

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

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

CRP.NPD.No.3746 of 2017

1.A.T.Jayaprakash
2.A.T.Dhenadayalan
3.A.T.Sumathi
4.A.T.Praveenkumar

..Petitioners

Vs.

T.Abdullah

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decreetal order dated 06.03.2017 in RCA.No.556 of 2015 on the file of the IX Judge, Small Causes Court at Chennai confirming the fair and decreetal order dated 14.08.2015 in RCOP.No.679 of 2014 on the file of the XI Judge, Small Causes Court at Chennai.

For Petitioners : Mr.M.L.Ramesh

For Respondent : Mr.P.Chandrasekar

ORDER

The civil revision petition is directed as against the fair and decreetal order dated 06.03.2017 passed in RCA.No.556 of 2015 thereby reversed the order of eviction passed by the learned Rent

Controller in RCOP.No.679 of 2014 dated 14.08.2015.

2. The petitioners are the landlords. The respondent is the tenant. The petitioners filed petition for eviction on the ground of wilful default. The respondent is the tenant in respect of shop portion on the ground floor of the petition premises at New No.24, Old No.48, Station Road, Villivakkam, Chennai. The monthly rent is fixed at Rs.4,000/- payable by the respondent herein. The landlords executed power of attorney in favour of one D.Rajapa on 24.04.2009 vide document No.1188 of 2009 to collect rent and also to maintain the petition premises. The landlords authorised the power of attorney to collect the rent and also authorised to collect additional rental advance, to evict the tenants, to fix fair rent and for maintenance of the petition premises. The respondent regularly paid rent till 2011 and all of sudden, they stopped payment of monthly rent. Therefore, the petitioner namely power of attorney caused legal notice on 05.08.2013 thereby call upon the respondent to pay arrears of rent. After receipt of the same, the respondent did not reply for the notice caused by the petitioner. The respondent has committed wilful default in payment of monthly rent for the period from 01.01.2011 to 2013. Whereas the respondent filed counter and stated that the land in

question belong to temple authorities. They filed suit as against the landlord for permanent injunction restraining them from alienation and subletting the petition premises property. The respondent already filed RCOP.No.2509 of 2009 on the file of the XV Small Causes Court, Chennai to deposit the rent for the reason that the landlord refused to receive the rent for the petition premises. Therefore, the intention of the petitioner landlord is only to evict the respondent forcibly. Therefore, the respondent never committed any default in payment of rents. The learned Rent Controller allowed the petition and ordered for eviction. Aggrieved by the same, the respondent preferred appeal and the learned Rent Control Appellate Authority reversed the findings of the learned Rent Controller and dismissed the petition for eviction.

3. The learned counsel for the petitioner raised two grounds.
- (i) The power of attorney appointed by the landlord is an agent and clearly authorised him to collect rents. Under Section 2 (6) of the Tamil Nadu Buildings (Lease and Rent Control) Act defines that landlord "includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator,

receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant. Therefore, the petitioner is entitled to collect rent on behalf of the landlords. (ii) The respondent refused to pay the rent to the power of attorney and as such he filed petition to deposit the rent in RCOP.No.2509 of 2009. It was dismissed since the respondent did not follow the procedure as contemplated under Section 8 of the said Act permitting him to deposit rent in the court. Therefore, he committed wilful default and liable to be evicted.

4. Per contra, the learned counsel for the respondent submitted that the tenant filed RCOP in the year 2009 itself, seeking permission to deposit rent for the petition premises. He further submitted that the respondent never committed any default since he followed all the procedure contemplated under Section 8 of the said Act and aggrieved by the order of the learned Rent Controller, he also filed appeal and it is pending in RCA.No.21 of 2017. In fact, the respondent is permitted to deposit rent in the account of RCA.No.21 of 2017 and he is regularly depositing the rent for the petition premises before the Rent Controller. He further submitted that temple authority issued circular and categorically

instructed that those who are having leasehold right in respect of the land, building and house plot should not be sublet to the third person without prior sanction. He further submitted that the sale or lease is illegal and the sub tenant should be treated as encroacher. Further temple authority filed suit as against the petitioners in OS.No.3507 of 2008 and the same was decreed in their favour. Therefore, the respondent never committed any default and he is ready to pay the rent to the landlords directly.

5. Heard, Mr.M.L.Ramesh, the learned counsel for the petitioners and Mr.P.Chandrasekar, the learned counsel for the respondent.

6. The relationship of the landlord and the tenant is admitted by the parties. The land in question was leased out in favour of the landlords. Subsequently, the landlords put up superstructure and leased out the petition premises to the tenant by the general power of attorney dated 24.04.2009 vide document No.1188 of 2009. The landlords appointed the petitioner as their agent to collect additional rental advance to evict the tenants, to fix fair rent and other maintenance in respect of the petition premises. In fact, the tenant paid monthly rent regularly to the agent of the petitioners till January 2011 and thereafter failed to pay rent to the

agent appointed by the landlords from 01.01.2011 to July 2013.

7. The point for consideration is that whether the tenant has committed default on payment of monthly rent for the petition premises. The petitioner was duly appointed by the landlords as their agent to collect rents for the petition premises. In this regard, it is relevant to extract provision under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as follows:

2(6). "landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.

Accordingly, the petitioner is an agent of the landlords and authorised to collect the rent for the petition premises. In fact, the respondent also paid rent till January 2011 and thereafter failed to pay rent to the petitioner herein. Though the land belongs to the temple authority, the landlords put up superstructure and leased out to the tenant herein. The temple authorities filed suit in OS.No.3507 of 2008 for permanent injunction restraining the landlords from alienating or assigning the leasehold right or executing any document either between themselves or in favour of

anybody else in respect of the leasehold right of the land owned by the temple authorities in the suit property. By the judgment and decree dated 10.07.2009, the landlord made an endorsement and undertook not to alienate the leasehold right of the suit property in favour of any third party without obtaining any prior sanction from the competent authority.

8. Admittedly, the landlords put up superstructure and they are the owners of the superstructure. Further they did not lease out land which was leased out to them to the tenants. After putting up the construction under the leasehold right of the property owned by the temple authority and thereafter it was rented out to the tenants. Therefore, there is no impediment for the landlords to collect rents from the tenant and also tenant has no say in question about the ownership of the petition premises, since the tenant already admitted the relationship of landlord and paid rent till January 2011.

9. The order passed in RCOP.No.2509 of 2009 dated 30.11.2016 filed by the tenant for the deposit of rent for the petition premises revealed that only after demand notice sent by the landlords, the tenant paid rent from April 2008 to December 2008. Again, the tenant defaulted

in payment of rent. Thereafter the landlords appointed power of attorney namely the petitioner herein to collect rent for the petition premises and also for other parties. The power of attorney was also marked as Ex.R4. Thereafter the landlords issued notice which was marked as Ex.R4 call upon the tenant to pay rents to their agent i.e. petitioner herein. It was refused to receive the same and returned cover was marked as Ex.R5. Again on 10.10.2009, the landlord sent notice which was marked as Ex.R7. At that juncture, the tenant sent letter dated 22.09.2009 to call upon them to specify the bank account to deposit the rent. On receipt of the same, the landlords issued reply which was marked as Ex.R8 and directed the respondent to pay rent to their power agent which was refused by the tenant. In this regard, the tenant in his cross examination has stated that he is ready and willing to pay the rent to the landlords directly and will not pay the rents to the power agent. The tenant wantonly and willfully refused to pay rent to the petitioner who is an agent of the landlords.

10. As stated supra, the petitioner is the landlord as per Section 2 (6) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, the respondent has committed wilful default in payment of monthly rent for the petition premises. Though the learned Rent controller allowed the

petition for eviction on the ground of willful default, without considering the above, the learned Rent Control Appellate Authority reversed the same and dismissed the petition for eviction on the ground of wilful default.

11. In view of the above, the order passed by the learned Rent Control Appellate Authority is perverse, illegal and liable to be set aside. Accordingly, the civil revision petition is allowed and the order dated 06.03.2017 in RCA.No.556 of 2015 on the file of the IX Judge, Small Causes Court at Chennai is set aside. Consequently, the tenant is directed to vacate the premises and handover the petition premises within a period of three months from the date of receipt of copy of this order. No order as to costs.

23.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

- 1.The learned IX Judge,
Small Causes Court at Chennai
- 2.The learned XI Judge,
Small Causes Court at Chennai.



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