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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 28.04.2021
Delivered On : 03.08.2021
CORAM:
THE HONOURABLE MRS. JUSTICE R. THARANI
C.R.P.(NPD)(MD).No.1334 of 2018
and
C.M.P.(MD).No.5687 of 2018

K.Alagesan ... Petitioner/Appellant/Respondent

Vs.

Senthilkumar represented through
his power of attorney R.Ramarajan
8/23, Irulappan Illam,
Sembiyan Kinatru Theru,
Ramayana Chavadi, North Masi Street,
Madurai – 1. ... Respondent/Respondent/Petitioner

PRAYER: This Civil Revision Petition has been filed under Section 25 of Tamil Nadu Buildings (L&R) Act, to call for the records relating to the order and decretal order dated 18.09.2017 passed in R.C.A.No.39 of 2012 by the Rent Control Appellate Authority (III Additional Sub Judge), Madurai confirming the order and decreetal order dated 28.08.2012 passed in R.C.O.P.No.54 of 2007 by the Rent Controller (Principal District Munsif Court), Madurai Town and to set aside the same.

For Petitioner : Mr.D.Malaichamy
For Respondent : Mr.D.Senthil

ORDER

This petition has been filed to set aside the order passed in R.C.A.No.39 of 2012 dated 18.09.2012, by the Rent Control Appellate Authority (III Additional Sub Judge), Madurai confirming the order and decreetal order passed in R.C.O.P.No.54 of 2007 dated 28.08.2012, by the Rent Controller (Principal District Munsif Court), Madurai Town.

2.The petitioner is the tenant and the respondent is the landlord. The landlord has filed a petition against the tenant in R.C.O.P.No.54 of 2007.

3.Brief substance of the petition in R.C.O.P.No.54 of 2007 reads as follows:

On 27.04.2005, the petitioner purchased the property. The respondent was a tenant of the previous owner. He was in occupation of 240 square feet, doing fruits business. The building was more

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than 100 years old and is in a dilapidated condition. The petitioner wants to demolish the building and to construct a new one and sent a notice to the tenant. He sent a reply notice with false particulars and the tenant has to be vacated.

4.Brief substance of the counter by the respondent reads as follows:

In 1999, the tenant occupy the premises with an extent of 240 square feet from the owner Sengutuvan and he is running fruits business under the name and style of "K.Alagesan Fruits Shop". When the said Sengutuvan tried to vacate the tenant, he filed a case in O.S.No.555 of 2001 before the learned District Munsif, Madurai. The said Sengutuvan refused to receive the rent and the tenant filed a petition in R.C.O.P.No.356 of 2002 for permission to deposit the rent in Court. When the petition was pending, the tenant came to know that the property was purchased by the petitioner. The grandfather of the petitioner was already occupying the eastern side of the building as the tenant. On 05.05.2005, the petitioner tried to vacate the tenant. The building was 40 years old and is in a good condition. The petitioner is not having sufficient means to construct a new building and prayed the petition to be dismissed.

5.On the side of the petitioner, two witnesses were examined and 15 documents were marked. Three documents were marked as Court documents. On the side of the respondent, one witness was examined and no documents was marked. After trial, the trial Court allowed the petition and the tenant was directed to vacate the premises within a period of two months. Against which, the tenant has filed an appeal in R.C.A.No.39 of 2012. After hearing both sides, the appeal was dismissed by the III Additional Sub Judge, Madurai. Against the same, the revision petitioner has filed the Civil Revision Petition.

6.On the side of the revision petitioner, it is stated that the respondent purchased the property pending litigation between the erstwhile landlord and tenant. The respondent failed to discuss the earlier litigations. There is no bonafide requirements. Ex.P1, plan was obtained just to satisfy the legal requirement. Adverse inference can be drawn against the landlord that he has no bonafide intention. The landlord failed to prove the case by entering into the box. The evidence of a power of attorney cannot be legally taken into consideration. The source of income for the landlord to put up new construction has not been proved. The bonafide requirement is questioned. Ex.P1 and Ex.P2 xerox copies cannot be considered by the trial Court. Ex.P1 was obtained fraudulently. Even after the remand order from this Court, the landlord failed to enter the box.

7.On the side of the revision petitioner, it is stated that the new landlord has not filed any counter. The suit filed by the senerio was decreed on 18.09.2006. The tenant filed the petition to

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fix the rent in R.C.O.P.No.48 of 2007. Till now the tenant is paying the fair rent. The status of the revision petitioner as to whether he is a tenant or not is not stated. There is discrepancies in the measurement in the plan and in the title deed. Even after the remand of the case, the landlord was not ready to enter the box. Ex.P1 and Ex.P2 are xerox copies and reasons for filing secondary evidence and for non filing of original was not stated.

8.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case ***C.Chellakoma v. Arunachalam*** reported in ***2018(1) MWN (Civil)225***, wherein it is stated as follows:

> *"When it is found that the only document marked as Ex.P3 do not support the case of the landlady and on the other hand, it is found tha the same had been brought into existence after the institution of the petition and when the landlady has not placed any material in furtherance of the above said plan and when the said plan has also not been established to be a genuine one prepared for the purpose of the need for the landlady as such, it is seen that the case of the landlady that she requires the building bona fidely on the ground of demolition and reconstruction as such cannot be accepted."*

9.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***R.Chandra Gupta v. V.Mehanathan and 15 Others*** reported in ***2019 (1) MWN Civil 501*** is cited.

10.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of ***Man Kaur v. Hartar Singh Sangha*** reported in ***2010 (6) CTC 652***, wherein it is stated as follows:

> *"Whether the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bonafide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to his requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family*

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member), it may be possible to accept the evidence of such attorney even with reference to bonafides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

11.In support of his contention, a judgment passed by this Court in the case of ***Chellammal v. Krishnaveni Ammal*** reported in ***2006 3 L.W. 713*** is cited.

12.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***Gurunathan v. T.Krishnappa*** reported in ***2007 (2) CTC 159***, wherein it is stated as follows:-

"For the purpose of getting possession for demolition and reconstruction, the landlord must prove that the condition of the building is so bad requiring immediate demolition. But from Ex.C1 and C3, reports of the Commissioner, it cannot be inferred that the condition of the building requires immediate demolition and reconstruction. As I have already indicated earlier, there is absolute no evidence on record to show that if the building is demolished and reconstructed, it will fetch more income."

13.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***Mariammal and another v. Narayanan*** reported in ***2015 (3) MWN 312***, wherein it is stated as follows:

"Apart from age and condition of the building the capacity of the landlord to demolish and reconstruct the useful utilization of the property after reconstruction and the desire of the landlord to earn economic advantage are also relevant factors to consider the bonafide requirement. In the present case, the landlord had in fact offered Ex.P1 Sanctioned Plan for the construction. The means of the landlord also was not doubted and there is truthfulness in the statement of the landlord."

14.On the side of the respondent, it is stated that the Commissioner report was filed and the age of the building is 70

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years and the building lost its stability. The Engineer report was also filed. No petition was filed against the Commissioner report. The financial capacity of the landlord was proved through Exs.P3 to Exs.P15. The tenant has admitted that the respondent has purchased the property. He is questioning only the rectification deed. Since a mistake was crept into the title deed, it was rectified as per Ex.P6. There is arrears of rent to be paid by the tenant. There is no bar in examination of a power agent. The agent is non other than the father of the landlord and the examination of power agent was not disputed before the lower Court and prayed the revision petition to be dismissed.

15.The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of ***D.Sasi Kumar v. Soundararajan*** reported in ***2020-3-1.w. 325***, wherein it is stated that as follows:-

> *"Non production of approved plan or the documents to indicate financial capacity cannot be held fatal.*
>
> *However, as already indicated above, the nature of the requirement as stated by the landlord would be for running a garment shop which in any event could be run in the premises as it exists with minor alterations though the desire of the landlord is also to demolish and reconstruct."*

16.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***G.S.Dhandapani and Others v. G.D.Selvaraj*** reported in ***2013 (5) CTC 373***, wherein it is stated as follows:

> *"It is open to landlord to withdraw anyone or more grounds raised in eviction petition, at any stage of the proceedings- such withdrawal cannot be construed as lack of bonafide on part of landlord*
>
> *Merely because landlord sought eviction on grounds of additional accommodation and demolition & reconstruction, it cannot be stated that there is no bonafide on part of landlord-when additional accommodation is sought, landlord need not immediately occupy building-landlord can reconstruct and then occupy tenement.*
>
> *Contention that landlord stated in eviction petition that he intends to put up multistoried building, but deposed that he is going to construct godown – whether landlord is going to put up godown or multistoried building is immaterial for tenants- landlord has proved his means to demolish &*

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reconstruct-No contra evidence-production of approved plan is not condition precedent to seek eviction on ground of demolition & reconstruction-landlord has given undertaking to demolish tenement within time stipulated"

17.The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of ***S.Venugopal v. A.Karruppusami and Another*** reported in ***2006 (2) CTC 615***, wherein it is stated as follows:

"As regards bonafide requirement for demolition and reconstruction it was held that conditions of building is no material when the landlord wants to demolish owned structure in order to build multistoried building so as to get better return of investment-landlord had already applied for and obtained planning permission - not giving details regarding funds for construction held will not militate against his claim since raising funds for constructing commercial structure is not difficult as Bank and Financial Institution are willing to advance such funds."

18.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***Alauddin Sahit v. R.Jothi*** reported in ***2015 (1) TLNJ 602 (Civil)***, wherein it is stated as follows:

"Held in an application for eviction on the ground of demolition and reconstruction, Court has to see (i)bonafide intention of landlord (ii)age of building and (iii)financial position of landlord to put up new construction- obtaining approved building plan is not a pre-condition for ordering eviction on the ground of demolition and reconstruction- further, the tenant not disputed the factum and business carried on by landlord-petition for demolition and reconstruction cannot be dismissed only the ground that landlord had not established means"

19.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***S.Saraswathiammal and others v.R.S.Mallikarjun Raja and two others*** reported in ***1997-2-l.w. 287***, wherein it is stated as follows:

" It is well settled that the building is not be in a dilapidated condition or in a dangerous state of affairs for ordering a petition under Section 14(1) (b) of the Act. In this case, the landlady has proved

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that she is having sufficient money to construct the building and she has filed necessary plan to show that she is going to construct the building in the demolished portion so as to enable the sons to divide the properties.

In this case, the landlady has given an undertaking that she will demolish the building and commence the construction of the building and within a particular period. If she fails to do so, the tenant can seek restitution under the Act."

20.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***Rizwanur Rahman v. V.M.S.Seyedha and others*** reported in ***2013 (3) CTC 782***, wherein it is stated as follows:

"Concurrently ordered eviction of Tenant on ground of wilful default-civil revision before high Court-contention of tenant that eviction petition filed by power agent on behalf of landlord is not maintainable-tenant had not raised any objection in counter affidavit filed before rent controller with regard to maintainability of eviction petition filed by power agent-tenant also cross examined power agent and agitated matter without raising any objection-competency of power agent to institute eviction petition is mixed question of law and fact-objection raised by tenant for first time before the revision Court is untenable."

21.Support of his contention, the judgment passed by this Court in the case of ***J.Kubendran and others v. D.Rajappa and others*** reported in ***2015-5-L.W. 378*** is cited.

22.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***M.M.Mohamed Ali v. Elite Electronics and others*** reported in ***(2013) 7 MLJ 620***, wherein it is stated as follows:

"On the contrary, the learned counsel for the tenants/respondents would contended that the landlord/revision petitioner has not stepped into the box and deposed about the age and nature of the building. It is only the power agent of the petitioner who stepped in the box and deposed about the age and condition of the building in question.

I hold that if the landlord produce the sanctioned building plan approval at the stage of execution proceedings it is sufficient compliance of the provisions of Section 14(1)(b) of the Act."

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23.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of ***A.Lakshmanan and others v. Kanniammal @ Pattammal*** reported in ***1995 (1) MLJ 178***, wherein it is stated as follows:

> *"At the time of argument alleged certain motives to the landlady, I am of the view, that in an eviction petition filed on the ground of demolition and reconstruction, motive for demolition and reconstruction is wholly irrelevant. It is in evidence that the building in question was put up more than thirty years ago and that the same is not in a sound condition and therefore, the landlady requires the building for demolition and reconstruction."*

24.On the side of the respondent, it is stated that the revision petitioner has taken two shops for rent in the fruits market constructed by the Government and there is no necessity for the revision petitioner to continue in the premises.

25.A purchase during the pendency of a litigation between a tenant and erstwhile landlord is not a bar and this contention raised by the revision petitioner is not maintainable.

26.On the side of the revision petitioner, it is stated that the reasons stated by the landlord to vacate him is not genuine and that building is only 40 years old. The Commissioner report and the enquiry report, Ex.X3 reveals that the age of the building is 70 years.

27.The landlord has filed an approved plan, Ex.P1 and Ex.P2. The tenant alleged this document as fraudulent and as xerox copies. But he has not raised this points before the trial Court. The tenant has not taken any steps to disprove Ex.P1 and Ex.P2.

28.On the side of the tenant, it is stated that the time limit for the approved plan expired and the plan itself was not genuine and hence, the landlord cannot claim eviction. Since the tenant has not vacated the premises and the landlord was not able to construct the building, the plan approval has expired . The expiry of the plan approval cannot be taken as a point against the landlord. The tenant/revision petitioner is questioning the financial capacity of the landlord. But the financial capacity of the landlord was proved through Ex.P3 to Ex.P15.

29.On the side of the revision petitioner, it is stated that the landlord has not entered the box to give evidence and that only the power agent of the landlord was examined as P.W.1 and even after the case was remanded for re-trial, the landlord did not come forward to enter the box. The evidence of power agent cannot be entertained and the claim of the landlord is not proved.

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30.The power agent has given evidence. The power agent is the father of the landlord. The grandfather of the landlord was already occupying a portion of the property as a tenant from the erstwhile landlord and there was possibility for the power agent to have personal knowledge and hence, it is decided that the power agent is well aware of the facts of the case and his evidence is maintainable.

31.On the side of the revision petitioner, it is stated that this Court has already remanded the matter for fresh consideration, permitting the parties to adduce additional evidence. Even though the appellate Authority received the records, failed to record additional evidence, which is a violation of the Court order. The appellate Authority failed to frame points for consideration and prayed the order passed by the appellate Authority has to be set aside. It is stated that the purpose of remand is to adduce further evidence and to mark additional documents and the purpose was not served.

32.It is true that earlier this Court has remanded the matter with liberty to both the parties to adduce additional evidence. A perusal of the records reveals that the revision petitioner, who was the appellant before the appellate Authority, has not examined further witness. When the appellant is not ready to examine any witness, the appellate Authority cannot compel him to examine additional witness or compel him to mark additional documents. It is for the revision petitioner to utilise the opportunity. But the landlord/respondent has marked two documents. Since the revision petitioner failed to utilize the opportunity given by the appellate Authority, there is no violation of Court order and this contention of the revision petitioner is not maintainable. All the grounds raised by the revision petitioner are not maintainable.

33.In the above circumstances, there is nothing sufficient enough to interfere in the order passed in in R.C.A.No.39 of 2012 dated 18.09.2012, by the Rent Control Appellate Authority (III Additional Sub Judge), Madurai confirming the order and decreetal order passed in R.C.O.P.No.54 of 2007 dated 28.08.2012, by the Rent Controller (Principal District Munsif Court), Madurai Town. Hence, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed. Two months time is granted for vacating the premises.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Rent Control Appellate Authority (III Additional Sub Judge),
Madurai.

2.The Rent Controller (Principal District Munsif Court),
Madurai.

Copy to:

1.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.D.SENTHIL, Advocate (SR-25125[F] dated 03/08/2021)

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-25209[F] dated 04/08/2021)

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RS (25.08.2021) 10P 7C

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