



C.R.P.(NPD) No.2089 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : 27.05.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(NPD) No.2089 of 2020
and CMP. No.13208 of 2020
and CMP.No.5865 of 2021

L.Kutty

... Respondent / Appellant / Petitioner

Vs

V.Rajasekar

... Petitioner / Respondent / Respondent

Prayer : Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, to set aside the fair and decretal order dated 23.11.2017 passed in RCOP No.639 of 2015 on the file of the learned Rent Controller, XI Small Causes Judge, Chennai confirmed in fair and decretal order dated 11.02.2020 passed in R.C.A. No.839 of 2017 on the file of the IX Small Causes Court, Chennai.



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For Petitioner : Mr.G.Rajkumar

For Respondent : Mr.S.Packiaraj

ORDER

The tenant who had successively lost the eviction proceedings before the Rent Controller in RCOP No.639 of 2015, and before the Rent Control Appellate Authority in an appeal preferred by him in RCA No.839 of 2017, has approached this court in this revision. The eviction was sought under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called as the Act) and for own occupation under Section 14(1)(b) of the Act, for demolition and reconstruction. The building, admittedly is a commercial building.

2. The case of the landlord is that the building is over 40 years old, and he needs the property for demolition and reconstruction of the property, and also for his own occupation for commencing a business. The tenant would however, contend that the building is sound, and it does not require any demolition and reconstruction and that the landlord has other commercial buildings in the city where he is already carrying on business.



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3. The dispute went to trial, and during trial, the landlord entered the witness box, and examined himself as P.W.1, and produced Ext-P1 to Ext.P3, of which Ext.P2 is the planning permission and Ext.P3 is a building approval plan. The tenant did not enter the box, but instead examined a certain engineer as R.W.1 through who he has filed Ext.R1, the report of the engineer. This report pertains to the condition of the building in question.

4. The learned counsel for the revision petitioner submitted that:

- (a) The landlord as PW1, has admitted in his cross-examination that he is in possession of other commercial buildings in the city and therefore, is not entitled to seek eviction under Section 10(3)(a)(iii) of the Act.
- (b) Turning to his prayer for eviction under Section 14(1)(b) of the Act, the petition itself is laid on the strength of Ex.P2, a permission of the Corporation for demolishing the property within the meaning of Section 246-A of the Madras City Municipal Corporation Act, 1919 (hereinafter called as MCMC Act). This proceeding is not one under Section 274 of the MCMC Act, and the landlord/respondent herein has not taken out a



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commission for examining the engineer to provide material for the tribunals to come to the conclusion that the building indeed requires demolition. The landlord/respondent has not produced any other document to indicate that he has already taken preparatory steps for demolition and reconstruction. The tenant however, on his part has examined an engineer as RW1 before the tribunal, who made a statement before the court that the building might stand for few more years.

The learned counsel for the revision petitioner/tenant relied on ratio in ***Super Forgings & Steels (Sales) Pvt. Ltd.***, [(1995)1 SCC 410], ***M.K.Stores, rep. by its Proprietor Mr.Mohamed Rafiq vs. A.Syed Sulthan*** [(2021) 5 Mad LJ 266 and another decision of this court in ***Bata India Limited, rep. by its Manager vs. M.R.Manickam*** [2004 (1) CTC 94].

5. Per contra, the learned counsel appearing for the landlord/respondent herein submitted that so far as the ground - own occupation for non-residential purposes is concerned, since the filing of the petition, the landlord's son has completed his BDS degree, and he is now in search of a premises for setting up his clinic.



6. In response, the learned counsel for the respondent/landlord submitted that whether the building requires demolition and reconstruction must be assessed based on the current status of the building and not in anticipation, how it may stand for few more years.

7. The building is a non-residential building, and the landlord has sought eviction on two grounds :

- (a) That the landlord wants the said building for shifting his existing business situated in a certain lane to the main road;
- (b) That the building requires demolition and reconstruction.

Each of the grounds are mutually independent, though in the given case it can be inter-related, and the fact that in a given case the inter-relation sought to be projected has failed, it does not *ipso facto* imply the merit to each of the grounds, as an independent ground cannot be looked into.

8. In this case, the landlord states that he requires demolition and reconstruction of the building in question, that he was doing business in another premises, which is in a narrow lane, and that on reconstruction, he wants to shift his business to the



building proposed to be reconstructed since that would be facing the main road.

Here on the ground of own occupation for non-residential purposes under Section 10(3)(a)(iii) of the Act, the landlord appears to be on a slippery wicket. The statute requires that the landlord should be doing a business, and should not be owning any other buildings of his own for running his business. This admittedly is not the scenario here. Here the ratio of the judgment cited by the tenant surely come to his rescue. In the course of arguments, the counsel for the landlord/respondent submitted that one of the sons of the landlord has since become a dentist, the premises is now required for setting up a clinic for him. This Court does not find any material to support it, and it may not be appropriate for it to swap the reason for eviction in the middle of the proceedings without putting the tenant on notice about it.

9. This Court finds that the landlord has not established his bonafide for seeking eviction of the tenant under Section 10(3)(a)(i) of the Act. However, as outlined earlier, this does not foreclose the ground for eviction under Section 14(1)(b) of the Act. Here, the landlord claims that the building is old and requires demolition and reconstruction. It may be that he has pressed into service Ext.P2, which is a printed



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proceedings of Corporation of Chennai, which merely grants permission to landlord to demolish the building under Section 246-A of MCMC Act. But it does not take away the right of the landlord to seek demolition and reconstruction. It may be that the landlord may not have taken out a commission for inspecting the condition of the building, but then the tenant has taken out one. The Tribunals below did not want to rely on Ext.R1, the report of the engineer, but, it has to be underscored that even this engineer has indicated that the building is 40 years old, and that the building is not a RC building, but an old type Madras Roofed building. The landlord in his testimony as P.W.1 has testified that the building was about 40 years old, and to disprove or discredit it, the tenant has not even entered the witness box. Necessarily, the advantage is in favour of the landlord.

10. The view taken by the Tribunals below as concerning the grounds for eviction under Section 14(1) (b) is surely a plausible view on the basis of the evidence before them, and if the same have to be interfered by this Court under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, then the findings must be so perverse as to shake the conscience to move this Court to hold it as patently illegal and irregular. This Court does not find any such elements to impugn the



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order of the Tribunal. See : ***Hindustan Petroleum Corporation Ltd., Vs. Dilbahar***

Singh [(2014) 9 SCC 78].

11. In conclusion, the revision is liable to be dismissed, even though the tenant has partly succeeded as regards one of the ground for seeking eviction under Section 10(3)(a)(i) of the Act. Hence, the revision is dismissed accordingly. The revision petitioner / tenant is directed to deliver vacant possession within a period of six months from today. No costs. Consequently, connected miscellaneous petition is closed.

27.05.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
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To:

1.The Judge, IX Court of Small Causes
Chennai.

2.The Judge, XI Court of Small Causes
Chennai.



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N.SESHASAYEE.J.,

ds

Pre-delivery Order in
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