



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.907 of 2019 (NPD)

and

C.M.P. (MD) .No.5237 of 2019

M.Mariamammal

... Petitioner / Appellant / Tenant

Vs.

1.Hotel Visaka,
Partnership firm,
having office at 70/7,
Balavinayagar Kovil Street,
Tuticorin.

2.A.Varadarajan (Died)
S/o.Alwarsamy,
Partner, Hotel Visaka Partnership Firm,
having Office at 70/7 Balavinayagar Kovil Street,
Tuticorin.

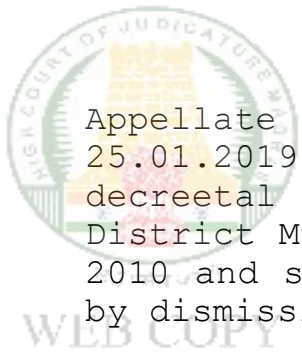
3.Alwar Thilakaraj,
S/o.A.Varadarajan,
Partner, Hotel Visaka Partnership Firm,
having Office at 70/7 Balavinayagar Kovil Street,
Tuticorin.

Radha Varadaraj (died)

4.V.S.Ravindran,
S/o.Varadarajan,
Partner, Hotel Visaka Partnership Firm,
having Office at 70/7 Balavinayagar Kovil Street,
Tuticorin. ... Respondents/Respondents/Landlords

(As per the memo dated 11.01.2021 filed by the respondents, in this order, it is recorded that the 2nd respondent died and the respondents 3 and 4 who are already on record are the legal heirs of the deceased 2nd respondent.)

PRAYER: Civil Revision Petition filed under Section 25 of the Lease and Rent Control Act, praying to call for records relating to the judgment and decree passed by the learned Rent Control



Appellate Authority / Subordinate Judge, Thoothukudi, dated 25.01.2019 in R.C.A.No.13 of 2013, confirming the fair and decreetal order passed by the learned Rent Controller / Principal District Munsif, Thoothukudi, dated 25.07.2013 in R.C.O.P.No.61 of 2010 and set aside the same and allow the civil revision petition by dismissing the RCOP.

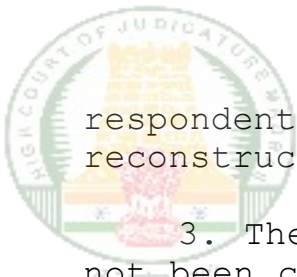
For petitioner : Mr.N.Dilip Kumar

For respondents : Mr.Pon Senthil Kumaran for R1

ORDER

This Civil Revision Petition has been filed by the petitioner/tenant challenging the concurrent order of eviction passed by the Courts below.

2. The case of the respondents/Landlords is that the first respondent is a partnership firm, which runs a lodge business in the name and style of Hotel Visaka in Door No.70/7, Bala Vinayagar Kovil Street, Tuticorin. The respondents 2 to 4 are the partners of the said firm. For the convenience of the inmates of the lodge, a separate building was constructed in the North Eastern Portion for restaurant, for which Door No.70/8 was assigned by the Corporation. The petitioner/tenant was agreed to run a hotel in the said premises and accordingly, he has been running a hotel under the name and style of Hotel Brindavan for the last fifteen years and after few years later, as per the request of the petitioner/tenant, the respondents/landlords gave few rooms in the lodge as additional accommodation. Initially, the monthly rent was fixed at Rs.3,000/- and thereafter, it has been periodically increased. At present, the petitioner/tenant is paying Rs.33,000/- as monthly rent. The said hotel premises is the 1st property mentioned in the petition. The 2nd property is the few rooms occupied by the petitioner/tenant forming part of 55 rooms of lodge run by the landlords. The petitioner/tenant is not proper in paying rent and in maintaining hotel, which causes nuisance for the inmates of the lodge. Due to expansion of city and competition in the hotel business, in the year 2000 the respondents / landlords have decided to give face lift to the existing structure and demolish the structure in D.No.70/8. The few lodge rooms occupied by the petitioner/tenant are also required for additional accommodation. Therefore, the respondents / landlords requested the petitioner/tenant to give vacant possession from May, 2000. Though the petitioner/tenant initially prayed time for shifting and expanded his business by starting two more branches in Thoothukudi ie., Hotel Brindavan in Banumathi Theatre Complex and another Hotel Banu Brindavan Green Park at Palayamkottai, she did not give vacant possession of the building. Hence, the



respondents/landlords filed RCOP on the ground of demolition and reconstruction, causing nuisance and for additional accommodation.

3. The case of the revision petitioner/tenant is that she has not been causing any nuisance. She has been paying rent regularly. Few lodge rooms stated to be occupied by petitioner/tenant as additional accommodation for rent are being used as Office and rest room. The respondents/landlords have no intention to demolish the schedule property to give a face lift to the existing structure and they do not have any financial capacity. The building is in sound and stable and it does not require demolition and reconstruction. The respondents/landlords are having sufficient rooms to carry on their lodge business and therefore, additional accommodation does not require. The respondents/landlords are planning to evict the petitioner/tenant without any valid reason.

4. Before the Rent Controller, on the side of the respondents/landlords, PW1 was examined and Exs.P1 to P16 were marked and on the side of the petitioner/tenant, RW1 to RW3 were examined and Ex.R1 was marked. The Rent Controller, after hearing both sides, allowed the RCOP on the ground of demolition and reconstruction, and additional accommodation. Aggrieved by the same, the petitioner/tenant has filed appeal in R.C.A.No.13 of 2013. The Rent Control Appellate Authority, after hearing both sides, dismissed the appeal and thereby, confirmed the order of the Rent Controller. Aggrieved by the concurrent judgment of the Courts below, the petitioner/tenant has come up with this revision petition.

5. The learned counsel for the petitioner/tenant mainly contended that the respondents/landlords erroneously filed a single eviction petition for two different properties on two different grounds ie., hotel premises on the ground of demolition and reconstruction and the few rooms in the lodge premises on the ground of additional accommodation. Therefore, the Rent Control Original Petition itself is not maintainable. The Courts below, without considering the above aspect, have erroneously granted the relief sought for by the respondents/landlords. Thus, he prayed to allow this revision petition.

6. The learned counsel appearing for the respondents/landlords submitted that the above ground has not been raised by the petitioner/tenant anywhere in the proceedings and it is for the first time raised before this Court and therefore, the same may be eschewed. Further, there is no provision in the Tamil Nadu Buildings Lease and Rent Control Act preventing the landlord seeking eviction of tenant from two premises on different grounds. Thus, he prayed to dismiss this revision petition.

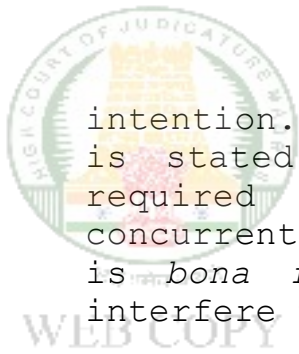


7. Heard the learned counsel appearing for both sides and perused the records carefully. It is seen that a memo dated 11.01.2021 has been filed by the learned counsel for the respondents/landlords stating that the 2nd respondent died, leaving behind the 3rd and 4th respondents as his legal heirs. The said memo is hereby recorded.

8. Admittedly, in this case, there is no dispute with regard to landlord and tenant relationship. The building is situated in the heart of the Town. It is also not in dispute that the hotel premises was constructed on the North Eastern Portion of the lodge premises, for the convenience of the inmates of the lodge and it was let out to the petitioner/tenant. After some time, the few rooms in the lodge were also let out to the petitioner/tenant for office purpose as additional accommodation. The respondents/landlords wanted the hotel premises on the grounds of demolition and reconstruction and nuisance and the few rooms of the lodge on the ground of additional accommodation. Both the Courts below held that except the ground of nuisance, the other grounds have been proved by the respondents/landlords.

9. According to the respondents/landlords, due to competition in the lodge business, they wanted to give a face lift to the existing structure by demolishing the hotel premises and it was informed to the petitioner/tenant in the year 2000 and she agreed to shift her business and sought time, for which she has also given a letter - Ex.P14. But, she did not shift her business and give vacant possession. Ex.P10 shows that the petitioner/tenant, though expanded her business, did not give vacant possession of the premises of the respondents/landlords saying that there is no necessity to demolish the building.

10. So far as the ground of demolition and reconstruction is concerned, it is well settled that the condition of the building is not sole criterion, whether the intention of the landlord is *bona fide* or *mala fide* has to be considered. It is not in dispute that the building is situated in the heart of the town. Modern buildings have come up in and around the schedule property. A landlord has every right to decide as to how the new construction has to put up for better use and for extra income. It is stated that in order to compete in the business, the respondents/landlords wanted to construct a modern building by demolishing the hotel premises. In order to show their *bona fide*, the respondents/landlords have produced the building plans - Exs.P4 and P7, and Ex.P6 - Bank receipts to show their financial capacity. More over, it is seen that having agreed to vacate the premises and even after expanding the business, the petitioner/tenant did not vacate the premises with *mala fide*



intention. So far as the additional accommodation is concerned, it is stated by the landlords that the few rooms in the lodge required for lodge purposes. Both the Courts below have concurrently found that the intention of the respondents/landlords is *bona fide*. This Court does not find any valid reason to interfere with the said findings of the Courts below.

11. The main ground on which the petitioner/tenant wanted to set aside the concurrent eviction order of the Courts below is that single petition for eviction of the tenant from two different schedule of properties is not maintainable. Admittedly, in this case, the hotel premises was constructed only in a portion of the land where the lodge business has been running by the landlords. The hotel premises was let out for running hotel and the few rooms in the lodge were let out for office purpose to the petitioner/tenant. Though it is stated by the petitioner/tenant that two separate properties were let out on two different times, this Court is of the view that as there are common questions of law and fact arising between the same parties and in respect of different portions of the same property, there would be nothing illegal in one eviction petition being entertained and tried in respect of the entire premises,. Such an approach is in the interest of justice has the effect of avoiding multiplicity of proceedings. In short, there is no legal bar on the landlord claiming eviction of the tenant from a totality of the premises irrespective of the fact that whether they had been rented out at different times or under one rent note or two rent notes. The Hon'ble Supreme Court also in the decision in **S.M.Gopalkrishna Chetty Vs. Ganeshan and others**, reported in **AIR 1975 SC 1750**, has held that a single petition with regard to two different tenancies in the same premises, one for residential purpose and other for non residential purpose is maintainable. Thus, viewing from any angle, this Civil Revision Petition is liable to be dismissed.

12. In view of the above, this Civil Revision Petition is dismissed. The petitioner/tenant is directed to give vacant possession of both the premises within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



WEB COPY

1.The Subordinate Judge /
Rent Control Appellate Authority,
Thoothukudi.

2.The Principal District Munsif /
Rent Controller,
Thoothukudi.

Copy to

1.The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

C.R.P (MD) No. 907 of 2019
18.02.2021

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