



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1917 of 2021 &
CMP(MD)No.10326 of 2021

S.N.Ponraj

... Petitioner

Vs.

M.S.Vaithyanathan @ Kumaran

... Respondent

PRAYER:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, 1960, read with Section 115 and 151 of the Civil Procedure Code, to set aside the fair and decreetal order of the Rent Control Appellate Tribunal / Principal Sub Court, Madurai dated 28.09.2021, passed in RCA.No.7/2020 confirming the order passed in RCOP.No.31 of 2013 by the Additional District Munsif Court / Additional Rent Control Judge, Madurai Town, dated 18.02.2019.

For Petitioner : Mr.F.X.Eugene

For Respondent : Mr.T.R.Subramanian

O R D E R

The revision petitioner who is the tenant has filed this petition challenging the concurrent order of eviction passed against him.

2. The brief facts preceding the filing of the above Civil Revision Petition are as follows.

The respondent herein who is the landlord of the demised premises had filed RCOP.No.31/2013 on the file of the District Munsif Court, Madurai Town seeking eviction on the ground of demolition and re-construction. It was his case that under a sale dated 03.03.2004, the suit property was purchased by him and his brother Senthil. The ground floor was leased out by the respondent to the petitioner herein. The petitioner was a tenant even before they had purchased the property. After the purchase of property, the petitioner had attained tenancy to the respondent. It is his case that the suit property was over 78 years old and therefore, the respondent and his brother wanted to demolish the property and put



up a new construction. Further, the respondent and his brother were doing a business in a portion of the suit property in the first floor for which they require a larger space. Therefore, they were desirous of demolishing the property and putting up a new construction. The respondent further stated that the property was in a dilapidated state, the walls have developed cracks and there was every possibility of the building collapsing due to age and owing to its dilapidated condition.

3. The petitioner / tenant had filed a counter *inter alia* contending that the property was in a good condition and was not in a dilapidated state as contended by the respondent / landlord. The petitioner / tenant had denied the contentions made in the eviction petition that he had agreed to pay the enhanced rent and the respondent / landlord had not insisted on an advance since the petitioner had agreed to vacate the premises within a period of six months. The petitioner / tenant would contend that his father had entered tenancy of the demised premises on 09.12.1949 and since then, they have been in possession of the property. Initially the rent was a sum of Rs.15/- per month, which was later enhanced periodically and at present, the monthly rent is a sum of Rs.600/-. The petitioner / tenant would submit that there has never been a default in the payment of rent by him. The petitioner / tenant would submit that after the death of the original owner Marimuthupillai, his sons had attempted to dispossess the petitioner's father and his father had filed a suit in OS.No.1224 of 1999 before the Additional District Munsif Court, Madurai and during the pendency of the suit, his father passed away leaving behind the petitioner / tenant as his legal heir. The petitioner / tenant would submit that the suit in OS.No.1224 of 1999 was decreed in favour of the petitioner / tenant on 17.03.2004 itself. Once again there was an attempt to dispossess the petitioner / tenant which constrained him to file yet another suit in OS.No.238 of 2003 before the Additional District Munsif Court, Madurai Town. The said suit was also decreed. It is in this background that the respondent herein had purchased the property. Therefore, the petitioner / tenant had sent the rent for the period from March 2004 to September 2004 in favour of the respondent / landlord along with the legal notice. The respondent / landlord received the same on 02.10.2004 and thereafter, sent a reply notice dated 28.10.2004 making bald allegations. Thereafter, the respondent / landlord refused to accept the rents which constrained the petitioner / tenant to file a petition under Section 8(5) of the Tamil Nadu Building (Lease and Rent Control) Act [herein after called as 'the Act'] in RCOP.No.305 of 2004 and the petitioner herein is depositing the rents into the rent control proceedings. The petitioner / tenant would submit that there is no need to demolish the property and since the entire property is not owned by the respondent / landlord, his claim is not *bonafide*. In fact, it is the petitioner / tenant, who has been maintaining the building in a very good condition. Therefore, he

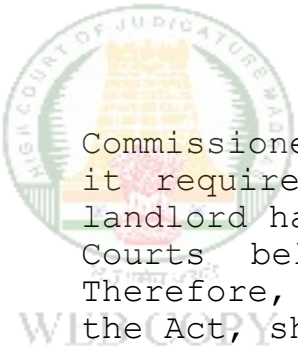


sought for the petition to be dismissed.

4. The learned Rent Controller after elaborate trial and after hearing the arguments and perusing the evidence, ordered eviction. The Rent Controller had relied upon Exs.C1 to C6, the Commissioner's Report along with the Engineer's Report and Sketch, wherein, it has been stated that the petitioner building has long lost its utility value. The Rent Controller has also observed that the respondent / landlord was in possession of sufficient wherewithal to demolish and re-construct the building. Therefore, he ordered the petition as prayed for. The petitioner / tenant challenged the said order by filing RCA.No.7 of 2020 before the Rent Control Appellate Tribunal (Principal Sub Court), Madurai. The Appellate Authority also confirmed the findings and decision of the learned Rent Controller. The Appellate Authority has extensively considered and extracted the Engineer's Report as well as the Advocate Commissioner's Report to come to the conclusion that the building has out lived its age and has reached the stage of demolition. The Engineer who had inspected the property had opined that the ground floor portion of the building was about 80 years old and the first floor portion was about 60 years old. The building was Madras terrace roofed and a lime mortar construction. He has noticed that the walls had developed extensive cracks, over which, patch works have been made and the wooden meshed door was in a deteriorated condition. The southern outer wall plastering had peeled off below the wooden area and the door step was also in a damaged condition. The Appellate Authority had observed that the respondent's brother had also instituted proceedings for eviction against the concerned tenant in respect of the other portion as well and negated the argument of the petitioner / tenant that the petition seeking eviction only in respect of his portion for demolition and re-construction lacks *bonafide*. Challenging these concurrent orders, the petitioner / tenant is before this Court.

5. During the arguments, Mr.F.X.Eugene, learned counsel appearing on behalf of the petitioner / tenant would make two submissions, (i) that the eviction petition was for demolition and re-construction as well as for owner's occupation and therefore, a single petition cannot be filed as the two are mutually exclusive and (ii) the respondent / landlord has not filed an affidavit stating that he will complete the construction within a period of three months from the date of handing over the possession.

6. Mr.T.R.Subramanian, learned counsel appearing on behalf of the respondent / landlord would submit that these contentions have not been raised either before the Rent Controller or before the Appellate Authority. Further, this defence has not been raised even in the counter, but has been raised for the first time before this Court. He would submit that the respondent / landlord has proved his case through the evidence of the Engineer and Advocate



Commissioner that the building was in a dilapidated state and that it requires immediate demolition. Further, that the respondent / landlord has necessary wherewithal has also been proved by him. The Courts below has considered the above and ordered eviction. Therefore, this Court exercising jurisdiction under Section 25 of the Act, shall not re-appreciate the evidence.

7. Heard the learned counsels on both sides and perused the materials available on record.

8. The defences now taken at the stage of revision petition, admittedly, have not been raised in the counter either by way of oral evidence before the Rent Controller or as a ground of appeal before the Appellate Authority. It is for the first time that these two defences have been taken. Be that as it may, a perusal of the petition would clearly indicate that the eviction is sought for only on the grounds of demolition and re-construction owing to the effect that the building was in a dilapidated state. The respondent / landlord has narrated the use to which the demised premises was proposed to be used after the demolition and re-construction of the property. The eviction has not been sought on the ground of owner's occupation or on the ground of additional accommodation. The astute argument put forward by the learned counsel for the revision petitioner / tenant though attractive at first blush, is not supported by proof. Therefore, this Court is constrained to reject the argument. Coming to the second argument that the affidavit as contemplated under the Act has not been filed is also fallacious. Section 14 (2) of the Act only provides for the landlord to give an undertaking that the demolition would commence not later than one month from the building being handed over and completed before the expiry of three months from the date of recovering the possession of the entire building. In the petition, the respondent / landlord has made the following averment.

"மனுசொத்தின் அனுபவத்தை எதிர் மனுதாரர் / வாடகைதாரர் மனுதாரர் / உரிமையாளரிடம் ஒப்படைத்தவடன ஒரு மாத காலத்துக்குள் மனு சொத்தின் கட்டிட பகுதியை அப்ப,றப்படுத்தி அதிலிருந்து முன்று மாத காலத்திற்குள் கட்டிடத்தை கட்டி முடித்து விடுவார் என உறுதி கூறுகிறார் "

There is a specific compliance of Section 14(2)(b) of the Act. Therefore, this argument also fails. Both the Authorities below have appreciated the evidence produced by the Engineer and the Advocate Commissioner to come to the conclusion that the building requires to be demolished and they have also held that the respondent / landlord proved he has sufficient wherewithal to proceed with the demolition as well as re-construction of the demised premises.



9. Therefore, I do not intend to re-visit these findings of the Authorities below and accordingly, the Civil Revision Petition stands dismissed. The revision petitioner / tenant shall hand over the vacant possession of the property within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Rent Control Appellate Tribunal
/ Principal Sub Court, Madurai

2.The Additional District Munsif Court
/ Additional Rent Control Judge, Madurai Town

+1 CC to M/s.F.X.EUGENE, Advocate (SR-40128[F] dated 23/12/2021)

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-40150[F] dated 23/12/2021)

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22.12.2021

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