

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (NPD) Nos.4101 and 4104 of 2018

and

C.M.P.Nos.22645 and 22647 of 2018

C.R.P (NPD) No.4101 of 2018

Madhu Lashman Das

... Petitioner

Vs.

R.Vijaya

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and as amended by Act 23/1793 and Act 1/1980, to allow the above CRP by setting aside the fair and decretal order dated 31.10.2017 passed in R.C.A.No.27 of 2008 on the file of the Rent Controller Appellate Authority (I Additional Subordinate Judge) Coimbatore, confirming the fair and decretal order dated 28.04.2008 passed in R.C.O.P.No.204 of 2003 on the file of the Rent Controller (I Additional District Munsif Coimbatore.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.N.Sridhar for
Mr.R.Bharath Kumar

C.R.P (NPD) No.4104 of 2018

Madhu Lashman Das

... Petitioner

Vs.

R.Vijaya

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and as amended by Act 23/1793 and Act 1/1980, to allow the above CRP by setting aside the fair and decretal order dated 31.10.2017 passed in R.C.A.No.24 of 2008 on the file of the Rent Controller Appellate Authority (I Additional Subordinate Judge) Coimbatore, confirming the fair and decretal order dated 28.04.2008 passed in R.C.O.P.No.206 of 2003 on the file of the Rent Controller (I Additional District Munsif Coimbatore.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.N.Sridhar for
Mr.R.Bharath Kumar

COMMON ORDER

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C.R.P.NPD.No.4101 of 2018 is directed as against the judgment and decree passed in R.C.A.No.27 of 2008 dated 31.10.2017 on the file of the

learned Rent Controller Appellate Authority (I Additional Subordinate Judge) Coimbatore, confirming the fair and decretal order dated 28.04.2008 passed in R.C.O.P.No.204 of 2003 on the file of the learned Rent Controller (I Additional District Munsif Coimbatore, thereby fixing the fair rent for the petition premises.

2. C.R.P.NPD.No.4104 of 2018 is directed as against the judgment and decree passed in R.C.A.No.24 of 2008 dated 31.10.2017 on the file of the learned Rent Controller Appellate Authority (I Additional Subordinate Judge) Coimbatore, confirming the fair and decretal order dated 28.04.2008 passed in R.C.O.P.No.206 of 2003 on the file of the Rent Controller (I Additional District Munsif Coimbatore, thereby ordering eviction on the ground own use and occupation.

3. In both the Civil Revision Petitions, the petitioner is the tenant (hereinafter called as “the tenant”) and the respondent is the landlady (hereinafter called as “the landlady”). The case of the landlady is that she is the absolute owner of the petition property. The tenant has been in occupation of the petition premises from 12.12.2002 for the monthly rent at

Rs.2,000/-. The landlady is a partner of M/s.Techno Matrix Private Limited and which has been running the business since in the year 1993. The tenant's office is situated at Door No.93, Kalingarayan Street, Ram Nagar, Coimbatore, which belongs to her husband. It is a manufacture units and the manufactured goods are stored in the godown at D.No.318, Patel Road, Coimbatore-9. The said godown premises is a rental premises. Except the petition premises, no other premises was owned by the landlady and hence, she requested the tenant to vacate and deliver possession of the petition premises for her own occupation.

4. The landlady also filed a petition for fixation of fair rent for the petition premises on the ground that the monthly rent has been fixed at Rs.2,000/-. The petition premises is situated in posh locality and in and around the petition premises, several commercial transactions are being carried out. The tenant is running Plastic Industry in the petition premises. The extent of the petition premises ad-measuring 1,950 sq.ft and as such, the rent paid by the tenant is very meager.

5. Resisting the same, the tenant filed a counter stating that the petition premises is situated at D.No.27, Thadagam Road ad-measuring total

extent of 12 cents with factory building, which belongs to the family of Ponnusamy consisting of his two sons and two daughters. Originally, the entire property was leased out as a single unit to the tenant by one of his son in the year 1977. In fact, factory sheds were put up by the tenant and he carries on business under the name and style of M/s.Agro Plastic Industries. There was a partition between the family members of Ponnusamy in respect of the entire petition premises, in which the landlady was allotted 1,950 sq.ft. Therefore, for the purpose of paying the rent for the respective allotment, the tenant entered an agreement for lease with the landlady on 22.02.2002 for the petition premises. The tenant is in occupation of the entire premises as a single unit. Though there was a partition between the family members, no demarcation has been done and as such, the landlady cannot use the petition premises for her godown. Therefore, the requirement of the landlady is not bonafide requirement and prayed for dismissal of the petition.

6. As far as the fair rent is concerned, the tenant is in occupation of the entire petition premises to an extent of 12 cents for the past 3 decades. The present rent paid by the tenant is correct and fair rent. Therefore, the

estimation as per the landlady is too high and prayed for dismissal of the petition seeking fair rent.

7. On the side of the landlady, P.W.1 and P.W.2 were examined and documents were marked as Ex.P.1 to Ex.P.27 in the eviction petition. On the side of the tenant, he was examined as R.W.1 and documents were marked as Ex.R.1 to R.3.

8. On a perusal of the oral and documentary evidence, the learned Rent Controller allowed the petition and ordered eviction. Aggrieved by the same, the tenant preferred an appeal before the learned Rent Control Appellate Authority who had also confirmed the order of learned Rent Controller. Aggrieved by the same, the tenant filed a Civil Revision Petition in C.R.P.No.4104 of 2018.

9. As far as the petition for fixation of fair rent is concerned, on the side of the landlady, P.W.1 to P.W.3 were examined and documents were marked as P.1 to P.10. On the side of the tenant, he was examined as R.W.1 and documents were marked as R.1 to R.3.

10. On a perusal of the oral and documentary evidence, the learned Rent Controller fixed the fair rent at Rs.11,000/- per month payable by the tenant. Aggrieved by the same, the tenant preferred an appeal before the learned Rent Control Appellate Authority who had also confirmed the order of the learned Rent Controller. Aggrieved by the same, the tenant filed a Civil Revision Petition in C.R.P.No.4101 of 2018.

11. The learned counsel for the tenant submitted that the petition premises is ad-measuring 12 cents and it was originally owned by one Ponnusamy. He had two sons viz., Selvaraj and Soundarraj and two daughters viz., Vijaya and Kamala. The entire property has been looked after by the elder son Selvaraj. The tenant entered agreement for lease with elder son Selvaraj in the year 1977 in respect of the entire premises. There was a partition between the family members of Ponnusamy, in which the landlady was allotted 1,950 sq.ft of the premises. In respect of payment of rent to the respective allottees, the tenant entered a separate agreement for lease with the landlady on 22.02.2002. The entire petition premises is a single unit and the tenant is running a manufacturing unit in the name and style of M/s.Agro Plastic Industries. Therefore, the partial ejectment cannot

be ordered in respect of the petition premises. Insofar as the partition allotted in favour of two daughters is not yet divided and its a single unit topped by Asbestos sheet. Though the landlady had given separate boundary, the same boundary for the share of other daughter. Both the shares of the daughters are situated under the common roof. Therefore, it cannot be ordered for eviction and also it cannot be used for the purpose of godown as required by the landlady. Since the share of other daughter viz., Kamala was already purchased by the tenant. Insofar as the fair rent is concerned, the tenant is paying the enhanced rent at Rs.11,000/- per month for the petition premises and the tenant is ready and willing to pay the enhanced rent. In support of his contentions, the learned counsel for the tenant relied upon the judgment of the Hon'ble Supreme Court of India reported in 200-1-L.W.414 (*Habibunnisa Begum & others -vs- G.Doraikannu Chettia (D) & others*).

12. Per contra, the learned counsel for the landlady contented that the tenant entered into a lease agreement dated 22.02.2002 with the landlady. The petition premises is a commercial building ad-measuring 1,950 sq.ft situated at D.No.367-A, Bharathi Park Road, Coimbatore. The landlady along with her partner running the manufacturing unit and the manufactured

goods are stored in the rented premises. Therefore, the landlady is in immense need of a godown to store her products such as pumps, valves, water meter etc. Except the petition premises, the landlady does not own any other premises on her own to use as a godown within the Coimbatore limit. He further submitted that the petition premises is ad-measuring 1,950 sq.ft, which was allotted to the landlady by a partition among her family members. The same extent of the premises was allotted to her sister viz., Kamala. The said portion was purchased by the tenant from the said Kamala. Only after demarcation of the respective shares, the tenant purchased the share which was allotted to the sister of the landlady. Therefore, there is separate boundaries for the petition premises and that there would not be any issue for the landlady to occupy the said premises for her own use. Insofar as the fair rent is concerned, though the landlady claimed only a sum of Rs.11,000/- for the petition premises, it can be determined by this Court by exercising power under Article 227 of the Constitution of India and determine the correct rent as fair rent for the petition premises. In support of his contentions, the learned counsel for the landlady relied upon the judgments of this Court reported in MANU/TN/1267/1999 **(D.V.Ramana -vs- P.S.Rathina Bai)** and

MANU/TN/0466/1985 (*Dovo Tax Company -vs- T.R.Ramnath and Ors*).

13. Heard the learned counsel for the tenant as well as the learned counsel appearing for the landlady.

14. Admittedly, the tenant entered into an agreement for lease with one Selvaraj in respect of the petition premises ad-measuring 12 cents, which was originally belonged Ponnusamy. Thereafter, there was a partition among the family members of Ponnusamy and 1,950 sq.ft of the premises was allotted to the landlady. The same extent of the petition premises was allotted to her sister viz., Kamala. Thereafter, by the lease agreement dated 22.02.2002, the tenant entered into the separate lease agreement in respect of the share allotted to the landlady. The tenant also purchased the share which was allotted to her sister viz., Kamala. The boundaries mentioned for the petition premises shows that after the partition between the family members, petition premises was demarcated. In fact, without demarcation, the tenant would not have purchased the share allotted to Kamala. Though, the petition premises along with the share allotted to the landlady's sister stood by common roof, it can be used for godown in respect of the share

allotted to the landlady.

15. In this regard, the learned counsel for the tenant relied upon the judgment of the Hon'ble Supreme Court of India reported in 2000-1-L.W.414 (*Habibunnisa Begum & others -vs- G.Doraikannu Chettia (D) & others*), in which it has been held as follows:-

“2. The only question that arises in this case is as to whether it was open to the High Court to split the single tenancy by ordering partial ejectment of the tenant from the premises let out to him. In S.Sanyal v. Gian Chand 1968 (i) SCR 536, it was held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the Court to split the tenancy. Law therefore, is that where there is single indivisible contract of tenancy, it cannot be split by a Court unless there is statutory provision to that effect. In the present case it is not disputed that the contract for Door Nos.27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Buildings (Lease and Control) Act empowering the Court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to split the tenancy and order for partial ejectment of the tenant from the

premises.”

16. The Hon'ble Supreme Court of India held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the Court to split the tenancy. Law therefore, is that where there is single indivisible contract of tenancy, it cannot be split by a Court unless there is statutory provision to that effect.

17. In the case on hand, admittedly the tenant purchased a share of the landlady's sister after demarcation of the property. Therefore, the above judgment is not applicable to the case on hand. In respect of bonafide requirement is concerned, the landlady categorically proved that she has stored the manufactured goods in a rental premises and as such, she is in need of petition premises for her own use. Therefore, this Court finds no infirmity or illegality in the order passed in R.C.A.No.24 of 2008 by the Court below.

18. Though the tenant is ready and willing to pay the fair rent for the petition premises, the learned counsel for the landlady relied upon the judgment for determination of fair rent by this Court reported in

MANU/TN/1267/1999 (**D.V.Ramana -vs- P.S.Rathina Bai**), in which it has been held as follows:-

“Appellate Authority has got all the powers of the Rent Controller and the entire case is open before him. While considering the appeal, it found that the Rent Controller has not followed the procedure under Section 4 of the Act. It re-appreciated and recalculated the amount payable to the landlord. Eventhough in the appeal filed by the tenant, he may be aggrieved in fixation of fair rent at particular amount, when he files appeal, he pleads before the Appellate Authority only to fix fair rent. He has not pleaded before Appellate Authority to fix lower rent because he happened to be a tenant. It is only that power that is exercised by the Appellate Authority while holding that the fair rent fixed by Rent Controller is low and if the norms are followed, the rent amount payable will be higher.”

19. The learned counsel for the landlady also relied upon the judgment of this Court reported in MANU/TN/0466/1985 (**Dovo Tax Company -vs- T.R.Ramnath and Ors**), in which it has been held as follows:-

“10. It is then urged by the learned counsel for the tenant revision petitioner in C.R.P.2006 of 1983 that the

landlords have themselves claimed that the building will easily fetch a rent of Rs.1250 and the Rent Controller has, therefore, no authority to fix the fair rent at a rate higher than the rate claimed by the landlords. This contention cannot be accepted. The fair rent is fixed for the building in question in accordance with the provisions of the Act. It is not fair rent for the landlord or for the tenant, but for the building and as such the Rent Controller is free to fix the fair rent as per law untrammelled by the contentions of the parties. In the result, I uphold the fair rent fixed by the Rent Controller at Rs.1510 per month and confirmed by the Appellate Authority. Both the revision petitions fail and are dismissed. No costs."

20. This Court held that the learned Rent Control Appellate Authority has got power to determine the fair rent even without any appeal by the landlady. Further, held the fair rent is fixed for building in question in accordance with the provisions of the Act, though the landlady claimed fair rent lower than the fair rent in accordance with law.

21. In the case on hand, the landlady claimed Rs.11,000/- to be fixed as the fair rent for the petition premises and accordingly, the learned Rent Controller fixed the fair rent at Rs.11,000/- and the same was also

confirmed by the learned Rent Control Appellate Authority. The landlady failed to prefer any appeal and Civil Revision Petition for enhancement of fair rent against the order passed by the Court below. Therefore, the above judgments relied upon the learned counsel for the landlady are not helpful to the case on hand and this Court finds no infirmity or illegality in the order passed in R.C.A.No.27 of 2008 by the Court below.

21. In view of the above discussion, these Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The VII Additional Judge, City Civil Court, Chennai.
2. The IV Assistant Judge, City Civil Court, Chennai.
3. The Section Officer,

15/17

V.R. Section, High Court of Madras.

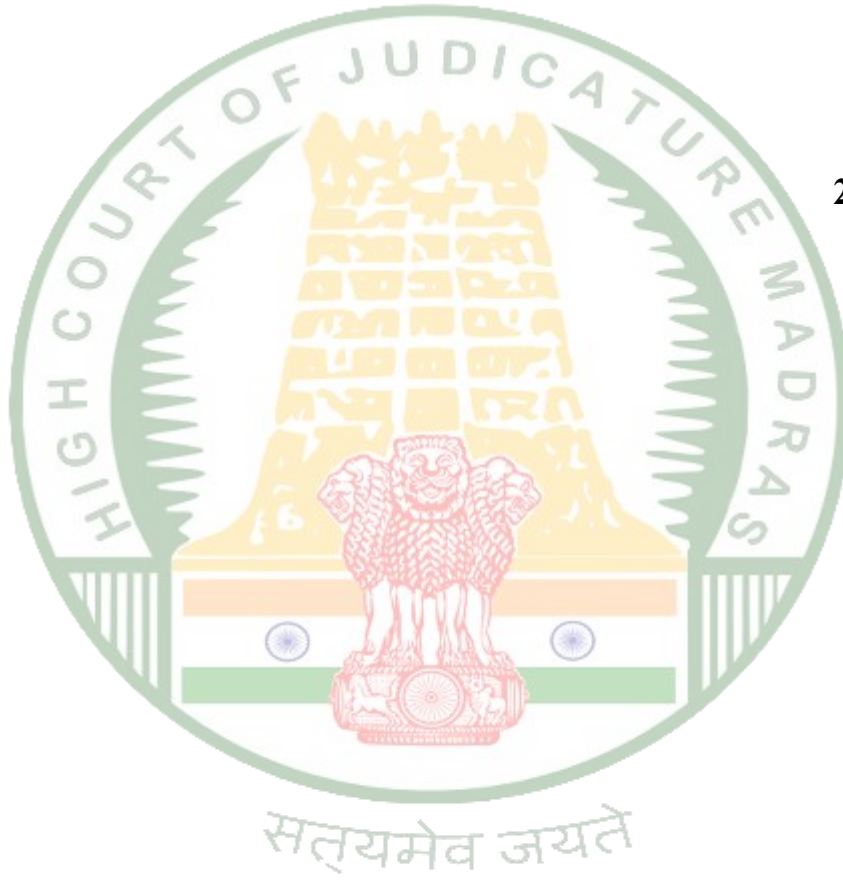


G.K.ILANTHIRAIYAN,J.

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