC 740** in the case of **Dinesh Kumar Vs. Yusuf Ali**, which reads as follows :-

"11. In Siddalingamma and Anr. v. Mamtha Shenoy : AIR 2001 SC 2896 this Court held that while determining the case of eviction of the tenant, an approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises. However, the bona fide requirement of the landlord must be distinguished from a mere whim or fanciful desire. It must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire. The need should be bona fide and not arbitrary and the requirement pleaded and proved must neither be a pretext nor a ruse adopted by the landlord for evicting the tenant. Therefore, the Court must take relevant circumstances into consideration while

determining the issue of bona fide need so that the protection afforded to a tenant is not rendered illusory or whittled down."

19. He relied upon yet another judgment reported in **2019 (4) CTC 890** in the case of **Prabhakaran Vs. Muthulakshmi**, in which this Court held as follows :-

"20. She has specifically come forward with a case that she is presently running a clinic in a rented premises, however, no documents whatsoever has been produced to prove the said contention either in the form of the lease deed or by examining the landlord of the said premises. The existence of a bonafide requirement is the primordial condition that is required to be satisfied in a proceedings seeking for an eviction on the ground of owner's occupation.

21. From a mere perusal of the chronology narrated supra, it appears that within four months from the dismissal of the petition for demolition and reconstruction and within three months of the property being settled in her favour the landlady

has come forward with an application for owner's occupation and further no where in the petition does she make any reference to the earlier proceedings instituted by her husband against the tenant which also casts a doubt on her bonafides. It is also seen that the contention of the tenant that other portions in the larger extent of the property were lying vacant and better suited for the need of the landlady has not been refuted by her."

20. The Hon'ble Supreme Court of India and this Court held that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bonafide. The existence of a bonafide requirement is the primordial condition that is required to be satisfied in a proceedings seeking for an eviction on the ground of owner's occupation.

21. In the case on hand, as discussed above, the landlord is running his business in the rental premises and he has no other non-residential building in the city to shift his business, except the petition premises. In fact, the tenant himself categorically admitted in his cross-examination that if the landlord shifted his business to the petition premises, he can gain more in his business. The relevant portion of the deposition is extracted hereunder:-

"நான் செலுத்தும் வாடகை குறைந்த வாடகை. மனுதாரர் தொழில் நடத்தினால் அதிகமான லாபம் கிடைக்கும் என்பதால் சுவாதீனம் கேட்கிறார் என்றால் நான் அப்போதிலிருந்து இருப்பதால் வாடகை குறைவாக உள்ளது. மனுதாரர் மனுச்சொத்தில் தொழில் நடத்தினால் அதிக லாபம் கிடைக்கும் என்பது சரிதான்."

Therefore, the requirement of the landlord is bonafide one as such, the judgments cited by the learned Senior Counsel appearing for the respondent/tenant are not helpful to the case on hand. Further the learned Senior Counsel appearing for the tenant submitted that the tenant is ready and willing to vacate the first floor of the petition premises to continue the

business of the landlord. However, the learned Senior Counsel appearing for the landlord was instructed to submit that the landlord is not agreeing for the offer made by the tenant.

22. In view of the above discussions, the fair and decreetal order passed by the Courts below are perverse and liable to be set aside. Accordingly the order dated 22.01.2016 passed by the learned Principal Subordinate Judge, Salem, in R.C.A.No.10 of 2015, and the order dated 07.11.2014 passed by the learned I Additional District Munsif, Salem, in R.C.O.P.No.62 of 2013, are hereby set aside. The prayer sought for in the eviction petition in R.C.O.P.No.62 of 2013 is allowed and the tenant is directed to vacate and hand over the vacant possession of the petition premises to the landlord, within a period of three months from the date of receipt of copy of this Order.

23. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Principal Subordinate Judge,
The Rent Control Appellate Authority,
Salem.
2. The I Additional District Munsif,
The Rent Controller,
Salem.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



order in
C.R.P.(NPD)No.2415 of 2016

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23.03.2021