



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2021
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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1356 of 2020 and
Caveat No.1190 of 2020

M.K.Stores rep.by its
proprietor
Mr.Mohamed Rafiq
No.40(64) Bundar Street,
Chennai - 600 001

... Petitioner/Tenant

Vs.

A.Syed Sulthan

... Respondent/Landlord

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 against the order passed in R.C.A.No.239 of 2017 dated 11.02.2020 on the file of VIII Small Causes Court, Chennai confirming the Judgment and decreetal order dated 04.04.2017 in R.C.O.P.No.1878 of 2015 on the file of the XV Small Causes Court, Chennai.

For Petitioner : Mr.V.Perumal

For Respondent : Mr. R.Sureshkumar for
M/s K.M.Vijayan Associates

O R D E R

The present Civil Revision Petition has been filed against the Judgment and decreetal order passed in R.C.A No.239 of 2017 dated 11.02.2020 on the file of VIII Small Causes Court, Chennai confirming the Judgment and decreetal order dated 04.04.2017 in R.C.O.P.No.1878 of 2015 on the file of the XV Small Causes Court, Chennai.

2. The respondent is the landlord and originally, seems to have approached the Small Causes Court, Chennai in R.C.O.P.No.1878 of 2015 seeking eviction of the revision petitioner on two grounds, viz., demolition and reconstruction and own use and occupation. For convenience, the parties herein are referred as landlord and tenant, as in the R.C.O.P.

3. The landlord before the Rent Control Authority pleaded that he purchased an extent of 1,237 square feet by way of registered sale deed dated 05.02.2014. The revision petitioner



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herein, being the tenant under the previous owner, was intimated of the change of ownership and the tenant attorned the tenancy and the tenant also started paying rent to the landlord. In the meanwhile, the tenant filed O.S.No.1204 of 2014 praying for permanent injunction not to evict without following the due process of law. Thereafter, the landlord filed the petition on the ground that the building is in dilapidated condition and that therefore not fit for occupation, the other tenants, who had occupied the portions had vacated and only the tenant before this Court, the Revision Petitioner, is occupying the premises and the landlord seem to have obtained demolition order from the appropriate authority and the landlord had decided to demolish the property and reconstruct for own use of the landlord, who is carrying on the business in the rented building in the same street. Since the request of the landlord was not heeded by the tenant, the landlord approached the Rent Control Authority seeking eviction on the above grounds.

4. The tenant before the Rent Control Authority had stated in the counter statement that initially, it was one S.Abbas, a Partnership concern, was carrying on business in the name, M.K.Store and the said Abbas died on 08.07.2014 and the said concern being proprietary one, all the legal heirs should have been made party before the Rent Control Authority and when the said Abbas was alive, he filed O.S.No.1204 of 2014 seeking the relief of permanent injunction restraining the landlord, ie., the then landlord and the present landlord, who was party to the proceedings, not to evict except under due process of law. When the said Abbas died, the legal heirs were impleaded as plaintiffs, which fact was known to this landlord. Apart from that, the tenant also pleaded that the tenant, M/s M.K.Stores, which was initially a partnership firm, who is carrying on the business of manufacture of note books, under the reputed brand 'Sunflower' and distributed to the Tamilnadu Text Books and guides for the last 40 years and was eeking his livelihood. He also contend that the erstwhile owner had not initiated any proceedings for the last 3 or 4 decades of tenancy.

5. The said tenant Abbas, who became a tenant under Jathin K.Sheth and two others, who were the owners of the property for measuring an extent of one ground and 74 square feet and occupying the ground floor portion and was paying a monthly rent promptly with an advance amount of Rs.2,00,000/-. When things were running smoothly, the present landlord after he purchased the property threatened late Abbas to vacate the premises and left with no other alternative, the said Abbas approached the City Civil Court in O.S.No.1204 of 2014. The tenant also pleaded that the landlord owns property in the same area and he has not stated that as to how the present portion is required for his own use and the tenant pleaded for dismissal of the petition.



6. The learned Rent Control Authority by order dated 04.04.2017 in RCOP NO.1878 of 2015 while holding eviction on the ground of additional accommodation against the landlord, allowed the eviction petition on the ground of own use and occupation and on the ground of demolition and reconstruction. This order was confirmed in the appeal filed by the tenant in R.C.A. No.239 of 2017 on the file of VIII Small Causes Court, Chennai by Judgment and decreetal order dated 11.02.2020, who had confirmed the orders passed by the Rent Control Authority, by dismissing the appeal filed by the tenant. As against the said concurrent finding, the present Revision Petition is filed by the tenant.

7. Mr.V.Perumal, learned counsel appearing for the petitioner / tenant contended that both the Rent Control Authority as well as the Appellate Authority concurrently failed to appreciate that there was no pleadings / evidence supported by the landlord seeking for own use and occupation. The learned counsel further contended that there is no bonafide reasons established by the landlord for its requirement, the court ought not to have allowed ordering eviction on the ground of own occupation and requirement for own purpose.

8. The learned counsel appearing for the tenant contended that eventhough the building is 40 years old, it is not in dilapidated condition, which can easily survive for further more years, as the building is stable and strong, both the lower courts below had wrongly appreciated the fact and position of law and had ordered eviction on the ground of demolition and reconstruction.

9. The learned counsel for the tenant in support of his argument, has cited the following Judgments:-

1. 2006 (1) CTC 333 [Shahjahan Vs. Janath Ashraf Uduman]
2. 1997 3 L.W. 850 [Balasubramaniam (a Palaniappan rep. By Power Agent M.Arumugham) Vs. Waran]
3. 2006 (3) CTC 147 [Duraishamy Vs. R.Sureshlal]
- 4.(1988) 2 SCC 513 [Hameedia Hardware Stores Vs. B.Mohan Lal Sowcar]
- 5.2005 [5] CTC 585 [M.Abu Tahir Vs. M.Rahamathulla]

10. In contra to the argument of the petitioner, Mr.R.Sureshkumar, learned counsel appearing for M/s K.M. Vijayan Associates appearing for the respondent / landlord, contended that the landlord has established his requirement for his own use and occupation on his pleading before the Rent Control Authority and he has also stated that he is not owning any building on his own and the building is required to be demolished, as the building is more than 100 years old, which is



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use, wherein the landlord is carrying on the business in the rental building in the same street.

16. Apart from the above pleadings, the landlord has not made any other pleadings as to what business he is doing or purports to do in the newly constructed building. The landlord in his support has produced the demolition permission issued by the Corporation of Chennai as Ex.B.3 and the legal notice and the reply notice as Ex.B.4 and Ex.B.5 respectively. Moreover, the landlord has not supported the same by any other documents and had approached the Rent Control Authority and the learned Rent Control Authority based only on the pleadings has allowed the eviction, which came to be confirmed by the Appellate Authority also.

17. On perusal of the pleadings and deposition, especially, the cross examination of P.W.1,

“மனு சொத்தை தவிர வேறு சொத்து உள்ளது என்றால் அதே தெருவில் எனது தாயார் பெயரில் சொத்து உள்ளது. எனது தாயார் பெயரில் உள்ள சொத்தில் நான் தொழில் செய்கிறேனா என்றால் இல்லை. அது எனது தாயார் வாடகைக்கு விட்டுள்ளார்.”

18. It is clear from the above deposition of P.W.1, landlord that he owns property in the same street and the property has been rented out to some other person, bonafide requirement should be on fact bonafide and the pleadings should also disclose the bonafide requirement. As far as the present case, the landlord merely makes an averment that he requires the building for his own purpose and he does not own any other building. Apart from the above, the landlord has not pleaded how he is bonafidely requiring the premises for his own use and occupation and he is not owning any other building.

19. The above deposition clearly shows that the landlord owns a building in the same street, which is not denied by him. It is relevant to refer to the Judgment reported in 2006 (1) CTC page 333 [Shahjahan Vs. Janath Ashraf Uduman] wherein at Paragraph nos. 19 and 20 it is mentioned as follows:-

“19. In paragraph No. 5 of the Rent Control Original Petition, it is said that the landlord's relative is running a business in the name and style of Agja Traders, dealing with T.V., Fans, Refrigerators, etc. and in order to carry out an agency business of the same, this building is required for the son of the landlord. Further, it is alleged, necessary arrangements have been made out. The petition was filed, as per the verification, on 3.7.1997. In view of the above admission, P.W. 1 also stated that the building is required for him, to run an agency business in the premises. Thus, it is seen, it is not the case of the landlord, either in the petition or while letting in evidence, that P.W.I was



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'carrying on business'. But, the business is only in the initial stage of 'an intention to commence the same', which is not contemplated under the Act. The documents relied on, to make out a case for personal occupation viz. Exs.A-2 to A-4, are all correspondence between Agja Traders and P.W.I, wherein there is no specific order appointing P.W.I as the agent for the business, which is intended to be commenced, in the petition mentioned premises.

20. For the appointment of agency, no formality may be required and it all depends upon the agreement between two individuals who intends to appoint another person as agent. This being the position, if really P.W.I had the intention to commence a business as agent of Agja Traders, certainly, Agja Traders should have appointed him as Agent, which is not the case here. Therefore, in my considered opinion, the mere correspondence between P.W.I and Agja Traders, alone, will not be sufficient to label the P.W.I as a person 'carrying on business', as contemplated under the Act, and therefore, on that ground, the landlord is not entitled to evict the tenant. Unfortunately, both the Courts below have not considered, properly, this legal and factual position about the 'carrying on business' and accepting the 'intention to start the business', ordered eviction, which is not the purport of Section 10(3)(a)(iii) of the Act. In this view, the eviction order passed under Section 10(3)(a)(iii) of the Act is liable to be set aside and not the entire eviction order, which is based on wilful default also."

20. At the same time, it is apt to refer the Judgment of this Court reported in 2006 (3) CTC 147 [Duraishamy and Others Vs. R.Sureshlal and Another], wherein at Paragraph Nos. 4, 5 and 6, it is mentioned as follows:-

"4. However, now let us go into the question of bonafide requirement of demolition and reconstruction. Even though the landlord has cited the following decisions in Vijay Singh etc., Vs. Vijayalakshmi Ammal, 1996 (2) CTC 586; R.Perianna Asari and another V. Jayakumar, 1997 (1) LW 727 ; and S.Namagiri Lakshmi Vs.Pravin Harilal Mehta and others, 1998 (1) CTC 595, ultimately, we are guided by the Division Bench Judgment of the Supreme court in Shakeelulur Rahman V. Sysd Mehdi Ispahani 2002 (4) CTC 753, wherein it was held as follows:-

"Age and condition of building sought to be demolished are relevant factors to test bona fides of landlord but they are not determinative of bonafide requirement; Landlord could seek eviction on ground of demolition and reconstruction to construct new building for which necessary permission has been obtained and sufficient financial resources were available with landlord as then bonafide requirement would be established."



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5. But in the given circumstances, there is no plan filed for reconstruction and there is also no evidence, indicating the financial resources available with the present respondent. There is also no Engineer's report to show that the building is dilapidated and in a condition endangering human occupation. In this view of the matter, the requirement of the building for demolition and reconstruction is not bonafide.

6. Regarding owner's occupation also, there is no bonafide reasons stated nor was it discussed in the Judgments of the Rent Control Appeals. I have also perused the Rent Control Original Petitions. Para 11 of Rent Control Petitions states that eviction is sought for under Sections 14(1) and 10(3) of Rent Control Act and no substantial reason has been assigned for owner's occupation. Even in Para 11 of the order of Rent Controller in R.C.O.P.No.24, 28, 30, 35 and 42 of 1999, it is found that the request of owner's occupation is devoid of merits."

21. In the Judgment of Hon'ble Supreme Court reported in (1988) 2 Supreme Court Cases 513 [Hameedia Hardware Stores, rep. By its partner S.Peer Mohammed Vs. B.Mohan Lal Sowcar] at Paragraph No.13, it is observed as follows:-

"We are of the view that by merely proving that the premises in question is a non-residential building and that the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which section 10(3)(a)(iii) appears get a tenant evicted. He must show in view of clause (e) of section 10(3) that his claim is bona fide. The word 'claim' means "a demand for something as due" or "to seek or ask or for on the ground of right" etc. In the context of Rent Control Law which is enacted for the purpose of giving protection to tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them in order to prove that his claim is bona fide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant. Any decision on the question whether a landlord deserves to be put in possession of a premises in the occupation of a tenant should naturally depend upon the bona fides of the landlord's requirement or need. The word 'claim' in clause

(e) of section 10(3) of the Act should, therefore, be construed as 'the requirement' of the landlord or his deservedness. 'Deserve' means 'to have a rightful claim' or



'a just claim'. Since clause (e) of section 10(3) of the Act is also applicable to a petition filed under sub-clause

(iii) of section 10(3)(a) of the Act it becomes necessary to examine whether the requirement of the landlord is bona fide. Otherwise a landlord will be able to evict a tenant to satisfy his whim by merely proving the ingredients mentioned in section 10(3)(a)(iii) of the Act. Take a case where a landlord for some oblique reason wishes to get rid of his tenant from a non-residential building of the category mentioned in section 10(3)(a)(iii) and to achieve his aim fakes to start money-lending business (for which indeed no specified separate portion in a building may be needed) in a building not belonging to him and to create evidence even actually lends money to some of his friends or relatives and a week thereafter applies for eviction of the tenant on the ground that he is carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned. Apparently, the conditions prescribed in the aforesaid sub-clause (iii) are fulfilled. If the requirement of "claim" being "bona fide" as contained in section 10(3)(e) is construed to mean that genuineness of the need of the landlord for the non-residential building is not to be considered and the circumstances that the landlord on the date of making the application is factually carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned is to be construed sufficient to make his claim bona fide, the tenancy of no non-residential building will be secure. It will be preposterous to attribute such an intention to the legislature. Such a contingency should be avoided as it would be against the very object of the Act itself. The need of the landlord should be genuine. That is the object of enacting clause (e) of section 10(3) of the Act. When once we reach the above conclusion it is not enough that the landlord should merely desire to use or occupy the premises. What is necessary is that he should bona fide need them for his own use and occupation or for occupation by any of the members of his family as held by this Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel & Ors.*, [1974] 3 S.C.R. 267 and *Mattulal v. Radhe Lal*, [1975] 1 S.C.R. 127. The learned Judge who decided the case out of which this appeal arises was, therefore, in error in holding that the landlord need not prove that his requirement was bona fide but that his claim was bona fide as provided in clause (e) of section 10(3) of the Act. The learned Judge has made a distinction between 'requirement' and 'claim' in the present case without there being a difference."

22. In the above cases, it is clear that the Hon'ble Supreme Court at Paragraph No.13 in the case reported in (1988) 2 Supreme Court Cases 513 [*Hameedia Hardware Stores*, rep. By its



partner S.Peer Mohammed Vs. B.Mohan Lal Sowcar] has clearly held that the landlord seeking eviction of tenant from the non-residential premises under Section 10(3)(a)(iii) of the Act in order to succeed in his petition, should establish that the bonafide requirement of the premises in addition to proving the other ingredients referred in the Act. Relying on the above judgment, it is clear in the present case, both the Rent Control Authority below had failed to appreciate that the landlord has neither sufficiently or satisfactorily pleaded his bonafide requirement nor proved his requirement and a mere statements during trial or examination, cannot be sufficient to order eviction on the ground of bonafide requirement unless it is supported by proper proof.

23. The right of the tenant, to be a tenant, in the premises has to be protected, if not on the other ground of willful default or act of waste, is to be proved by the landlord. The eviction on the ground of bonafide requirement should be bonafidely proved and failing to prove the same does not resolve on the ground of bonafide requirement, especially, when it comes to non-residential building. The livelihood of the person or the tenant, is also to be taken into account. If the landlord seeks an eviction of an residential building for his own use and occupation, the tenant has to be evicted, if the bonafide is proved. If the tenant is evicted from residential building, he always finds another home for his residential purposes, but it is not so for a non-residential / commercial places, where the tenant had made huge investments and would have taken efforts to establish his business by building up his clients and suddenly the landlord wants to evict him, it will not only affect the tenant, but also his livelihood, which would ultimately affect the entire family depending on him.

24. Therefore, this Court is of the view that both the courts below had failed to appreciate that whether said requirement by the landlord is for bonafide use. When no cogent evidence has been produced, the Tribunal cannot order eviction on the ground of bonafide requirement on mere statements.

25. As far as the question of demolition on the ground of age of the building, which is in dilapidated condition is concerned, this Court is not able to appreciate the arguments put forth by the learned counsel for the landlord and the conclusion arrived by the Tribunal below. Merely because the building is aged does not mean that the building should be in a dilapidated condition. If that alone is the criteria taken, most of the iconic heritage buildings, which are more older than a century should be raised down on the reasons of age of the building. We could even see the buildings of recent construction develop cracks and get demolished even at an early stage unlike



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the buildings constructed to 40 to 50 years old back. The High Court building is testimonial for such constructions, there are several other buildings in the City of Chennai which stands testimonial for that being strong and its stability despite standing there for more years.

26. No doubt in the present case the building occupied by the tenant is more than 40 years old, as far as tenant is concerned, however, one could see that the present landlord has purchased the property in the year 2014. The tenant is occupying the same for more than 40 years as tenant with the erstwhile owner who has not raised dispute of eviction on the ground of demolition for it being in a dilapidated condition. It is also not the case of the respondent / landlord that he has produced any expert opinion that the building is in a dilapidated condition and requires demolition. Merely producing a demolition order from the Corporation of Chennai may not be sufficient to prove that the building needs demolition on account of its age. The demolition certificate was taken into account by the Rent Control Authority as well as the appellate authority for ordering eviction as against the tenant. Both the rent control authority as well as the appellate authority has relied on the demolition certificate issued by the Chennai Corporation alone for ordering demolition and reconstruction. Mere production of the demolition certificate is not sufficient, as the demolition certificate can be obtained even for buildings that were constructed recently to suit the requirements of reconstruction. But when producing the certificate to substantiate or to prove the age of the building and state that it is in dilapidated condition, demolition certificate alone is not sufficient for the Tribunals to order eviction on the ground of demolition and reconstruction, as demolition certificate will not prove the age of the building. On considering all the above facts, this Court is of the opinion that the landlord has not proved the bonafide requirement for his own use and occupation and to establish that he requires the premises. Merely to secure possession and remove the tenants, the provisions of the Tamilnadu Building Lease and Rent Control Act, 1960 should not be used. The Tribunals have to be vigilant in ordering eviction when there is no proper pleading or proof to substantiate the pleadings for ordering eviction. Apart from that, this Court is also of the view that both the courts have failed to see that the land lord has not proved the dilapidated nature of the building and merely because the building is more than 40 or 50 years old, does not mean that it should be in a dilapidated condition or not fit to use.

27. Further, the Judgments referred by the learned counsel for the respondent / landlord, does not apply to the present case, as the present facts are different from the one discussed in the Judgment referred.



28. Under these circumstances, this Court has no hesitation in setting aside the order passed by the appellate authority confirming the order passed by the rent control authority. Accordingly, the Revision Petition is allowed by setting aside the Judgment and decreetal order passed in R.C.A No.239 of 2017 dated 11.02.2020 and the fair and decreetal order passed in R.C.O.P. No. 1878 of 2015 dated 04.04.2017. Consequently, connected miscellaneous petitions are closed. No costs.

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ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To

1. The VIII Small Causes Court,
Chennai.
2. The XV Small Causes Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Perumal, Advocate Sr.28767

C.R.P.No.1356 of 2020

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srg 26/11/2021