

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

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

C.R.P.(NPD) Nos.2814 & 2749 of 2018 and
CMP.Nos.16149 & 16939 of 2018

CRP.No.2814 of 2018

P.Kumar

...

Petitioner

Vs

VE.A.VE.Vairavan Chettiar

...

Respondent

Prayer :- Civil Revision Petition is filed under Section 25 (1) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 against the order passed in RCA.No.4 of 2017 dated 28.06.2018 on the file of the learned Principal Subordinate Court, Mayiladuthurai at Mayiladuthurai confirming the RCOP.No.35 of 2014 dated 09.06.2017 on the file of the Principal District Munsif Court, Myiladuthurai.

For Petitioner : Mr.B.Mahendranaidu

For Respondent : Mr.A.Muthukumar

CRP.No.2749 of 2018

Gunaseelan

...

Petitioner

Vs

VE.A.VE.Vairavan Chettiar

...

Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decretal order in RCA.No.7 of 2017 dated 26.07.2018 on the file of Rent Controller / Principal Subordinate Judge, Mayiladuthurai confirming the fair and decretal order in RCOP.No.34 of 2014 dated 09.06.2017 on the file of the Principal District Munsif, Mayiladuthurai.

For Petitioner : Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates

For Respondent : Mr.A.Muthukumar

COMMON ORDER

These Civil Revision Petitions are filed against the order passed in RCA.No.4 of 2017 dated 28.06.2018 on the file of the learned Principal Subordinate Court, Mayiladuthurai at Mayiladuthurai; and against the fair and decretal order in RCA.No.7 of 2017 dated 26.07.2018 on the file of Rent Controller / Principal Subordinate Judge, Mayiladuthurai, thereby confirmed the orders passed by the learned Rent Controller, thereby ordered eviction on the ground of demolition and reconstruction.

2. In both the civil revision petitions, the petitioners are the tenants and the respondent is the landlord. The landlord filed eviction petitions on the ground of demolition and reconstruction. The petition premises is in dilapidated condition and it totally consists of eight shops. Therefore, it may any time collapse and in fact, three tenants were already vacated the premises. Therefore, the landlord filed petitions for eviction in respect of five tenants. He further stated that already he filed petitions for eviction on the same ground in RCOP.Nos.15 of 2007 and 11 of 2007. The same were dismissed for default. Therefore, instead of filing the petitions to restore the same, fresh petitions have been filed for eviction on the ground of demolition and reconstruction.

3. Resisting the same, the petitioners filed counter stating that the landlord already filed petitions for eviction and the same were dismissed and therefore, the second petitions for eviction are hit by the principles of *res judicata*. The land of the petition premises belongs to a temple i.e. Arulmigu Kumarakattalai Subramaniasamy Devasthanam and as such the petitioner therein is not the owner of the property and the petitions for

eviction are not at all maintainable. Before demolition and reconstruction of any building in the land belongs to the HR&CE Department, the petitioner therein ought to have got permission under Section 34 of HR&CE Act and therefore prayed for dismissal of the eviction petitions.

4. In support of the landlord's case, P.W.1 was examined and five documents were marked as Ex.P.1 to Ex.P.5. On the side of the tenants, R.W.1 was examined and Ex.R.1 to Ex.R.3 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 ordered for eviction on the ground of demolition and reconstruction. Aggrieved by the same, the petitioners have preferred appeals and the learned Rent Control Appellate Authority dismissed the appeals and confirmed the order of eviction. Aggrieved by the same, the present civil revision petitions have been filed.

5. The learned counsel for the petitioners submitted that RW1 was examined on the side of the petitioners, who is Revenue Sub Inspector of

Mayiladuthurai Municipality. He categorically deposed that the petition premises is situated in the land belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam and the said temple is coming under the purview of the HR&CE Act. In support of his evidence, he produced Ex.R1 to Ex.R3 categorically revealed that the land belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam. Further submitted that the landlord already filed eviction petitions on the very same ground and the same were dismissed in RCOP.Nos.15 of 2007 and 11 of 2007. Therefore, eviction petitions are hit under the principle of *res judicata*. Both the courts below, without considering the above points and simply ordered eviction on the ground of demolition and reconstruction. He further submitted that when the petitions for eviction are filed on the ground of demolition and reconstruction, the respondent ought to have got prior permission from HR&CE Department to put up new construction. Therefore, he prayed for dismissal of eviction petitions.

6. Per contra, the learned counsel for the respondent contended that the petitioners are continuously paying rents for the petition premises.

The petition premises totally consists of eight shops. The entire building is in dilapidated condition. Therefore, the landlord requested the tenants to vacate the premises for demolition and reconstruction. Accordingly, three tenants vacated and in respect of five shops, they refused to vacate the premises. Therefore, the landlord was constrained to file petitions for eviction on the ground of demolition as against the five shops, in which eviction was ordered and aggrieved by the same, only two tenants have preferred the present civil revision petitions. He further submitted that the landlord already filed petitions for eviction in RCOP.Nos.15 of 2007 and 11 of 2007, which were dismissed for default. When the petitions were dismissed for default, the principle of *res judicata* would not apply. In respect of another ground raised by the petitioners that the land belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam, for which the petitioners failed to enter into the box to depose that the land belongs to the temple. They also failed to produce any documents in respect of title which belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam in respect of the petition premises. They examined RW1, who is Revenue Sub Inspector of Mayiladuthurai Municipality and Ex.R1 to Ex.R3 revealed that

they were marked only to prove the classification of land and that stands in the name of Arulmigu Kumarakattalai Subramaniasamy Devasthanam. The revenue records do not confer any title. They ought to have produced title documents to prove that the suit land belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam. Therefore, the court below rightly ordered eviction and prayed for dismissal of the civil revision petitions.

7. Heard, Mr.B.Mahendranaidu, the learned counsel for the petitioner in CRP.No.2814 of 2018, Mr.R.Shivakumar, the learned counsel for the petitioner in CRP.No.2749 of 2018, and Mr.A.Muthukumar, the learned counsel for the respondent.

8. The petitioners raised two grounds in the present civil revision petitions: (i) The eviction petitions are hit under principles of *res judicata* and (ii) The petition premises land belongs to Arulmigu Kumarakattalai Subramaniasamy Devasthanam and coming under the purview of HR &CE Act, and if so, the landlord ought to have got prior permission for demolition and reconstruction under Section 34 of HR&CE Act.

9. Admittedly, the landlord filed eviction petitions on the ground of demolition and reconstruction in RCOP.Nos.5 of 2007 and 11 of 2007 as against the respective petitioners herein. Both the petitions were dismissed for default on 21.01.2008. Instead of restoring the petitions, the landlord filed fresh petitions for eviction on the very same ground. When the petitions were dismissed for default, fresh petitions are not hit by the principle of *res judicata*. Therefore, the eviction petitions are very much maintainable and the court below rightly entertained the petitions for eviction on the ground of demolition and reconstruction. Insofar as the ownership of the land is concerned, the petitioners have examined RW1, who is Revenue Sub Inspector of Mayiladuthurai Municipality. The petitioners also marked Ex.R1 to Ex.R3 through RW1. Those documents are revenue documents and they stand in the name of Arulmigu Kumarakattalai Subramaniasamy Devasthanam. Those documents would not confer any title over the petition premises land. That apart, admittedly the petitioners paid rents to the landlord in respect of their respective shops. Therefore, they cannot dispute that the petition premises land is not belong to the landlord.

10. Moreover, when the petitioners had taken specific stand that the building premises land is not belong to the landlord, and as such they ought to have entered into the box and deposed in support of their contention. Whereas they failed to enter into the box to depose to substantiate their contention. That apart, admittedly the petition premises is in dilapidated condition and it may collapse at any time. Further, the learned counsel for the landlord submitted that the petitioner in CRP.No.2749 of 2018 failed to pay rent from the month of July 2018 onwards for his petition premises and the petitioner in CRP.No.2817 of 2018 also failed to pay monthly rent for the petition premises from the month of July 2019 onwards. Therefore, this Court finds no infirmity or illegality in the orders passed by the court below.

11. Accordingly, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

15.07.2021

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Index: Yes/No

9/10

Internet: Yes/No

Speaking Order: Yes/No

G.K.ILANTHIRAIYAN,J.

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To

- 1.The Principal Subordinate Judge,
Mayiladuthurai at Mayiladuthurai
- 2.The Principal District Munsif,
Mayiladuthurai
- 3.The District Munsif,
Myiladuthurai.
- 4.The Principal Subordinate Judge,
Mayiladuthurai.



C.R.P.(NPD) Nos.2814 & 2749 of 2018

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