

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2021

Delivered on :13.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) No. 2283 of 2020
and C.M.P. No.14301 of 2020

Hussain Ansar

... Petitioner

Versus

S.Elumalai

... Respondent

Civil Revision Petition is filed under Section 25(1) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960,, to set aside the Judgment and Decree of the learned IX Judge, Court of Small Causes, Chennai in R.C.A. No.367 of 2015 dated 13.03.2020, confirming the order of the eviction of the learned XVI Judge, Court of Small Causes, Chennai, RCOP No.464 of 2008, dated 22.06.2015 and allow this Civil Revision Petition.

For Petitioner

: Mr. S.Parthasarathy
for Mr. P.Dinesh Kumar

For Respondent

: Mr. V.Srikanth

O R D E R

Challenging the judgment and decree of the learned IX Judge, Court of Small Causes, Chennai in R.C. No.367 of 2015 dated 13.03.2020, in confirming the order of learned XVI Judge, Court of Small Causes, Chennai in R.C.O.P. No.464 of 2008 dated 22.06.2015, this civil revision petition is filed.

2. R.C.O.P. No.464 of 2008 was filed under Section 10 (2) (iii), (iv) and (v) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. The respondent as a petitioner filed the R.C.O.P. claiming that he is the owner of the petition premises bearing new door No.25, old door No.13, Purasawalkam High Road, Chennai – 600 007 and the petitioner is a tenant in respect of this premises, on a monthly rent of Rs.8,775/-. The tenanted premises consists of ground floor only and the petitioner has been running a hotel in the name and style of M/s. Hotel New Deccan. There were earlier proceedings between the petitioner and the respondent with regard to the petition premises.

3. The case of the respondent is that without his consent, the petitioner unlawfully and illegally demolished the existing walls and concrete tiles of the building and put up illegal construction in the entire first floor area about 1700 Sq.ft. The respondent came to know about the unauthorised and illegal

alterations and construction on 24.12.2005. He immediately sent a complaint to the Commissioner and other authorities on 26.12.2005. Against the respondent, a criminal prosecution was launched under Section 362 of the MCMC Act in SMJTC No.24 of 2006 on the file of the XX Metropolitan Magistrate. The respondent contested the case and he was acquitted from this case on 04.09.2006. It was found by the learned Magistrate that unauthorised construction was put up by the petitioner without the respondent's consent and without getting approval from the corporation. The petition premises is an old building. The unauthorised and illegal construction and alteration made by the petitioner resulted the building becoming very weak, structurally unsound and impaired materially the value of the building. The aforesaid acts of the petitioner are nothing but 'acts of waste'. Therefore this petition.

4. Countering the case of the respondent, the petitioner submitted that the petition premises was occupied by his father (late) Abdul Khader in the year 1937, as a tenant under Appruthamani, the grand mother of the respondent. He was running a hotel business, a stationery shop and a betel shop in the premises. After the death of the petitioner's father, the petitioner occupied the property and he his running the business from the year 1947. The rent was increased to Rs.1,800/- from January 1946. The hotel business, under the name

and style of “Hotel New Deccan”, is being run after effecting improvements. The petitioner is paying Rs.8,776/- being fair rent fixed by the Rent Control Court. There is no dispute that the respondent is the owner of the premises. It is false to contend that the rented premises consist of ground floor only and ground floor alone was leased. The fair rent was fixed for first floor also. The respondent suppressed the fact that the rented premises consists of ground floor and first floor with four rooms with asbestos sheet roof and the first floor is used a store room and rest room for the workers. The petitioner is paying the fair rent fixed by the Court without any default. It is denied that the petitioner, without the consent and authorisation of the respondent, unlawfully and illegally demolished the existing parapet walls and weather proofing, country tiles on the terrace floor and put up illegal construction to an extent of 1700 square feet. It is not said in the petition in R.C.O.P. No.2598 of 1992, specifically, the illegal construction put up by the petitioner.

5. The Engineer of the respondent indicated in his report and his evidence that ground floor is 2663 sq.ft. and first floor is 1099 sq.ft. The petitioner's Engineer deposed that the extent of ground floor is 2413 sq.ft. and first floor is 762 sq.ft. The Rent Controller accepted the version of the petitioner's engineer and fixed the fair rent. It is stated that even in 1992, there

is first floor put up by the respondent. The petitioner is not aware of proceedings before the XX Metropolitan Magistrate, Chennai in S.M.S.T.C. No.24 of 2006. This proceedings appears to be collusive in nature and instigated at the instance of the respondent and it will not bind the petitioner. The adjacent owner on the western side had put up a building in his premises and that caused damage to A/C sheet roofing and the same was cleaned by the petitioner. It is stated by the petitioner that except the same, he has not put up any construction in the first floor. It is reiterated that the petitioner has not made any alternations, additions and repairs in the petition premises.

6. Before the learned Rent Controller P.W.1 and P.W.2 were examined on the side of the landlord and Exs.P1 to P12 were marked. R.W.1 was examined on the side of the tenant and Exs.R1 to R9 were marked. In the appeal three exhibits were marked each on the side of the tenant and landlord.

7. Considering the evidence produced before the learned Rent Controller, the learned Rent Controller found that the petitioner had constructed 1,700 sq.ft. in the first floor without approval and without permission from the respondent which amounts to acts of waste and hence ordered eviction. In appeal in R.C.A. No.367 of 2015, the learned appellate Judge found that the

finding of the learned Rent Controller is correct and confirmed the order of learned Rent Controller and dismissed the appeal. Against the said dismissal of the appeal, this civil revision petition is preferred.

8. As narrated above, the eviction petition was filed on the ground of 'Act of waste', nuisance allowing the building to be used for immoral or illegal purpose. Eviction was ordered only on the ground of Acts of waste. Learned counsel appearing for the petitioner submitted that the respondent has made false claim with regard to the rented premises. In the present petition, he claim that the rented premises consists of a ground floor and the ground floor was alone let out, contrary to the fact that the rented premises include the ground floor and first floor. Earlier the respondent filed R.C.O.P. No.2598 of 1992 for fixing a fair rent. In that petition in paragraph '5' and in the schedule of the property, it is specifically said that the rented premises consists of ground floor and first floor. It is also clear from Engineer's report filed in R.C.O.P. No.2598 of 1992 that fair rent was fixed taking into consideration the construction available in the first floor. He had also taken a plea on 'Act of waste' in R.C.O.P. No.2363 of 1992 and that ground was negated by the learned Rent Controller. This aspect is referred to in the order passed in C.R.P. Nos.1737 & 1738 of 1998. There is no 'act of waste' committed by the petitioner in the

petition premises. There were proceedings between the parties with regard to alleged 'act of waste' committed by the petitioner and that went up to Hon'ble Supreme Court. The tenant is entitled to make suitable alternations to suit his business needs. There is no unauthorized construction or illegal construction which materially impair the value of the building. However, the Court below, without properly appreciating the oral and documentary evidence, wrongly ordered eviction against the petitioner on the ground of 'Act of waste'. Therefore, the learned counsel for the petitioner prays to set aside the order of Rent Control Appellate Authority. In support of his submissions, he relied upon the judgments reported in (2014) 9 SCC 78 and (2018) 12 SCC 576.

9. The learned counsel for the petitioner relied upon the judgment the case of *Hindustan Petroleum Corporation Ltd., Vs. Dilbahar Singh* reported in (2014) 9 SCC 78, for the proposition that the High Court is entitled to satisfy the correctness or legality or propriety of any decision or order impugned. The revisional power under Rent Control Act may not be as narrow as the revisional power under Section 15 CPC, but at the same time, it is not wide enough to make the High Court a second Court of the first appeal.

The relevant portion of the said judgment is extracted hereunder:

“ ...

The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal”

In the case of *Gandhe Vijay Kumar Vs. Mulji* reported in (2018) 12 SCC 576, the Hon'ble Supreme Court held as under:

“ ...

The use of two expressions “appeal” and “revision” when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an “appeal” and so also of a “revision”. If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case.

The classic statement in Dattonpant that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a Second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, 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.”

It is clear from this ruling that the High Court under its revisional Jurisdiction under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, is not expected to act as a second Court of first appeal. Only if perversity in appreciating the evidence is made out, that can be interfered with.

10. In response, the learned counsel appearing for the respondent submitted that subsequent to the disposal of earlier R.C.O.P., the petitioner had put up unauthorised and illegal construction without getting permission from the respondent and without getting approval from the Corporation Authorities. That additional, unauthorised and illegal construction damaged the structural stability of the building and materially impaired the value of the building. The respondent was prosecuted and he was acquitted. The learned Magistrate held that the petitioner was responsible for the unauthorised construction. Proceedings were initiated on the basis of the complaint given by the

respondent. The petitioner was directed to demolish the construction made by him. The matter went up to Hon'ble Supreme Court. The oral and documentary evidence produced in this case clearly proved that constructions were made by the petitioner after the dismissal of the earlier R.C.O.P. filed for fixing fair rent. The petitioner had put up additional construction without any permission. Due to additional construction, the respondent was made to pay enhanced rent tax. The building is 90 years old. Any construction on an old building would definitely endanger the very foundation and stability of the building. The Courts below rightly found that the construction made by the petitioner would amount to 'act of waste' and therefore, rightly ordered eviction. During the course of submission, learned counsel for the respondent submitted that the meaning of term 'Act of waste' should be considered from the perspective of landlord and not from the tenant. In support of this proposition, he relied on the following judgments.

In the case of *M.Salem Vs. Josephine Mary*, in CRP. Nos.1246 & 1247 of 2000, this Court has held as under:

“..

In 1996 II LW 322 (M.Shanmugam Vs. C.Kannbiran and another), it was held that though the tenant may plead that the changes that have been made have not impaired the utility and value of the building, on the contrary only enhanced the value, the same has to be determined and judged from the

point of view of the landlord and not that of the tenant. For this, the learned Judge relied on MANU/SC/0800/1996; [1996]2SCR997 (Shri Gurbachan Singh and Another Vs. Shivalak Rubber Industries and others) wherein the Supreme Court held that “The decrease or deterioration, in other words, the impairment of the worth and usefulness of the value and utility of the building or rented land has to be judged and determined from the point of view of the landlord and not of the tenant or any one else.””

In the case of *British Motor Car Co. Vs. Madan Lal Saggi (Dead) and Another*, reported in (2005) 1 SCC 8, the Hon'ble Supreme Court has held as under:

“...

The impairment of the value or utility of the building is from the point of the landlord and not of the tenant”

In the case of *Subramaniapuram Recreation Club, through its President L.Pandian Vs. M.Devarayan*, in 2005 (5) CTC 465, this Court has held as under:

“ The above two ruling relied on by the learned counsel for the revision petitioner, may not lend any support in view of the decision rendered by the Apex Court, wherein it is stated, the impairing the value and utility of the building should be viewed from the point of landlord, not as alleged by the tenant.

...

The Apex Court, considering the decision in Gurbachan singh case and also the case in Vipin Kumar Vs. Roshanlal Anand, 1993 (2) SCC 614, has held that the impairment of the value or utility of the building is to be seen from the point of the landlord and not of the tenant. Therefore, if the tenant had put up any new, construction, over the demised premises, without the consent of the, landlord, then that construction, though may be an addition to the existing building, should be viewed, whether an offending construction causing some disturbance regarding the utility of the demised premises and it cannot be said as a matter of course, since buildings were put up in the demised premises, that will add to the value of the building and it will not come within the meaning of 'impairing the value of the building or utility of the building', as the case may be."

In the case of *B.Selvaraj Vs. Krishna Reddy* in CRP (NPD) No.61 of 2006 and C.M.P. No.472 of 2006, this Court has held as under:

" 8. As per the reported decisions, the impairment in the value and utility must be judged from the landlords' point of view. In the case on hand, it is the case of the landlords that because of the alterations done, the value and utility of the building has been impaired. The value of utility may be different for the landlords and for the tenant depending upon the need. What is useful for the tenant need not be useful for the landlord and vice-versa. The works carried out by a tenant may increase the material value, but may affect the utilitarian value."

11. Learned counsel for the respondent relied upon the judgment in the case of *V.Kanadasan and others Vs. K.Swaminatha Pathar (died) and others*, reported in 2007 (2) CTC 127, on the proposition that the unless there is

perversity in appreciating evidence, there is no reason for interference with the order passed by the appellate authority. The relevant portion of the said judgment is extracted hereunder:

“...

23. Taking note of the subsequent conduct of the Tenants, the appellate authority has rightly held that the tenants have committed wilful default and ordered eviction. Exercising jurisdiction under Section 25 of the Act, the High Court will not interfere with the findings unless there is perversity in the appreciation of evidence by the authorities below. There is absolutely nothing to show that there is perversity in the appreciation of evidence by the Appellate Authority and there is no reason calling for interference with the Order of eviction passed by the Appellate Authority.”

12. From the submissions made, it is seen that there is obvious difference between the schedule of property in this petition and in R.C.O.P. No.2598 of 1992. In this petition, the schedule of property is given as 'entire building bearing New Door No.25, Old Door No.13, Purasawalkam High Road, Chennai 600 017.” In the schedule given in R.C.O.P.No.2598 of 1992, it is given as “The entire building consisting of ground floor and first floor with open terrace situate in front of the first floor and made use of the same as roof garden by the respondent, in premises No.13, Purasawalkam High Road, Purasawalkam, Madras-7”.

13. In the present petition it is claimed that the premises consists of only ground floor and only the ground floor was let out. Contrary to this in R.C.O.P. No.2598 of 1992, it is claimed that the ground floor and the first floor in Door No.13, Purasawalkam High Road, Purasawalkam, Madras-7, was let out. It is fortified by Engineer's report filed in R.C.O.P. No.2598 of 1992, that the first floor has also taken into consideration for fixing the fare. In the counter affidavit filed by the petitioner, it is claimed that the scheduled property was leased out to the father of the petitioner in the year 1947 and since then it was used for running a hotel in the name and style of "Hotel New Deccan". After the death of petitioner's father, the petitioner is currently running the hotel. This aspect that the petition premises is used for running a hotel by the petitioner and earlier by his father, is not denied by the respondent. It is clear that at the time of leasing the premises or at least prior to institution of R.C.O.P. No.2598 of 1992, there is a ground floor and first floor in the premises bearing No.13, Purasawalkam High Road, Purasawalkam, Madras-7. Strangely, in this case, the respondent claims that there is only a ground floor and the ground floor was alone let out to the petitioner. The reason, may be, that the additional construction put up without permission was sought to be removed by taking proceedings before the authorities. This discrepancy will not stand on the way of disposing the present lis.

14. Be that as it may, we are now concerned as to whether the petitioner had committed any 'Act of waste'. The specific case of the respondent is that the petitioner, without the consent of the respondent, unlawfully and illegally demolished the existing walls and country tiles in the building and put up illegal construction in the entire first floor area to an extent of 1700 Sq.ft. The respondent lodged a complaint on 26.12.2005, to the Commissioner, Corporation of Chennai. The petitioner claimed that he was prosecuted for violating the provisions of MCMC Act, by the XX Metropolitan Magistrate in SMJTC No.24 / 2006. He was acquitted from that case holding that the unauthorised construction was put up by the petitioner.

15. The Engineer's report filed in R.C.O.P. No.464 of 200 was marked as Ex.P8. This report shows that the building has got ground floor and first floor. The ground floor is constructed with bricks and lime mortar and first floor is constructed with bricks, cement and sand. Madras Terrace roofing is available in ground floor and AC sheet roofing is available in the first floor. The ground floor walls have lime plastering and first floor walls have cement plastering. The Age of the ground floor is more than 60 years and first floor is 7 years.

The Engineer opined that the entire first floor has not been constructed properly taking into consideration the ground floor structure and the age of the ground floor. There is no approved plan for construction made in the first floor and it was constructed without getting permission from the concerned authorities.

16. It appears that the Secretary to Government, Housing and Urban Development Department, Chennai, issued orders on 07.10.2015 and 20.11.2015 directing the petitioner to demolish the temporary construction measuring 1700 sq.ft. at the first floor of the building. Against the said order, the petitioner preferred a writ petition in W.P. No.37919 of 2015 on the file of this Court. Reading of the order shows that the petitioner agreed to remove 938 sq.ft. and the Corporation wanted the petitioner to remove the entire 1700 sq.ft of unauthorized construction. The appellate authority upheld the decision taken by the Corporation. It was the case of the petitioner that 938 sq.ft alone was constructed by him. The remaining 762 sq.ft was constructed by the landlord long back. The order of Rent Controller had also referred to the fact that the petitioner put up construction to an extent of 938 sq.ft. Finally the Commissioner of Chennai Corporation was directed to consider the matter afresh taking into account the evidence adduced before the Rent Controller by affording an opportunity to both the parties. It is made clear from this order that

the petitioner himself admitted that he put up construction to an extent of 938 sq.ft.

17. The Hon'ble Supreme Court in its order in C.A. No.9942 of 2016 observed that the learned counsel for the first respondent (petitioner herein) acknowledges that he had raised construction to an extent of 938 sq.ft. which has been described as unauthorized by the Corporation and that he would remove the same. It is further his submission that the remaining construction to an extent of 762 sq.ft which was described as unauthorized construction by the Corporation, was not raised by him and therefore, he cannot be compelled to remove the same. Taking note of this submission, the Hon'ble Supreme Court directed the petitioner herein to remove an extent of 938 sq.ft of unauthorized construction made by him. The respondent was also directed to remove the remaining unauthorized construction of 762 sq.ft. It is again reiterated by the Hon'ble Supreme Court that the petitioner herein had put up unauthorized construction to an extent of 938 sq.ft.

18. Prior to the Hon'ble Supreme Court's order, the respondent had sent letters to Commissioner, Corporation of Chennai and others and The Member Secretary, Chennai Metropolitan Development Authority, with regard to

unauthorized construction made by the petitioner after demolishing the existing walls and country tiles. These complaints have been marked as Ex.P1 and P2. It is seen from these complaints that these unauthorized construction have been made only in the year 2005. A provisional order dated 24.01.2006, was issued to the respondent and it is marked as Ex.P4. The Member Secretary, Chennai Metropolitan Development Authority, has sent a communication dated 25.09.2006 with regard to the petition received from the respondent and that is marked as Ex.P3. These documents clearly show that the unauthorized construction was made in the year 2005 and that was subsequently demolished as per the order of Hon'ble Supreme Court in C.A. No.9942 of 2016. The petitioner was examined as R.W.1 during the course of his evidence. He admitted that the respondent filed a suit in O.S. No.1539 of 2008, seeking injunction against him not to change the structure and put up additional construction. When he was asked as to whether he had received any notice from the Corporation authorities in the year 2006 directing him to stop further construction, he admitted that the criminal prosecution was initiated for unauthorized construction. He admitted that he had put up construction in the first floor and the Corporation authorities inquired him with regard to the construction. It is also admitted by him that after the additional construction, half yearly property tax was raised from the year 2008. This admission of the

petitioner coupled with the previous proceedings in W.P. No.37919 of 2015 on the file of this Court and C.A. No.9945 of 2016 on the file of the Hon'ble Supreme Court, prove without any doubt that the petitioner had put up construction in the first floor during the year 2005. For putting up this construction, he has not sought permission from the respondent or the authorities concerned. This additional construction was put up without any plan approval as per the Engineer's report.

19. Reading of the aforesaid judgments shows what amounts to 'Act of waste' and it has to be looked from the perspective of the landlord. If the value of utility is diminished due to the alternations and construction made, it would certainly amount to act of waste. If something has been done permanent to the wall of the building it cannot be considered as a trivial in nature. When the building is damaged by the tenant on the ground that it is required for him to carry on his business and when there is no evidence to show that he had taken permission of the landlord for doing such acts, the tenant cannot expect relief from the Court. In the case before hand, it is found that the petitioner had constructed permanent structure on a building which is 60 years old. Subsequently, those additional constructions made without getting permission either from the respondent or from the authorities were ordered to be removed

at the instance of Hon'ble Supreme Court. The additional construction made subsequent to demolition of additional construction, no doubt would cause structural damage to the building and materially impair the value of the building. Therefore, this Court is of the considered view that the respondent had proved that the petitioner had committed act of waste. The scope of revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, is very limited. The Revisional Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is not expected to reappreciate the evidence unless perversity in appreciating the evidence is made out.

20. The building is 60 years old and when an additional construction is made in an old building without taking any precautionary measures, it would certainly result in causing damage to the structural stability of the building which ultimately result in materially impairing the value of the building. Therefore, this Court is of the considered view that the act of petitioner in putting up the construction in the first floor without the permission of the landlord/respondent and without permission from the authorities concerned, in an old building, without taking any precautionary measures, would definitely impair the value of the building. The Courts below have rightly appreciated

evidence and found that the act of petitioner in putting up construction in the first floor would amount to act of waste and ordered eviction. There is no perversity in appreciating the evidence. This Court finds no reason to interfere with the order of the learned IX Judge, Court of Small Cause, Chennai in R.C.A. No.367 of 2015, dated 13.03.2020.

22. Accordingly, this civil revision petition is dismissed with the costs of the respondent. Consequently, connected miscellaneous petition is closed.

13.08.2021

Index: Yes / No
Speaking order / Non speaking order
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Copy to:

The IX Judge, Court of Small Causes,
Chennai.

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G.CHANDRASEKHARAN. J.,

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