



CRP(PD)(MD)No.800 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.800 of 2022

and

CMP(MD)No.3232 of 2022

P.Sundarajan

... Petitioner

versus

S.L.Chinnakuppusamy

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2021 made in C.M.A.No.9 of 2018 on the file of the Subordinate Court, Madurai, confirming the order dated 06.01.2018 made in C.T.O.P.No.1 of 2007 on the file of the Principal District Munsif, Madurai Town.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondent : Mr.S.K.Naganathan



CRP(PD)(MD)No.800 of 2022

ORDER

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This Civil Revision Petition is filed against the order dated 16.12.2021 made in C.M.A.No.9 of 2018 on the file of the Subordinate Court, Madurai, confirming the order dated 06.01.2018 made in C.T.O.P.No.1 of 2007 on the file of the Principal District Munsif, Madurai Town.

2. The petitioner is a tenant under the respondent in respect of a site at Kamarajar Salai, Madurai City. The respondent/landlord filed a suit in O.S.No.769 of 2007 for recovery of possession of the suit property. The petitioner/tenant had entered into a lease agreement with regard to a vacant site 50 years back and had also put up superstructure in the site. On receipt of summons in O.S.No.769 of 2007, the petitioner filed a petition in CTOP No.1 of 2007, under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921, before the Principal District Munsif Court, Madurai Town, within 30 days from the date of receipt of summon in the above suit. The trial Court, by its order dated



CRP(PD)(MD)No.800 of 2022

06.01.2018, dismissed the said petition, holding that the tenant/petitioner has failed to prove the market value of the site schedule property as required under Section 9(b) of the Tamil Nadu City Tenants Protection Act, 1921. Aggrieved over the same, the petitioner preferred an appeal in C.M.A.No.9 of 2018, before the Principal Sub Court, Madurai. The Appellate Court, by its Judgment dated 16.12.2021, dismissed the appeal, confirming the order dated 06.01.2018 passed by the learned Principal District Munsif, Madurai Town, in C.T.O.P.No.1 of 2007. Aggrieved over the same, the tenant/petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submits that the petitioner is in occupation of the property for the past 50 years and he had put up the superstructure in the site and hence, he is entitled to purchase the site from the plaintiff/respondent herein, as per the provisions of Tamil Nadu City Tenants Protection Act, 192. Therefore, he filed the petition in C.T.O.P.No.1 of 2007 under Section 9 of the



CRP(PD)(MD)No.800 of 2022

Tamil Nadu City Tenants Protection Act, 1921, within 30 days from the date of receipt of summons in the suit in O.S.No.769 of 2007. But, the Courts below were not justified in rejecting the petition and the appeal filed by the tenant/petitioner, without appreciating the ingredients of Section 9 of the Tamil Nadu City Tenants Protection Act, 1921.

4. The learned counsel appearing for the petitioner further submits that the petition filed for eviction in RCOP No.14 of 2004 and another petition filed for fixing the fair rent in RCOP No.16 of 2004 were dismissed on 25.04.2006 and 29.11.2006 respectively. Thereafter, the suit in O.S.No.769 of 2007 was filed for recovery of possession of the suit property.

5. The learned counsel for the petitioner further submits that the petitioner has come forward to purchase the vacant site of the landlord/respondent for the appropriate market value of the property



CRP(PD)(MD)No.800 of 2022

and also produced the documents. However, the Courts below have not appreciated the documents exhibited by the petitioner. Though the petitioner has also adduced additional evidence in the appeal in CMA No.9 of 2018, before the Principal Sub Court, Madurai, the Appellate Court has simply followed the order of the learned Principal District Munsif, Madurai, passed in CTOP No.1 of 2007 and also confirmed the same.

6. The learned counsel for the petitioner further submits that the Courts below are not justified in putting the blame only on the shoulders of the tenant/petitioner in the matter of determination of the market value of the vacant site owned by the respondent. Further, the First Appellate Court was misdirected by the narrow definition of the word “market value” and “date of order” in Section 9(1)(b) of the City Tenants Protection Act and the interpretations given by the First Appellate Court are untenable and unacceptable.



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7. The learned counsel for the respondent submits that though the tenant/petitioner filed a petition under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921, he has not complied with the mandatory requirement under Section 9(b) of the Tamil Nadu City Tenants Protection Act, 1921. Before the trial Court, the tenant/petitioner furnished the details about the guideline value of the property for the years 2007 to 2012 only, but, failed to establish the market value. Therefore, the trial Court has rightly rejected the application filed by the petitioner in C.T.O.P.No.1 of 2007.

8. The learned counsel appearing for the respondent further submits that the petitioner has dragged on the proceedings in C.T.O.P. No.1 of 2007 nearly for 10 years and finally, the said petition in C.T.O.P.No.1 of 2007 was disposed of in the year 2018. Though sufficient opportunity was available for the petitioner, the petitioner has failed to prove the market value of the property before the trial Court.



CRP(PD)(MD)No.800 of 2022

Therefore, the said petition in C.T.O.P.No.1 of 2007 was dismissed by the trial Court, holding that the petitioner has failed to prove the market value of the property. As against that order, the petitioner has also preferred an appeal in CMA.No.9 of 2018 before the Principal Sub Court, Madurai and also filed an application in I.A.No.10 of 2020 to produce the documents before the Appellate Court. The petitioner has also produced eight sale documents to establish the market value of the property. But, all the eight sale documents are pertaining to residential properties, which are very remote and far away from the petitioner's property. Further, these documents were also executed in the year 2004, 2005, 2008, 2009 and 2011 and not preceding to the year 2020.

9. The learned counsel for the respondent further submits that the property is a commercial property situated in the hot of the city. But, the petitioner has failed to utilize the opportunity even in the appeal and did not prove the market value of the property. Therefore, the Appellate Court has also rightly rejected the appeal and there is no



CRP(PD)(MD)No.800 of 2022

reason to interfere with. He further submits that by taking advantage of the proceedings, the petitioner has not paid any rent for the vacant site also.

10. This Court considered the rival submissions made and also perused the materials available on record.

11. The landlord/respondent has filed a suit for eviction in O.S.No.769 of 2007 before the District Munsif Court, Madurai. Before filing the suit, the landlord/respondent has also filed the petition for eviction in RCOP No.14 of 2004 and another petition in RCOP No.16 of 2004 for fixation of fair rent. Both the petitions were dismissed by the Rent Controller, holding that the suit property was let out only as a vacant site and the respondent/plaintiff is entitled to only an extent of 4 ½ feet in East-West and in North-South, 39 feet in Door Nos.251 and 251A, Kamarajar Salai, Madurai. Therefore, the landlord/respondent filed the above suit for recovery of possession of the suit property.



CRP(PD)(MD)No.800 of 2022

Within 30 days from the receipt of summons in the suit in O.S.No.769 of 2007, the petitioner herein has filed the petition in CTOP No.1 of 2007 under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921. In support of that petition, the petitioner has examined himself and a Junior Assistant of the Sub Registrar Office, Madurai, as P.W.2 and also marked Exs.P1 to P3. Ex.P1 is the petitioner's vendor's licence. Ex.P2 is the certified copy of the order passed in RCOP No.14 of 2004. Ex.P3 is the Advocate Commissioner's report. Through P.W. 1, documents Exs.X1 and X2 were marked. The authorization of P.W. 2 to give evidence from the Sub Registrar Office is marked as Ex.X1 and the guideline register is marked as Ex.X2. P.W.2 has admitted in his cross examination that the documents produced reveal only the guideline value of the properties. The market value of the property will be higher than Rs.3,000/- even during the year 2007.



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12. Section 9(b) of the Tamil Nadu City Tenants Protection Act, 1921, is extracted as under:

“9(b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall, then, fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.”

13. Admittedly, the petitioner has not produced any document to establish the market value of the property before the trial Court. Therefore, the trial Court dismissed the petition in C.T.O.P.No.1 of



CRP(PD)(MD)No.800 of 2022

2007. As against the order of the trial Court in C.T.O.P.No.1 of 2007, the petitioner has also filed an appeal before the Principal Sub Court, Madurai, in C.M.A.No.9 of 2018. After two years, the petitioner has filed an application in I.A.No.10 of 2020 under Order 41 Rule 27 C.P.C. to receive the additional documents as additional evidence. He has produced certain sale deeds pertaining to the years 2004, 2005, 2008, 2009 and 2011, not prior to the three years from the date of order. Further, the petitioner has not adduced any valid reason that in spite of due diligence, the above documents are not within his knowledge and the petitioner could not produce those documents before the trial Court. Therefore, the First Appellate Court, as per the decisions of the Hon'ble Supreme Court reported in **2004 5 CTC 74 (Bharat Petroleum Corporation Limited and another vs. N.R.Vairamani and another)** and **2006 5 CTC 587 (Thirunavukkarasu Mudaliar (Dead) by L.Rs. vs. Gopal Naidu (Dead) by L.Rs.**, rejected the interlocutory application and appeal also.



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14. The Hon'ble Supreme Court, in the case of ***Bharat Petroleum Corporation Ltd. and another vs. N.R.Vairamani and another***, reported in ***2004 (5) CTC 74***, has held as follows:

“14. Once a suit is filed by the landlord for the eviction of a tenant from land the tenant has right to apply to the Court within one month from the date of the service of summons for the issuance of order directing the landlord to sell the whole or part of the extent of land as specified in the application to him for a price to be fixed by the Court. On making of such an application, the Court is under a mandatory duty to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court must hold enquiry to determine whether the tenant requires the land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient enjoyment. The Court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant.”



CRP(PD)(MD)No.800 of 2022

WEB COPY

15. In view of the above, this Court is of the view that there is no error in the orders passed by Courts below. Accordingly, the Civil Revision Petition is dismissed.

16. Considering that the suit was filed in the year 2007, the Trial Court is directed to dispose of the suit in O.S.No.769 of 2007 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The trial Court shall decide the entitlement of compensation of the petitioner for the superstructure put up by him, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2022

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CRP(PD)(MD)No.800 of 2022

B.PUGALENDHI, J.

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To

1. The Subordinate Court,
Madurai.
2. The Principal District Munsif,
Madurai Town.

CRP(PD)(MD)No.800 of 2022

02.08.2022