

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE MR. JUSTICE C.V. KARTHIKEYAN

**C.R.P. (PD) No. 2310 of 2020
and
C.M.P. No. 14518 of 2020**

R.K.Giridharan ... Petitioner/Petitioner/Respondent

-VS-

K.Baskar ... Respondent/Respondent/Petitioner

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the order dated 30.11.2020 passed in M.P. No. 153 of 2018 in R.C.O.P. No. 1266 of 2014 by the Hon'ble XII Judge, Small Causes Court, Chennai.

For Petitioner : Mr. L.Dhamodharan

For Respondent : Mr. V.Chandra Prabu

ORDER

The Petitioner before this Court is the Respondent/Tenant in R.C.O.P. No. 1266 of 2014 which is pending before the XII Court of Small Causes, Chennai. The said R.C.O.P. has been filed by the Respondent herein taking advantage of Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960 as amended by Act 23 of 1973. The Respondent/Landlord sought occupation of the building on the ground of demolition and reconstruction.

2. It is the contention of Mr. L.Damodharan, Learned Counsel for the Petitioner/Tenant that the building consisted of ground plus one floor. The Respondent/Landlord is in occupation of the first floor premises. The present Petitioner is a Tenant in a portion in the ground floor and another Tenant is in occupation of another portion in the ground floor. The Respondent/Landlord has filed an application seeking eviction on the ground of owner's occupation. Later, he had filed R.C.O.P. No. 1266 of 2014 under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. On the side of the Respondent/Landlord, a Civil Engineer had been examined as a witness and the Respondent/Landlord has also been examined as a witness. Both the witnesses have been cross examined on behalf of the Petitioner/Tenant. Thereafter, the Petitioner/Tenant tendered evidence. Later, the present Petitioner filed M.P. No. 310 of 2017 seeking permission to have the property inspected by an Advocate Commissioner along with the assistance of the Civil Engineer to determine the stability or otherwise of the building. That application came to be dismissed by the Learned Rent Controller holding that an Advocate

Commissioner cannot be required to determine the stability or otherwise of the building. That order was questioned in C.R.P. (PD) No. 1169 of 2018 which came up for consideration before a Learned Judge of this Court on 16.04.2019. By a considered order, the Learned Judge had referred to a Judgment of the Hon'ble Supreme Court of India reported in **2006 (2) CTC 615 (S.Venugopal Vs. A.Karruppusami and another)**. The Learned Judge took advantage of the dictum laid down by the Hon'ble Supreme Court of India, which reads as follows:-

"7. On the question of demolition and reconstruction of the premises in question, much was sought to be made out of the fact that the condition of the building had not been ascertained and, while according to the tenants it was not in a dilapidated condition, according to the landlord it was in a dilapidated condition. We do not attach much importance to the question as to whether the building was or was not in a dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short "the Act") contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the

building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site."

It has been held by the Hon'ble Supreme Court of India that in an application for eviction under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the primary aspect to be examined is whether the building is bonafide required by the Landlord for the immediate purpose of demolishing it and such demolition has to be made for the purpose of erecting a new building. It has been further held that it does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. The Learned Judge followed the said dictum and dismissed the said Civil Revision Petition.

3. Mr. L.Dhamodaran, Learned Counsel for the Petitioner in the Civil Revision Petition stated that the Engineer appointed by the Respondent/Landlord has given an opinion only on a portion of the demised premises, when the Respondent/Landlord has contended that the entire premises is in a state of dis-repair and on account of which the

Respondent/Landlord is incurring heavy losses. In this connection, the averment in the Rent Control Petition was also pointed out, wherein the Respondent/Landlord has stated that the super structure was constructed in the year 1959 and the age of the building was 55 years.

4. The matter before the Learned Rent Controller proceeded further and it is now stated is in the stage of arguments.

5. At that particular point of time, the present Petitioner/Tenant filed M.P. No. 152 of 2019 seeking to appoint a Civil Engineer to inspect the building and to give a opinion regarding the nature of its structure and its stability. That application came to be dismissed by the Learned Rent Controller. In the course of his order, the Learned Rent Controller relied on the observations made in the Civil Revision Petition in C.R.P. No. 1169 of 2018 and stated that the request for appointment of an Engineer cannot be granted particularly when the inspection of the building by an Advocate Commissioner with the assistance of the Engineer had been objected by the Hon'ble High Court. The application was dismissed.

6. I hold that re-agitating the same issue has not been encouraged by the Hon'ble Supreme Court of India. On the earlier round, the Petitioner herein had sought for appointment of an Advocate Commissioner for inspecting the building along with a Civil Engineer. As common sense would indicate, the Advocate Commissioner cannot file any report on the stability or otherwise of a building and it is only the Civil Engineer who could file such report.

7. The Petitioner herein had then filed an application seeking for appointment of a Civil Engineer to inspect the building. It has to be pointed out that the same relief is again sought and the only difference is that instead of an Advocate Commissioner being accompanied by a Civil Engineer visiting the premises, now the Civil Engineer is required to independently visit the premises. This would certainly fall under the category of re-agitating the same issue which aspect has been considered in several judgments of the Hon'ble Supreme Court and a ready reference can be made to the judgment reported in **AIR 1977 SC 2421 (T.Arivanandam Vs. T.V.Satyapal and another)**. That was a case in which a father suffered an order of eviction. He contested moved up to the Hon'ble Supreme Court and finally the eviction was confirmed. Thereafter, the son filed an application again questioning the order of eviction. That matter also went up to the Hon'ble Supreme Court and the Hon'ble Supreme Court has

stated that when second petition has been filed for the very same relief, it should not have been encouraged by the Court.

8. I would draw strength from the reasoning given in the said judgment and accordingly, hold that this is an attempt to re-agitate a same issue frowned upon by this Court in the earlier Civil Revision Petition. It would be a better option for the Petitioner herein is to advance arguments before the Learned Rent Controller questioning the necessity for demolition of the building and the bonafide intention of the owner to demolish the building.

9. Unfortunately, this Court could not therefore accede to the arguments advanced by the Learned Counsel for the Petitioner.

10. The Civil Revision Petition is dismissed. Learned Counsel for the Respondent is present. No order as to costs. Consequently, the connected Miscellaneous Petition is closed.

15.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

C.V. KARTHIKEYAN, J.

vjt

To

The XII Court of Small Causes,
Chennai.



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