



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1575 of 2013

WEB COPY

Balasubramanian

... Petitioner/Respondent/Petitioner
Vs.

Samsunisha

... Respondent/Appellant/Respondent

PRAYER:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair order and decretal order passed in R.C.A.No. 2 of 2009 dated 17.10.2012 on the file of the Rent Control Appellate Authority, (Subordinate Court), Tuticorin, reversing the order and decretal order passed in R.C.O.P.No.15 of 2005 dated 19.11.2008 on the file of the Rent Control Tribunal (Principal District Munsif-Cum-Judicial Magistrate Court) Tiruchendur by allowing this Revision.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mr.G.Rajaraman

ORDER

The landlord is the revision petitioner before this Court challenging the reversal of the eviction order passed by the Principal District Munsif cum Judicial Magistrate (Rent Controller), Thiruchendur, by the learned Subordinate Judge (Appellate Authority), Tuticorin, in R.C.A.No.2 of 2009.

2.The brief facts of the case are as follows:-

(i) The revision petitioner / landlord had filed RCOP No.15 of 2005 on the file of the Rent Controller/Principal District Munsif cum Judicial Magistrate, Thiruchendur, for eviction of the respondent/tenant on the ground of demolition and reconstruction. The revision petitioner would submit that the respondent had been inducted as a tenant on a monthly rental of Rs.5,000/- by way of an oral agreement. The tenant had also agreed to vacate and hand over vacant possession as and when required by the petitioner. The property consisted of four walls and the roof was tin-sheeted. The petitioner would submit that except for his property, all the other buildings are multi-storied and newly constructed buildings and the petitioner's properties stick out like a sore thumb. Therefore, the petitioner was desirous of demolishing the suit property and putting



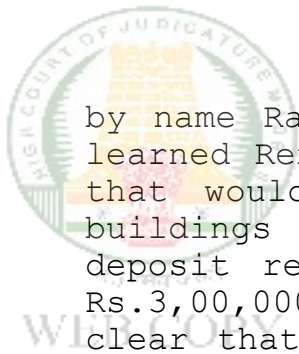
up a new constructions. He had requested the respondent/tenant to vacate the premises. However, the respondent did not come forward to vacate the same and therefore, the revision petitioner had come forward with the RCOP in question.

(ii) The respondent/tenant had filed a counter *inter alia* denying the contention that the the property was old and not in a good condition. The advantages pleaded by the landlord/petitioner around the petition premises was denied by the respondent/tenant. The respondent had also taken out the plea that the petitioner did not have the necessary wherewithal to construct the new building.

(iii) The Rent Controller on considering the evidence on record both oral and documentary, came to the conclusion that the claim of the landlord was *bona fide* and that eviction had to be ordered. Challenging the said order, the respondent/tenant had filed RCA No. 2 of 2009 on the file of the Sub Court (Appellate Authority), Thoothukudi. The appellate Authority proceeded to allow the rent control appeal. The Appellate Authority took it upon himself to arrive at the cost of construction of the property as submitted in the plan Ex.P1 and observed that the plaintiff did not have the necessary wherewithal since Ex.D3 deposit receipts does not belong to the respondent, but belongs to some third party and the landlord has not been able to establish the relationship between the deposit holder and himself. The Appellate Authority had examined the plan and opined that the cost of construction would be around a sum of Rs.10,00,000/-, which amount was not available with the petitioner/landlord and therefore, allowed the appeal. Challenging the same, the revision petitioner is before this Court.

3.The learned counsel for the revision petitioner/landlord would contend that the only ground on which the learned Judge had allowed the appeal was that the petitioner did not have the wherewithal to put up the construction. He would submit that the Hon'ble Supreme Court and this Court has held that there was no necessity for the landlord to prove the availability of funds, since today banking and financial institutions are available a dime and dozen to extend financial assistance. He would rely on the judgments of the Supreme Court reported in **2003(1) MLJ 189** in the case of **Syed Shah Mohammed Quadir and Amrijit Passayat** and **2006 (2) CTC 615** in the case of **S.Venugopal vs A.Karruppusami** and another as well as the judgment of this Court reported in **2004 (2) MLJ 153** in the case of **Habibullah Vs Mohamed Suitan**. He would submit that the learned Judge has *suo motu* entered a roving enquiry and exceeded his jurisdictions. Therefore, the order deserves to be set aside.

4.Per contra, the learned counsel appearing on behalf of the respondent would submit that the Court below has clearly found that the documents produced by the petitioner/landlord for proving his wherewithal did not relate to him, but related to some third person



by name Rameshwari. He would also refer to the discussion of the learned Rent Control Appellate Authority with reference to the cost that would be incurred for putting up the construction of the buildings as shown in Ex.P1, plan, coupled with the fact that the deposit receipts which have been produced was only for a sum of Rs.3,00,000/- and that too not in the name of the landlord. It was clear that the landlord did not have the necessary wherewithal to put up the construction. He would therefore submit that the order of the Appellate Authority should be sustained.

5.Heard the learned counsel appearing on either side and perused the records.

6.The only ground on which the learned Rent Control Appellate Authority had reversed the order of the Rent Controller was that the landlord had not been able to prove his wherewithal to put up the construction. The learned Appellate Authority has proceeded to arrive at the value of Rs.1,00,000/- as expenses for putting up the construction of each shop and had arrived at total cost of construction of Rs.10,00,000/-. This is the value that the learned Judge has *suo motu* arrived at, which is not based on any documentary evidence. The learned Judge in this regard has exceeded his jurisdiction. Further, the Hon'ble Supreme Court in the judgment reported in **2006 (2) CTC 650** has held that the failure of the landlord to give details regarding the source of income for constructions, will not militate against him, since there were several banks and financial institutions willing to advance funds. The same view had been taken by the learned Judge of this Court in the case reported in **2004 (2) MLJ 153**.

7.In the light of the above orders and the fact that the petitioner has produced the plan approval, Ex.P1, the Appellate Authority has committed an error in setting aside the order of the Rent Controller. Accordingly, the Civil Revision Petition is allowed and the order dated 17.10.2012 passed in R.C.A.No.2 of 2009 on the file of the Rent Contorl Appellate Authority/Sub Court, Thoothukudi, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To:-

- 1.The Subordinate Court,
Tuticorin.
- 2.Principal District Munsif-Cum-Judicial Magistrate,
Tiruchendur.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-4003[F] dated 03/02/2022)

C.R.P (MD) No.1575 of 2013

01.02.2022

_RD(24.02.2022) 4P 6C