



C.R.P.No.3252 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

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

C.R.P.No.3252 of 2016

Shajahan

....

Petitioner

Vs

Rangasamy

....

Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act XXIII of 1973 and Act I of 1980 to set aside the fair and decretal order dated 16.11.2006 made in RCOP No.3 of 2006 on the file of the Principal District Munsif (Rent Controller), Villupuram as confirmed by the Judgment and Decree dated 27.07.2016 made in RCA No.1 of 2007 on the file of the Principal Sub Court, Villupuram.

For Petitioner : Mr.N.A.Nissar Hussain
For Respondent : Mr.Aditya Chandramouli
for Mr.S.Chandramouli

ORDER

This Civil Revision Petition has been filed to set aside the Judgment and Decree dated 27.07.2016 passed in R.C.A. No.1 of 2007 on



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the file of the Principal Subordinate Judge, Villupuram, thereby confirming the fair and decreetal order dated 16.11.2006 made in RCOP No.3 of 2006 on the file of the Principal District Munsif (Rent Controller), Villupuram, thereby dismissing the petition filed for eviction on the ground of wilful default and own occupation.

2. The petitioner filed an eviction petition on the ground of wilful default and own occupation. The petition premises is owned by the petitioner. The respondent was inducted as tenant and the rent was fixed at Rs.600/- for the petition premises. The petition premises is for commercial purpose and non-residential use. According to the petitioner, from 01.04.1993 to February 1994, the respondent paid a sum of Rs.30,000/- as advance. Subsequently, the petitioner required the petition premises and requested the respondent to vacate the premises. Though the respondent assured to vacate the premises, he failed to vacate the same. Thereafter, the petitioner raised the rent and enhanced it from Rs.600/- to Rs.800/- and finally Rs.1200/- during the month of May 2002. The respondent also paid an advance of Rs.1,50,000/-. Thereafter, the petitioner requested the



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respondent to vacate the petition premises for want of his own use to conduct business. When the petitioner insisted the respondent to vacate the premises as assured, the respondent asked for Pagadi to the tune of Rs.2,00,000/-. Again the petitioner requested the respondent to vacate the premises for the purpose to start up a business for his son.

3. While being so, the respondent filed a suit in O.S.No.26 of 2006 for permanent injunction restraining the petitioner from vacating the respondent without due process of law. Therefore, the petitioner filed a petition to direct the respondent to vacate the petition premises and deliver vacant possession of the property. The respondent filed a counter stating that so far as he paid a sum of Rs.2,00,000/- as advance and enhanced rent was also paid to the petitioner. Thereafter, the petitioner demanded an additional amount of Rs.2,00,000/- as advance and Rs.5,000/- as rent which was not agreed to be paid by the respondent. Therefore, the petitioner and his henchman attempted to vacate the respondent from the petition premises. Therefore, the respondent filed a suit for permanent injunction in O.S.No.26 of 2006 and obtained interim order of injunction. Insofar as the



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own occupation is concerned, the adjacent shops are vacant and as such, the petitioner can very well start up his business in the vacant shop. The petition premises is the only livelihood of the respondent.

4. On the side of the petitioner, he had examined P.Ws.1 & 2 and marked Exs.P1 to P3. On the side of respondent, R.W.1 was examined and marked R1 to R10.

5. On a perusal of the oral and documentary evidence, the learned Rent Controller observed that the petitioner failed to prove any arrear of rent and also recorded the respondent paid advance amount and it is lying with the petitioner. Insofar as the own occupation is concerned, the son of the petitioner is a BCA graduate and the business of grocery shop is not suitable for him. Therefore, the learned Rent Controller dismissed the RCOP. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and the order passed by the learned Rent Controller was confirmed. Aggrieved by the same, the present Civil Revision Petition.



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6. The learned counsel for the petitioner would submit that the respondent, being the tenant, cannot dictate any terms to the landlord. The landlord had chosen the particular shop for his own business. Though the petitioner proved his bonofide requirements, the Court below, without considering the same, mechanically dismissed the petition on the ground that the son of the petitioner cannot to do the business of grocery shop that too for selling Tamarind and Dry Chilli shop.

7. Per contra, the learned counsel appearing for the respondent would submit that except the petition premises, the petitioner is owns other shops in the same building, which is vacant. Therefore, he can very well start the business in the vacant shop. The petition premises is the only shop for the livelihood of the respondent. He further submitted that pending Civil Revision Petition, again the petitioner filed another petition for eviction in RCOP 6 of 2015 on the ground of wilful default in payment of rent and aggrieved by the same, the respondent preferred the RCA and the same was allowed in favour of the respondent and dismissed the petition for eviction by an order 29.08.2022. Therefore, the petitioner failed to establish



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that the respondent is in default in payment of monthly rent. He also produced the photographs to show that the adjacent shop is lying vacant.

8. In support of his contention, he relied upon the Judgment reported in *2021 3 LW 557* in the case of *M.K.Stores, rep. By its proprietor Mr.Mohamed Rafiq Vs. A.Syed Sulthan*, this Court held that the landlord seeking eviction of tenant from the non-residential premises under Section 10(3)(a)(iii) of the Act in order to succeed in his petition, should establish that the bonafide requirement of the premises in addition to proving the other ingredients referred in the Act.

9. Heard, Mr.N.A.Nissar Hussain, learned counsel appearing for the petitioner and Mr.Aditya Chandramouli, learned counsel appearing for the respondent and perused the materials available on record.

10. Admittedly, the petitioner is the landlord and the respondent is the tenant. The respondent was inducted as the tenant for a commercial shop. The petitioner filed a petition to evict the respondent on two grounds



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(i) wilful default and (ii) own occupation. Further, the petitioner has received a sum of Rs.2,00,000/- as advance and it is lying with the petitioner. Therefore, both the Courts below rightly held that the respondent did not commit any default on payment of monthly rent, since, though the respondent is not regular in payment of monthly rent, the advance amount is lying with the petitioner. Insofar as the ground of own occupation is concerned, the son of the petitioner is a BCA graduate. Mere qualification of BCA cannot be a ground to say that he will not conduct the business of grocery. Further, he had visited Kwait once it also does not mean that he got employment at Kwait. Whoever had visited abroad may not be for employment, it can also be as a tourist. Unfortunately, both the Courts below concluded that BCA graduate is not suitable for doing the grocery business. Further, though the adjacent shop is lying vacant, the respondent, being the tenant, cannot dictate any terms to the landlord.

11. In this regard, it is relevant to rely upon the Judgment reported in ***CDJ 2017 MHC 3655*** in the case of ***Nagasamy Chettiar, Rep. By his power of attorney agent N.Veeraraghavan Vs. Fathima Gani & Other***, this Court and the Hon'ble Supreme Court of India held as follows :



15. *In a case reported in 2004 (5) CTC 675, T.Sivakumar Vs.K.Prabhakaran, the learned single Judge of this Court has considered similar issue almost on similar set of facts and found that though the landlord or the person for whom the eviction sought for, is not already carrying on business the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business. At this juncture, it is to be noted that it is not necessary that in all the cases the landlord has to prove or show some materials that he has taken steps to commence the business. Such requirement depends upon the nature of each business. What is required to be seen most importantly is that as to whether the requirement is a bona fide requirement and if such bona fide is proved by material documents the landlord should succeed in his attempt. The bona fide may be proved even by showing the intention and the qualification or eligibility to start the business. When such intention coupled with eligibility is established, then the bona fide of the landlord has to be held proved and mere non preparation for commencement of the business cannot be put against such person in all the cases. In certain business, even the pre-commencement preparation could be done only after occupying the premises. Some would intend to do*



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petty business. Whether pre-commencement preparation is required or not is to be considered and decided based on the facts and circumstances of each case and there cannot be any universal formula for all the cases. Therefore, in this case when the landlord has proved the bon fide with sufficient materials by marking Exs.P3 to P7 and also by examining P.W.2 which evidence having not been rebutted by adducing any contra evidence by the tenant, I find that the landlord is entitled to an order of eviction ?

In 2007 (2) CTC 797, B. Kishore Auto Spares Vs. D.Maragathavalli, it is held that

“8. So far as the order non-residential portion is concerned, which is vacant, the Act does not say that if Landlord owns more than one non-residential building, he would be disentitled to an order of eviction. It is naturally open to the Landlady to choose which building she would require for occupation of business of P.W.2. Contention of Learned Counsel for the Revision Petitioner that the Landlady has other portion vacant and the Landlady's son could occupy anyone of those premises cannot be countenanced both factually and legally. According to Landlady, the other portion is insufficient to run Automobile business. Even assuming that other premises is available choice is left to the Landlady as to which non-residential



premises she should occupy and the tenant cannot dictate terms in this matter. Adverting to this aspect, the Appellate Authority has observed even the tenant is running Automobile business and his business requires three rooms, it would be unjust on his part to contend that in one single room. P.W.2 can commence his business.”

...

13. It is well settled that to invoke Section 10(3)(a)(iii) of the Act, it is enough that the Landlord makes bonafide preparations to commence business and it is not necessary that Landlord/Member of the family should be actually carrying on business on the date of the petition. Some of the decisions for tis proposition are : Arumugam Chettiar V. Jayaraman 1995(2) MLJ 282 ; Thirunavukkarasu V. Vasantha Ammal 1197(2) L.W. 607 ; Velmurugan Engineers Proprietor Ravendran V. Kaliappan 1998 (2) MLJ 472 ; Sivanraj V. Essakki Muthu and Jagathrakshagan and Ors. v. N.Futaree Bai and Ors. 1993(3) MLJ 303.

12. Thus, it is clear that in order to invoke the provision under Section 10(3)(a)(iii) of the Act, it is enough that the landlord makes bonafie preparations to commence business and it is not necessary that the landlord or members of the family should be actually carrying on business on the



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date of the petition. In the case on hand, the respondent produced photographs showing that the adjacent shop is also lying vacant and as such, the petitioner can very well start his business in the said shop. When the petitioner proved his requirement is bonafide one, the respondent cannot dictate any terms to the petitioner. It is well settled that though the landlord or the person for whom the eviction sought for, is not already carrying on business, the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business. Admittedly, the son of the petitioner has completed BCA graduation and he is not employed anywhere. Therefore, the petitioner decided to start the business for his son in the petition premises. It is proved to be a bonafide requirement and the petitioner is entitled the relief sought for. In a case of bonafide requirement, the respondent, who being the tenant cannot decide or dictate as to which portion of the premises is suitable for the landlord's son own use and occupation.

13. In view of the above, the Judgment and Decree dated 27.07.2016 passed in RCA No.1 of 2007 on the file of the Principal



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Subordinate Judge, Villupuram and the fair and decreetal order dated 16.11.2006 made in RCOP No.3 of 2006 on the file of the Principal District Munsif (Rent Controller), Villupuram, is hereby set aside only on the ground of own use and occupation. The respondent is directed to vacate the petition premises and hand over the same to the petitioner on or before 28.02.2023.

14. In the result, this Civil Revision Petition stands allowed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To

1. The Principal Subordinate Court,
Villupuram.

2. The Principal District Munsif (Rent Controller),
Villupuram

3. The Section Officer,
V.R.Section,
High Court, Madras.

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G.K.ILANTHIRAIYAN, J.

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