

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021

Pronounced on : 25.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2706 of 2016
and CMP.No.1488 of 2021

Annam

..Petitioner

Vs.

P.A.Lakshmi Narayanan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree dated 13.06.2016 passed in RCA.No.628 of 2014 on the file of VII Small Causes Court, Chennai against the judgment and decree passed in RCOP.No.1501 of 2012 on the file of the Rent Controller, XV Small Causes Court, Chennai.

For Petitioner : Mr.P.L.Narayanan

For Respondent : Mr.V.Lakshminarayanan
for Mr.J.Balagopal

ORDER

This civil revision petition is arising out of judgment and decree dated 13.06.2016 passed in RCA.No.628 of 2014 on the file of VII

Small Causes Court, Chennai thereby reversing the judgment and decree passed in RCOP.No.1501 of 2012 on the file of the Rent Controller, XV Small Causes Court, Chennai thereby allowing the petition filed for eviction on the ground of demolition and reconstruction.

2. The case of the petitioner is that the petitioner is the landlady (hereinafter called as landlady) and the respondent is the tenant (herein after called as tenant). The petition premises is consisting of ground and first floor. The landlord let out the petition premises in the year 2006 to the respondent. The tenant is paying monthly rent of Rs.10,000/- and also paid a sum of Rs.25,000/- as advance. The petition premises was let out to the respondent for residential purpose. Thereafter the tenant with the consent of the landlady used the property for non residential purpose. Due to expansion of landlady's family, the landlady intended to demolish the existing building and construct new apartment in the petition premises. Hence, the petition for eviction on the ground of demolition and reconstruction.

3. Resisting the same, the tenant filed counter stating that the landlady intended to vacate the tenant from petition premises by using

illegal methods. In fact, the landlady lodged complaint with false allegations and threatened the tenant to vacate the premises. The tenant also filed suit for bare injunction restraining the landlady from forcible eviction, except due process of law. The petition premises does not require for demolition since it is in very good condition. Further stated that she is not possessing any absolute right, title, interest or authority over the petition premises. The property stands in the name of Manager and the said property had been sold by TamilNadu Housing Board. Therefore, there is absolutely no title in favour of the landlady. There is no bonafide requirement for immediate demolition and reconstruction. The tenant is carrying on his business in the petition premises and it is the only source of his livelihood.

4. In support of the landlady's case, PW1 was examined and six documents were marked as Ex.P1 to Ex.P6. On the side of the tenant, RW1 was examined and Ex.R1 to Ex.R4 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the learned Rent Controller allowed the petition for demolition and reconstruction. Aggrieved over the judgment and decree of the learned Rent Controller, the tenant preferred

appeal before the learned Rent Control Appellate Authority in RCA.No.628 of 2014 and the learned Rent Control Appellate Authority on appreciating the materials placed on records, allowed the appeal and dismissed the petition for demolition and reconstruction. Aggrieved by the same, the present civil revision petition is filed.

5. Mr.P.L.Narayanan, the learned counsel for the landlady submitted that the landlady is residing in the rental house and pays monthly rent of Rs.15,000/- per month and as such her requirement is bonafide one. She has financial capacity and source of income for reconstruction of building in the petition premises. The petition premises is located in the prime and commercial locality and as such she can very well mobilise funds either from bank or from private financial institution. He further submitted that admittedly, the age of the building is more than 25 years and the landlady is residing in the rental house with her children. Therefore, she is in dire need of the petition premises for demolition and reconstruction of the existing building for her own use and for augmentation of income. He relied upon the following judgments:

(i) Raja Mohammed Vs. V.D.Murugesan

reported in 2000 – 2 - LW 191

(ii) S.Venugopal Vs. A.Karruppusami and another
reported in (2006) 4 SCC 507

(iii) Common Order passed by this Court in CRP.NPD.Nos.3666 to
3670 of 2013 dated 27.01.2016

6. Per contra, Mr.V.Lakshminarayanan, the learned counsel for the tenant submitted that the landlady failed to prove that she has bonafide requirement of the petition premises for immediate demolition. The age of the building and other factors are not proved by the landlady. She has no financial status for putting up new construction after demolition. In fact she neither pleaded nor let in evidence in process of providing requirement. There is no evidence in establishing any one of the issues that is required to be made so as to enable to give finding. Therefore, the landlady has no bonafide intention for demolition and reconstruction. The petition has been filed only to vacate the tenant with malafide intention. In fact, she lodged false complaint and on which the tenant was taken to the police station and made him for illegal custody. As such the tenant was constrained to file suit for bare injunction restraining the landlady from forcible eviction of the tenant except due process of law. The same was decreed in his favour. Therefore, the landlady failed to

establish the case for eviction of the tenant as contemplated under Section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

7. Heard Mr.P.L.Narayanan, the learned counsel for the petitioner and Mr.V.Lakshminarayanan, the learned counsel for the respondent.

8. The landlady filed petition for eviction on the ground of demolition and reconstruction. The landlady let out the petition premises to the tenant in the year 2006 and subsequently monthly rent was enhanced to the tune of Rs.10,000/-. She is residing with her children in the rented premises at No.27/31, Golden Flats, Thiruveedhi Amman Koil Street, Koyambedu, Chennai 600 107 from the year 2008. Further she wants to construct flats in the petition premises since her children are growing up and as such the landlady and her family members are in dire need of the petition premises to demolish the existing building and construct new apartment building for their own occupation. The tenant also threatened the landlady not to vacate the petition premises and as such the landlady was constrained to lodge complaint before the Additional Commissioner of Police on 21.01.2012 and the same has been

forwarded to the Inspector of Police, V-5 Thirumangalam Police Station. In fact, the tenant had given written undertaking that he will vacate the petition premises within a period of three months. Immediately he filed false and frivolous suit in OS.No.1477 of 2012 on the file of the XIV Assistant City Civil Court, Chennai, in which he categorically mentioned the age of the building as 26 years. The suit was filed for injunction restraining the landlord from evicting the tenant forcibly except due process of law.

9. Admittedly, the petition premises was let out to the tenant for residential purpose and thereafter the respondent is carrying on business in the petition premises for his source of livelihood. Though the tenant disputed ownership of the petition premises, he categorically admitted that the landlady is one of the co owner of the petition premises. When the landlady filed petition for demolition and reconstruction, the landlady has to prove her bonafide requirement seeking for demolition and reconstruction. The landlady lodged complaint before the Inspector of Police, V-5, Thirumangalam Police Station, in which the tenant also appeared and gave undertaking to vacate the premises. It is not disputed by the tenant and he also filed suit in OS.No.1477 of 2012 on the file of the XIV City Civil Court, Chennai for bare injunction restraining the

landlady from forcible eviction except due process of law. Though the landlady did not produce any evidence to prove that she has financial capacity to raise new building, regarding financial position of the landlady for reconstruction is concerned, the banks and financial institutions are ready to render financial assistance. Admittedly, the petition premises is located in the prime locality at 21st Main Road, Anna Nagar, Chennai and it is also commercial locality. Therefore, the landlady can very well mobilise funds from the bank as well as private financial institutions for construction in the petition premises. That apart, the landlady is admittedly residing in the rental premises at No.27/31, Golden Flats, Thiruveedhi Amman Koil Street, Koyambedu, Chennai 600 107 along with her children. Therefore, she is in dire need of the petition premises for demolition and reconstruction. Admittedly, the petition premises is an individual house situated in the total extent of 5000 sq.ft. Whereas the built up area is only 1426.98 sq.ft. Therefore, the landlady can very well construct apartments for her own occupation along with her children.

10. The learned Rent Control Appellate Authority concluded that the requirement of the landlady for demolition and reconstruction is not bonafide one. The landlady did not produce any document to show the

age of the building and the building is in dilapidated condition. Further, she failed to produce evidence to show that she has taken steps for demolition and reconstruction of the building. Further concluded that the petitioner failed to produce any evidence with regards to the means of the landlady to put up new construction. In this regard, the learned counsel for the landlady relied upon the judgment in the case of ***S.Venugopal Vs. A.Karruppusami and another*** reported in **(2006) 4 SCC 507**, wherein the Hon'ble Supreme Court of India has held as follows:

6. We have read the deposition of PW 1. We notice that the recording of evidence is rather unsatisfactory, and most of the sentences are not even complete. The evidence has been recorded in a rather abbreviated manner. However, the landlord has clearly stated that he needed one shop for carrying on his own jewellery business and the premises in question were located in a commercial area in the city of Coimbatore. In very categorical terms, he stated that he required the premises for the purpose of carrying on his own occupation from where he wanted to conduct his gold jewellery shop. He again reiterated the same by saying that he required the premises for his own occupation. Only thereafter the so-called admission appears on which great emphasis had been laid by the High Court. In fact, later in the same paragraph, he has stated that most important reason for claiming eviction was his need of the premises for his own

occupation, Reading the deposition as a whole, it would appear that the landlord, in categorical terms, has repeatedly asserted that he needed the premises in question for running his own business in jewellery. He has emphasised the fact that the premises is located in a commercial locality and he, more than once, stated that he needed the premises for his own occupation. We are, therefore, inclined to take the view that the recording of evidence of PW 1 was not accurate, wherein it has been recorded that he could not do business if he got possession of the existing shops. Perhaps what he must have stated is that he cannot do business "unless" he got possession of the existing shops. The admission clearly goes against the general tenor of the landlord's deposition, which strengthens our apprehension that the same is the result of faulty recording of evidence. We, therefore, have no doubt that the High Court was in error in rejecting the claim of bona fide personal need of the landlord merely on the basis of the so-called admission made by the landlord in his deposition, which appears to be a result of faulty recording of his evidence.

7. On the question of demolition and reconstruction of the premises in question, much was sought to be made out of the fact that the condition of the building had not been ascertained and, while according to the tenants it was not in a dilapidated condition, according to the landlord it was in a dilapidated condition. We do not attach much importance to the question as to whether the building was or was not in a

dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act') contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site.

The Hon'ble Supreme Court of India held that whether the building was or was not in a dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act') contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition.

11. In the case on hand, though the petitioner did not produce any evidence to show that the building is in dilapidated condition, she is in

dire need of petition premises for demolition and reconstruction. As stated supra, the petition premises is situated in a prime and commercial locality and it has high value. The banker and other financial private institutions are very much ready to provide loan for construction of apartments. Therefore, the above judgment cited by the learned counsel for the landlady is squarely applicable to be case on hand and the fair and decreetal order passed by the learned Rent Control Appellate Authority is liable to be set aside.

12. While pending the civil revision petition, the petitioner filed petition in CMP.No.1488 of 2021 to admit the following documents as additional documents.

Sl.No	Date	Description of Document	Remarks
1	06.02.2014	Respondent's Engineer Report	Photocopy
2	15.09.2019 to 16.06.2021	Fixed Deposits Statement	Photocopy
3	12.01.2021	Undertaking given by the developer	Original
4	21.01.2021	Application for demolition	Photocopy
5	21.01.2021	Receipt issued by Corporation of Madras	Photocopy
6	21.01.2021	Bank Statements 1.Syndicate Bank 2.HDFC Bank 3.State Bank of India	Photocopy
7	21.01.2021	Equity Share Demat Account	Photocopy

13. On perusal of the affidavit filed in support of the said petition, the landlady applied for permission to demolition with the Corporation of Chennai and paid a sum of Rs.375/- and also a sum of Rs.5,500/- for licenced surveyor charges. The landlady also filed report about the petition premises dated 06.02.2014 which was marked as Ex.R3 in RCOP.No.1354 of 2012 filed for fixation of fair rent. The other documents revealed that the fixed deposit stands in the name of the landlady, undertaking letter given by her to develop the property, the equity share in the demat account and the bank statements to show the account balance for the landlady. In this regard, the learned counsel for the landlady relied upon the judgment in the case of **Raja Mohammed Vs. V.D.Murugesan** reported in **2000 – 2 - LW 191**, wherein this Court held as follows:

13. Mr.T.Somasundaram, J. on the other hand in [S.K.Babu Sayed and another v. A.Zubeda Bee](#), 1991 (2) L.W. 249 has relied on the case of [Krishnamurthy v. Jagath Textiles](#), 1981 (1) M.L.J. 394 : 94 L.W. 1160 and [Arya Vaisya Samajam v. Murugesu Mudaliar](#), 1990 TLNJ 82 : 1990 (1) L.W. 645. The learned Judge has observed that the provisions of the Code of Civil Procedure are applicable to the revision petition filed before this Court under Section 25 of the Act and from this it follows that a petition filed under Order XLI Rule 27 of the Code of Civil Procedure to receive the documents as additional evidence in the revision petition

filed under Section 25 of the Act is maintainable and the documents may be received as additional evidence provided the requirements of Order XLI Rule 27 of the Code of Civil Procedure are satisfied.

14. This aspect of the matter can be disposed of on the reasoning that what is sought to be filed as additional evidence is the petitioner's own pleadings in the proceedings between the same parties in respect of the same property and which came up to this Court by way of revision and this vital admission by the revision petitioner that he had received Rs.390 as advance for the property is also not disputed on behalf of the revision petitioner. There can be no absolute rule that the document cannot be received as evidence in the revision filed under Section 25 of the Act though a case has to be made out under Order XLI Rule 27 of the Code of Civil Procedure, Now a case has been made out for reception of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, particularly, when the document sought to be marked is the petitioner's own admission regarding the receipt of advance of three months rent from the respondent. The petition stands allowed and the document is received as additional evidence and it will be marked as Ex.R.1 on the side of the respondent.

This court held that there is no absolute rule that the document cannot be received as evidence in the revision filed under Section 25 of the Act though a case has to be made out under Order XLI Rule 27 of the Code of

Civil Procedure. Now a case has been made out for reception of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure

14. On perusal of the documents produced by the landlady are nothing but document which is filed in the petition for fixation of fair rent in RCOP.No.1354 of 2012. The other documents are to show that the landlady has applied for demolition and reconstruction with the Corporation of Chennai and paid requisite fees. The bank statements are produced to show the income of the landlady for raising building in the petition premises.

15. In this regard, the learned counsel for the tenant relied upon the judgment in the case of **Hindustan Petroleum Corporation Limited Vs. Disbahar Singh** reported in **2014(3) MWN (C) 334**, wherein so far as the maintainability of the application filed under Order 41, Rule 27 of CPC are concerned, 5 Judges Bench of the Hon'ble Supreme Court of India held that Rent Control proceedings cannot be equated with the power of reconsideration of all questions of fact as a Court of First appeal. The revision under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, the High Court is not conferred a status of second court of

First Appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent. When the Apex Court has clearly held that a revision under section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, cannot be construed as First appeal, the petition filed under Order 41, Rule 27 of CPC in a revision filed under section 25 of the Act is not maintainable. Order 41, Rule 27 of CPC applies only to the appeals and not to the revisions.

16. In view of the above judgment of the Hon'ble Supreme Court of India, the judgment cited by the learned counsel for the landlady is not helpful to the case on hand. The ratio laid down by the Hon'ble Supreme Court of India is squarely applicable to the facts and circumstances of the present case. In these circumstances, the petition in CMP.No.1488 of 2021 filed under Order 41 Rule 27 of CPC is dismissed.

17. However, as stated supra, for demolition and reconstruction of the petition premises, the condition of the building is need not be in a dilapidated condition. Even if a building is not in a dilapidated condition, it can be demolished for the purpose of erecting a new building on the same site of the landlady. That apart, the petition premises is situated at prime

locality and it has higher market value and it would fetch enough finance for reconstruction from the bankers and financial institutions.

18. In view of the above, this civil revision petition is allowed. Accordingly, the order passed by the learned Rent Control Appellate Authority in RCA.No.628 of 2014 dated 13.06.2016 is set aside and the order passed by the learned Rent Controller in RCOP.No.1501 of 2012 dated 10.09.2014 is confirmed. The respondent is directed to vacate and hand over the petition premises within a period of three months from the date on which the order copy is made ready. No order as to costs.

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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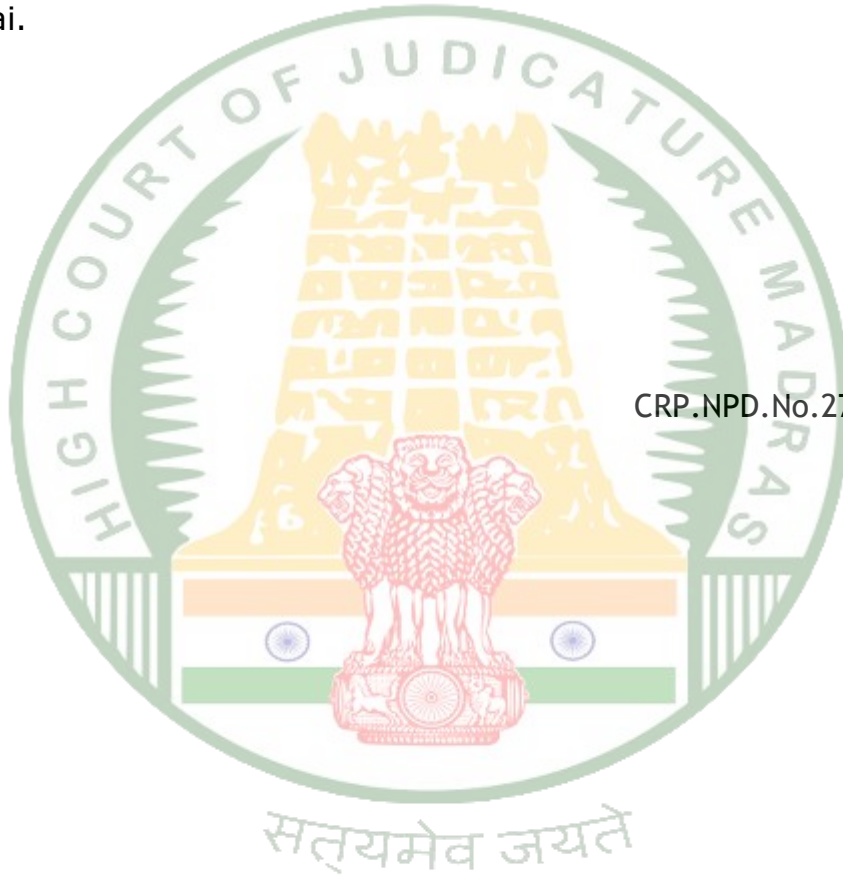
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G.K.ILANTHIRAIYAN,J.

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To

- 1.The VII Judge,
Small Causes Court,
Chennai
- 2.The Rent Controller,
XV Small Causes Court,
Chennai.



CRP.NPD.No.2706 of 2016

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25.03.2021