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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

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

CRP.NPD.No. 1590 of 2004

and

CMP.No.110 of 2009

M.C.Dharmar

...Petitioner/Petitioner

Vs.

- 1.Salma Bibi
2. Shahul Humeed @ Chella
3. Jabbar @ Abdul Jabbar
4. Muthu @ Muthalb
5. Sirajunnisa
6. Jaila @ Jailabudeen
7. Jaga @ Shabutheen
8. Appa @ Abdul Khadeer

...Respondents/Respondents

PRAYER: The Civil Revision Petition is filed under Section 25 of Tamil Nadu Building Lease and Rent Control Act 1960 as amended by Act 23 of 1973 and Act 1 of 1980), against the order and decretal order dated 12.08.2003 and made in R.C.A.No.31/1999 on the file of the learned Rent Control Appellate Authority and First Additional Subordinate Court, Coimbatore, reversing the order and decretal order dated 08.01.1999 of the learned Rent Controller and the Third Additional District Munsif, Coimbatore in RCOP.No.194 of 1994.

For Petitioner : Mr.A.E.Ravichandran

For Respondents: No Appearance

O R D E R

This Civil Revision Petition is filed as against the order and decretal order in in R.C.A.No.31/1999 dated 12.08.2003 passed by the learned Rent Control Appellate Authority and First Additional Subordinate Court, Coimbatore, reversing the order and decretal order passed in R.C.O.P.No.194 of 1994 dated 08.01.1999 on the file of the learned Rent Controller and the Third Additional District Munsif, Coimbatore.



2. The petitioner is the landlord. He filed a petition for eviction on the ground of wilful default, act of waste and owners occupation. Initially, the petition premises was rented out for the monthly rent of Rs.300/- in the year 1986 for the purpose of running a transport office and also for lorry booking office. Thereafter, from time to time, the rent was increased upto Rs.600/- per month. While that being so, the respondents/tenants failed to pay the rents and there were arrears to the tune of Rs.3,600/-. The respondents/tenants also used to pay rents once in six months and there was default in payment of rents wilfully. Further, the petitioner/landlord is running a business and he is in need of additional accommodation to expand his business. Since the petitioner/landlord and his son are running the business of vessels selling they intended to use the petition premises for business purpose. Further, the respondents/tenants are running a lorry transport business in the petition premises and they used to load the goods into the lorry and also unload from the lorry and keep the goods in the petition premises. Therefore, they completely damaged the entire floor of the petition premises, thereby, they committed act of waste.

3. On the side of the petitioner, P.W.1(landlord) and P.W.2 were examined and marked Exs.P1 to P4. On the side of the respondents/tenants, he examined D.W.1(8th respondent herein) and marked Exs.D1 to D12.

4. On a perusal of the material evidence as well as the oral evidence, the learned Rent Controller allowed the petition on all grounds. Aggrieved by the same, the respondents/tenants filed an appeal before the learned Rent Control Appellate Authority. The learned Rent Control Appellate Authority allowed the appeal and dismissed the petition for eviction, on the ground that the petitioner/landlord himself admitted that the rent was paid for 4 months by way of Demand Draft and there was only one month rental arrear. In respect of the ground of willful default, admittedly, the premises was rented out for lorry booking service and as such, while loading and unloading goods from the lorry, there will be some damage to the floor, but, it would not amount to act of waste. In respect of the owner's occupation is concerned, admittedly, the petitioner's shop is situated 0.5 kilometer away from the petition premises. The petition premises is admittedly in a residential area and as such, the petitioner cannot expand his business to the petition premises. On these grounds, the appeal was allowed and the petition for eviction was dismissed.

5. The learned counsel for the petitioner/landlord submitted that the respondents/tenants continuously defaulted in payment



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of rents. They used to pay the rents 6 months once and they have also committed wilful default for the past several months in payment of rent. In fact, pending the RCOP, the petitioner/landlord also filed a petition for fixation of fair rent in RCOP.No.286 of 2003 and the same was ordered on 31.08.2005, thereby, fixing the fair rent at Rs.2,692/-. From the month of September 2006, the respondents/tenants failed to pay any rent to the petitioner. Further, he also submitted that before the learned Rent Control Appellate Authority, an Advocate Commissioner was appointed and he categorically opined that the petition premises is situated in a semi-commercial area and the petitioner/landlord is also running his business on the next building to the petition premises. In fact, the respondents/tenants also used the petition premises for commercial purpose. Admittedly, the respondents completely damaged the entire floor of the petition premises and as such, they have also committed act of waste, in respect of the petition premises.

6. The learned counsel for the respondents produced a letter dated 01.02.2021 handwritten by the 8th respondent herein, in which he submitted that he directed his counsel to report no instructions. In the said letter presented on behalf of all the respondents, it is submitted that he is residing in the petition premises and doing business. This letter was produced by a counsel who is said to represent the counsel for the respondents.

7. Heard the learned counsel for the petitioner.

8. Admittedly, the respondents are tenants and the petition premises was leased out for the purpose of running lorry booking office, in which, the respondents used to load the goods and unload the goods from the petition premises. Therefore, there was damage to the entire floor of the petition premises. Though the respondents/tenants paid the rents, they used to commit default and pay the rents in the duration of 3 months, 4 months and 6 months. It would also amount to wilful default. Earlier, the petitioner/landlord filed a petition for fixation of fair rent in RCOP.No.286 of 2003 and the same was allowed and the fair rent has been fixed at Rs.2,692/- by an order dated 31.08.2005, against which, no appeal was preferred by the respondents/tenants and even then, the respondents/tenants failed to pay any rent from the month of September 2006.

9. That apart, before the learned Rent Control Appellate Authority, an Advocate Commissioner was appointed and as per his report, the petition premises is being used for lorry booking office and the petitioner's son is running the business of vessels selling nearer to the petition premises. Therefore, it cannot be considered that the petition premises is located in a



semi-commercial. Already the respondents/tenants used the petition premises for commercial purpose. That apart, the respondents being the tenants, cannot choose the premises to run a business by the petitioner herein. This Court as well as the Hon'ble Supreme Court of India repeatedly held that the tenant is not a right person to choose the place, in which, the landlord can run a business. Therefore, the findings of the learned Rent Control Appellate Authority are perverse and contrary to law.

10. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in R.C.A.No.31/1999 dated 12.08.2003 is set aside. The order of eviction in RCOP.No.194 of 1994 dated 08.01.1999 passed by the learned Rent Controller is confirmed. The respondents/tenants are directed to vacate and hand over the vacant possession of the petition premises within a period of three months from today. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The First Additional Subordinate Judge, Coimbatore.

2.The Third Additional District Munsif, Coimbatore.

3.The Section Officer

VR Section

High Court, Madras 104.

CRP.NPD.No. 1590 of 2004

KK(CO)

SP(11/08/2021)