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C.R.P.No.2845 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2845 of 2022
and
C.M.P.Nos.15409 & 16833 of 2022

Tmt.R.Nalini

... Petitioner

Vs.

Tmt.R.Nirmala

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the fair order dated 07.07.2022 in Na.Ka.No.137/2022/A4 on the file of the Revenue Divisional Officer, Suramangalam, Salem.

For Petitioner

: Mr.A.Thiyagarajan
Senior Counsel
For Mr.S.Ramesh Kumar

For Respondent

: Mr.H.Ilyas Ahmed

ORDER

The Civil Revision Petition has been filed, questioning the validity of the order dated 07.07.2022 passed by the Revenue Divisional Officer, Suramangalam, Salem District.



2. The respondent filed a Petition No.137 of 2022 for payment of arrears of rent and for handing over the property back to the respondent.

The petitioner states that the respondent is the absolute owner of the property situated at Door No.4/43, Bharathi Street, Sornapuri, Salem-4. The petitioner and the respondent entered into an agreement on 22.03.2017. Based on the Leave and License agreement agreed to rent out the portion of the property to the extent of 3319 Sq.ft. in the commercial complex to the petitioner for carrying on textiles and jewellery business under the name and style of “Dhasha Silks and Jewellery” for the period of 4 years from 23.08.2017 to 31.08.2021 for a monthly rent of Rs.1,15,000/- (One Lakh Fifteen Thousand Rupees Only).

3. The petitioner states that the monthly rent is being paid regularly to the respondent. However, the respondent issued a legal notice on 20.12.2018 to the petitioner to vacate the premises. The petitioner sent a reply notice on 07.01.2019 and thereafter, the respondent instituted a suit in O.S.No.410 of 2019 on the file of the I Additional District Judge Court, Salem for the injunction and recovery of possession.



4. The petitioner states that they have invested Rs.2 Crores in the building and also paid a huge sum of Rs.6,50,000/- as interest free advance to the respondent. The respondent with the influence of the police officials in Fairland Police Station had attempted to illegally vacate the petitioner from the premises. The Police Station threatened the petitioner and asked to vacate the premises, failing which a false F.I.R will be filed. The petitioner submitted a Police complaint to the Commissioner of Police dated 09.01.2021. The Commissioner of Police conducted an enquiry and advised both the parties to follow the Civil Court proceedings as per the law. The respondent again sent a complaint to the Revenue Divisional Officer, Suramangalam, Salem, who in turn, passed an order on 07.07.2022, directing the petitioner to pay arrears of rent within a period of 30 days, failing which, the petitioner would be evicted from the scheduled premises by the Police Officials as per Section 21(2)(b) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [herein after referred as 'The Act']. Thus, the petitioner is constrained to move the present Civil Revision Petition.



5. The respondent objected the contentions raised by the petitioner by stating that the revision petitioner is the opposite party before the Revenue Divisional Officer. It is contended that the petitioner has defaulted in paying the monthly rent from August 2018. The respondent filed a suit for injunction and recovery of possession with arrears of license fee in August 2019 in O.S.No.410 of 2019. During the pendency of the civil suit, the revision petitioner wilfully denied the payment of license fee from August 2019 onwards.

6. The respondent lodged a Police complaint against the revision petitioner in November 2020 for wilful default in payment of license fee and requested the Police authorities to advice the petitioner to pay license fee atleast from January 2020 to October 2020.

7. Under these circumstances, the respondent approached the Revenue Divisional Officer, who in turn, considered the facts and circumstances and passed an order on merits. Thus, the Civil Revision Petition is to be rejected.



8. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the Revenue Divisional Officer has no jurisdiction to pass an order under Section 21(2)(b) of the Act. Under Section 21(2) of the Act, the Rent Court alone is competent to pass an order and the Revenue Divisional Officer usurped the powers of the Tribunal and thus, the order is directly in violation of the provisions of the Act and also passed without jurisdiction.

9. The learned counsel for the respondent contended that the Rent Authority is also an authority under the provisions of the Act and she has not ordered for recovery of possession directly. The District Revenue Officer passed an order to pay the rent within a period of 30 days, failing which, actions are sought to be initiated. Therefore, there is no irregularity and the Civil Revision Petition is to be rejected.

10. Let us consider the scope of the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. Section 2(i) defines “Rent Authority” means an officer appointed under Section 30. Section 2 (j) defines “Rent Court” means a Rent Court constituted under Section 32.



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11. Under Section 32, the Government may, by notification, constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it. It is not in dispute that the Rent Court has already been constituted and functioning.

12. Chapter V enumerates repossession of the premises by the landlord. Sub-Section (1) contemplates “A tenant shall not be evicted during the continuance of tenancy agreement except in accordance with the provisions of Sub-Section (2).

13. In the present case, it is not in dispute that the tenancy agreement continues. Therefore, the process for repossession of the premises by the landlord is to be taken only under the Sub-Section 2 to Section 21 of the Act.

14. Sub-Section 2 to Section 21 of the Act stipulates that “the Rent Court may, on an application made to it in the manner as may be prescribed, make an order for the recovery of possession of the premises on one or more of the following grounds:



“(b) that the tenant has not paid the arrears in full of rent payable and other charges payable as specified in sub-section (1) of section 13 for two months, including interest for delayed payment as may be specified for in the tenancy agreement or as prescribed, as the case may be, within one month of notice of demand for the arrears of such rent and all charges payable being served on him by the landlord in the manner provided in sub-section (4) of section 106 of the Transfer of Property Act, 1882 (Central Act IV of 1882):”

15. In the present case, the respondent filed a complaint before the Revenue Divisional Officer, stating that the petitioner has failed to pay the monthly rent to the respondent and therefore, he is liable to be repossessed from the premises. The Revenue Divisional Officer issued notice to the petitioner and passed an order for payment of arrears of rent and in the event of failure to recover the possession. As per Section 21(2) of the Act, the Rent Court alone has got powers to entertain an application made by the landlord and the Revenue Divisional Officer has no jurisdiction to entertain any such application under Section 21(2)(b) of the Act. When Section 21(2) of the Act contemplates that “the Rent Court may, on an application”, then



the Revenue Divisional Officer, who is the Rent Authority, has no jurisdiction to entertain an application under Section 21(2)(b) of the Act and passed an order. Therefore, the respondent if at all aggrieved, ought to have approached the Rent Court by following the procedures as contemplated under the Act.

16. The Revenue Divisional Officer, Suramangalam, Salem District, has erroneously exercised the powers under Section 21(2)(b) of the Act and thus, the order is to be construed as non est in law.

17. In view of the facts and circumstances, the order dated 07.07.2022 passed in Na.Ka.No.137/2022/A4 on the file of the Revenue Divisional Officer, Suramangalam, Salem District is quashed and the Civil Revision Petition stands allowed. Consequently, connected Civil Miscellaneous Petitions are closed. However, there shall be no order as to costs.

08.12.2022

Jeni/Kak
Index : Yes
Speaking order



To

The Revenue Divisional Officer,
Suramangalam,
Salem District.

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S.M.SUBRAMANIAM, J.

Jeni/Kak

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