



WEB COPY



CRP (NPD) No.1910 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.1910 of 2021
and CMP No.14820 of 2021

Naina Mohammed

... Petitioner

Vs

Meenakshi

... Respondent

Prayer: The Civil Revision petition filed under Section 25(1) of the Puducherry Buildings (Lease and Rent Control) Act, 1969 (No.V of 1969), against the order, dated 08.03.2021, passed by the learned III Additional District Judge, Puducherry in RCA No.23 of 2017 confirming the order passed in HRCOP No.37 of 2008, dated 14.03.2017 on the file of the learned Rent Controller – I, Pondicherry.

For Petitioner : Mr.B.Divakaran

For Respondent : Mr.K.Doraisami,
Senior counsel for
Mr.Muthumani Doraisami



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ORDER

The tenant is the petitioner. The challenge is to the order of eviction made in HRCOP No.37 of 2008 as confirmed in RCA No.23 of 2017 on the file of the III Additional District Judge, Puducherry [Appellate authority under the Pondicherry Buildings (Lease and Rent Control) Act].

2. The tenancy is admitted. The landlord sought for eviction on three grounds, namely owner's occupation, committing act of waste and for demolition and reconstruction. The landlord claimed that she is doing business in a rented premises in the name and style Meenakshi Steel House at door No.87, Jawaharlal Nehru Street, Puducherry belonging to a company called PNL Nidhi Limited, which was attached and taken possession of by Vijaya Bank and the landlord is at risk of eviction from the demised premises at any point of time. Hence, she requires the petition premises for her own use to run her business. The premises consist of residential portion as well as the non residential portion. The tenant is carrying on business in the ground floor and he is residing in first floor. According to the landlord, the building which is an extent of 798 square feet

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is in bad condition and has developed several cracks. The landlord also obtained approval for construction of two storied commercial building from Puducherry planning Authority on 26.12.2006. It is further claimed by the landlord that the tenant had erected a temporary shed in the first floor of the demised premises without her consent. The said construction amounts to acts of waste as it is likely to impair the value and utility of the building. On the above claims, the landlord sought for eviction of the tenant.

3. The tenant resisted the petition contending that the apprehension of the landlord is not justified as no eviction proceedings have been launched by the owner of the premises at No.87, Jawaharlal Nehru Street, Puducheery where the landlord is carrying on business. It is also contended that the petition mentioned building is in sound condition and therefore it does not require demolition. It was also claimed that the requirement of demolition and reconstruction is not bonafide. On the ground of committed acts of waste, it was contended by the tenant that putting up of a temporary shed on the open terrace would not materially



impair the value or utility of the building and hence it will not amount to act of waste, under the Act.

4. At trial, the power agent of the landlord, one Arunagiri was examined as P.W.1 and one Vijayakumar was examined as P.W.2 and Exs.P1 to P14 were marked. The tenant was examined as R.W.1 and no documentary evidence was produced on the side of the tenant.

5. The learned Rent Controller upon consideration of the evidence on record concluded that the landlord has proved the bonafide need for her own occupation as well as for demolition and reconstruction. On the ground of acts of waste also, the learned rent controller agreed with the claim of the landlord. The learned Rent controller also found that the landlord has established her bonafides by producing Exs.P3 and P4 namely Licence issued by the Pondicherry Municipality and Town Planning Approval. As regards the eviction on the ground of owner's occupation, since the fact that the landlord was doing business in the rented premises was not denied, the requirements of the landlord were held to be bonafide.



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It was also held that the report of the Engineer and Ex.P12 photographs clearly showed that the whole building is not in a good condition and it has to be demolished. On the above said conclusion, the learned Rent Controller allowed the HRCOP and ordered eviction. Aggrieved, the tenant preferred an appeal in RCA No.23 of 2017.

6. The learned appellate authority on a reconsideration of the evidence on record, concurred with the findings of the learned Rent Controller and dismissed the appeal.

7. I have heard Mr.B.Divakaran learned counsel appearing for the appellant and Mr.K.Doraisamy, learned Senior counsel appearing for the respondent.

8. Mr.B.Divakaran, learned counsel appearing for the appellant would vehemently contend that the apprehension of the landlord that she would be evicted from the place where she is doing business, has not been proved as no eviction proceedings have been launched till date, and



therefore the eviction order passed under Section 10(3)(a)(iii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 for owner's occupation cannot be sustained. He would further contend that both the authorities, under the Act erred in ordering eviction on the ground of demolition and reconstruction in the absence of any proof that the building is wholly dilapidated and it required immediate demolition. On the ground of Acts of waste, Mr. Divakaran, would contend that putting up an additional construction or temporary shed on the open terrace cannot amount to acts of waste as it is not likely to materially impair the value and utility of the building as required under the provision.

9. Contending contra, Mr. K. Doraisami, learned Senior counsel appearing for the respondent would contend that the landlord who is carrying on business in a rented building, has got every right to seek eviction of the tenant in order to enable her to carry on business in her own building, whether there is a threat of eviction or not. The learned Senior counsel would also point out that the proceedings are still pending before the chief Judicial Magistrate Pondicherry regarding the properties of



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M/s.PNL Nidhi Ltd, which is the owner of the building in door No.87, Jawaharlal Nehru Street, Pondicherry and therefore, the threat of eviction still looms large. He would also point out that the Engineers report shows that the building is not in a sound condition and the Puducherry Planing Authority has granted sanction for construction of ground and two floors even in the year 2006. Therefore, according to the learned counsel, the requirement of the landlord is bonafide. The learned senior counsel would also add that putting up a temporary construction on the terrace of a very old building would materially impair the value and utility of the building. He would seek dismissal of the Civil Revision Petition.

10. I have considered the submissions of the learned counsel.

11. The fact that the landlord is carrying on business in a rented premises is admitted. Both the authorities have come to the conclusion that the requirement of the landlord is bonafide based on evidence. The landlord has also produced the required planning approval and her financial capacity or her means to put up a new construction has also been established in



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evidence. The engineer who was examined as P.W.2, has spoken about the condition of the building and his evidence has not been dented in cross examination, so as to enable the Court to disbelieve his evidence. The statutory requirements of the obtainment of the planning approval and for undertaking for reconstruction has been satisfied by the landlord.

12. As regards the acts of waste also, I find that both the Courts have applied their mind to the evidence on record to come to the conclusion that the claim of the landlord is true. Nothing has been placed before me to upset the concurrent findings of the Courts below or to interfere with the orders of eviction, particularly in a revision under Section 25(1) of the Puducherry Buildings (Lease and Rent Control), Act. It do not find any material irregularity or illegality in the orders of the Courts below. I find there is no scope for interference. Hence, the Revision fails and it is accordingly dismissed.

13. Mr.B.Divakaran, learned counsel appearing for the tenant would seek some time to vacate the premises.



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14. Considering the fact that the tenant is carrying on business in the premises which is in a very busy locality in Pondicherry, the tenant is granted one year from today till 17.11.2022 to vacate and hand over possession to the landlord without driving the landlord to execution proceedings. The tenant shall also file an affidavit of undertaking to vacate and hand over possession on or before 17.11.2022. Such affidavit shall be filed by 03.12.2021. If such affidavit is not filed by the said date, it will be open to the landlord to execute the order of eviction as if no time has been granted by this Court. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2021

vum

Index: Yes/No

Speaking order / Non speaking order

To:

1. The III Additional District Judge, Puducherry.

2. The Rent Controller – I, Pondicherry.

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R.SUBRAMANIAN, J.

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