



C.R.P.No.752 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2022

DELIVERED ON : 21.12.2022

CORAM

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

C.R.P.No.752 of 2016
and C.M.P.Nos.4165 of 2016 and 2685 of 2017

Karpagam

.. Petitioner

Vs.

1. Gunasekaran

2. Vijayan

.. Respondents

Prayer : Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 as amended by Act 23 of 1973 to set aside the Judgment and decree passed by the learned Sub Judge, Tiruvallur made in R.C.A.No.1 of 2014 dated 27.10.2015 confirming the order and decretal order in R.C.O.P.No.15 of 2009 dated 20.03.2014 on the file of the District Munsif Court, Tiruvallur by allowing the Civil Revision Petition.

For Petitioner : Mr.Sandeep.S.Shah

for M/s Shah and Shah

For Respondents : Mr.A.S.Alaguraja



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ORDER

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This Civil Revision Petition has been filed as against the fair and final order passed in R.C.A.No.1 of 2014 dated 27.10.2015, on the file of learned Sub Judge, Tiruvallur, thereby confirming the order passed in R.C.O.P.No.15 of 2009 dated 20.03.2014 on the file of the District Munsif Court, Tiruvallur.

2. The first respondent is the landlord and the second respondent is the tenant in the petition premises. The first respondent filed a petition for eviction under Section 14(1)(b) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 (hereinafter called as “the Act”).

3. The case of the first respondent is that he purchased the petition premises from the erstwhile owner one R.A.Ibrahim and others by a registered sale deed dated 01.08.2008, vide Document No.8629 of 2008. The second respondent is the tenant under the previous owner. After purchase of the said property, the first respondent fixed monthly rent at Rs.1000/- per month. However, the second respondent failed to pay the said rent from the date of purchase of the said property. Further, the



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petition premises is an aged building and its condition is in a very danger position and it may collapse at any time. Therefore, the first respondent intended to demolish the building for re-construction. The first respondent also had undertaken to offer the second respondent for re-occupation after completing construction. Hence, the first respondent issued notice dated 27.07.2009 to the second respondent, thereby calling upon him to vacate the premises. Pending the petition for eviction, the second respondent's whereabouts was not known and as such the wife of the second respondent filed a petition to implead herself as respondent in the eviction petition. It was allowed.

4. She contested the eviction petition and also filed a counter. On the side of the first respondent, he had examined P.Ws.1 and 2 and marked Exs.P1 to 6. On the side of the petitioner, she had examined R.Ws.1 to 3 and marked Exs.R1 to 7. On a perusal of oral and documentary evidence, the learned Rent Controller allowed the eviction petition and directed the petitioner herein to vacate the premises, within a period of two months and further directed the first respondent to demolish the petition premises and reconstruct the same, within a period



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of three months. Aggrieved by the same, the petitioner preferred an appeal in R.C.A.No.01 of 2014 and the same was also dismissed confirming the order of eviction. Aggrieved by the same, the present revision.

5. The learned counsel for the petitioner would submit that insofar as the petition for eviction was filed on the ground of demolition and reconstruction under Section 14(1)(b) of the Act, the production of sanction plan from the concerned authority is mandatory, at least before the Executing Court. The landlord also failed to prove that he has got sufficient means to embark upon the project of demolition and reconstruction. The landlord also failed to let in any acceptable evidence in order to prove the ground of willful default and demolition and reconstruction. The eviction petition was filed under Section 14(1)(b) of the Act, whereas, the intention of the first respondent is to carry out the repair works by re-modeling the petition premises and thereafter, he undertakes to let out the same to the petitioner herein. If it is so, the first respondent ought to have filed a petition under Section 14(1)(a) of the Act. The first respondent also failed to give undertaking as contemplated



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under Section 14(2)(b) of the Act. Except the evidence of the first respondent, no other experts inspected the petition premises to find out whether it is in dilapidated condition or not. The first respondent also failed to prove the age of the petition premises so as to say it is in a dilapidated condition. The first respondent also failed to produce any order of demolition from the authorities concerned, since it is in dilapidated condition. Insofar as the willful default in payment of rent is concerned, the first respondent failed to produce any piece of evidence to show that the monthly rent was fixed at Rs.1000/-. Even when the second respondent was in occupation of the premises, as per the evidence of the first respondent, the second respondent was inducted as tenant only for Rs.300/- per month as monthly rent. That apart, he parted with huge amount as security deposit and as such the willful default would not at all arise. Further, the petitioner also filed a petition under Section 8(5) of the Act in R.C.O.P.No.5 of 2013 and it is pending. In the said petition, the petitioner is regularly depositing the rent and in fact the first respondent is permitted to withdraw the admitted rent. Therefore, the Courts below ought not to have ordered for eviction.

6. In support of these contentions, the learned counsel for the



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petitioner relied upon the Judgments cited in **2006 3 CTC 147** in the case of ***Duraisamy and others Vs.R.Sureshlal and another***, in **2005 5 CTC 585** in the case of ***M.Abu Tahir Vs.M.Rahamathulla***, in **2005 5 CTC 537** in the case of ***K.A.M.A.K. Nataraja Nadar & Sons, Iron Paint & Pipe Merchants, Vadasery, Vadasery Village, Agastheeswaram Taluk, Kanyakumari District and others Vs. R.Kannan*** and in **1989 LawSuit (SC) 434** in the case of ***Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao***.

7. Per contra, the learned counsel for the first respondent would submit that even before purchase of the petition premises, the second respondent was inducted as tenant. The second respondent admitted himself that he was paying rent to the erstwhile owner at Rs.1000/- per month. Admittedly, the petitioner did not pay the admitted rent of Rs.1000/- per month for the petition premises. The shop is situated in a busy market area and it fetches more than Rs.5000/- as monthly rent. The petition premises is also aged about more than 100 years and it will fall down at any time. Therefore, it requires immediate demolition for



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reconstruction. In fact, the first respondent categorically had undertaken before the learned Rent Controller that after demolition and reconstruction, the schedule mentioned premises will be offered to the petitioner for re-occupation. Therefore, the Courts below rightly ordered eviction and it does not require any interference by this Court.

8. Heard, Mr.Sandeep.S.Shah, learned counsel appearing for the petitioner and Mr.A.S.Alaguraja, learned counsel appearing for the respondents and perused the materials available on record.

9. The first respondent purchased the petition premises on 01.08.2008 from the said R.A.Ibrahim and others. Even before the date of purchase, the second respondent was inducted as tenant under the erstwhile owner. After purchase of the said property, the first respondent fixed the rent at Rs.1000/- per month payable by the second respondent. On the ground of demolition and reconstruction and on the ground of willful default of payment of rent, the first respondent filed a petition for eviction and issued notice. Pending petition, the second respondent's whereabouts was not known and as such the petitioner herein filed a



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petition to implead herself as respondent and the same was allowed.

Though, the petitioner marked some receipts for the money order, that would not be accepted as payment of rent. On receipt of the notice for eviction, a reply notice was issued by the tenant dated 04.10.2013, in which he admitted rent to the tune of Rs.500/- per month. The Rent Control Original Petition was filed in the year 2009. However, the petitioner filed R.C.O.P.No.05 of 2013 under Section 8(5) of the Act, to deposit the monthly rent, after a period of four years. If at all, the petitioner intended to pay the rent without fail, she would have filed RCOP, immediately after the confusion with regard to ownership of the petitioner premises.

10. Insofar as the quantum of rent is concerned, the petitioner categorically admitted that rent was demanded by the first respondent at Rs.1000/- as monthly rent and if she is not able to pay the said amount, the petitioner was directed to vacate the premises. She also admitted that the petition premises is located in the busy market area. The petition premises is aged about 100 years and it is tiled roof. Though, the learned



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counsel for the petitioner had produced Judgments to show that when the landlord intended to demolish the building for reconstruction, he ought to have shown his financial capacity, the first respondent proved that his requirements are bonafide one for demolition and reconstruction, since the petitioner herself admitted that the petition premises roof is a tiled one and aged about more than 100 years. It is under dilapidated condition.

11. Insofar as the willful default in payment of rent is concerned, admittedly the petitioner did not pay any rent and after four years, she filed RCOP under Section 8(5) of the Act. Even before the Court, the petitioner has not deposited the rent regularly and as such she committed willful default. Hence, the Judgments cited by the learned counsel for the petitioner are not applicable to the case on hand. Therefore, the Courts below rightly ordered for eviction on both the grounds.

12. Therefore, this Court finds no infirmity or illegality in the



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order passed by the Courts below and this revision is liable to be dismissed. The petitioner shall vacate the premises and hand over the same, within a period of three months from today i.e, on or before 10.03.2023.

13. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

21.12.2022

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

1. The Sub Judge, Tiruvallur.
2. The District Munsif Court, Tiruvallur.

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