



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1021 of 2019

and

C.M.P(MD) No.5642 of 2019

SIRAJUDEEN, ... Petitioner/Appellant/Respondent

Vs

1. S.DHILSATH BEGUM,

2. S.ABDUL KADHAR, ... Respondent/Respondent/Petitioners

PRAYER:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to set aside the Fair and Decretal Order dated 11.04.2019 in R.C.A.No.08of 2017 on the file of the Rent Control Appellate Authority/Principal Sub Judge, Dindigul, confirming the Fair and Decretal Order of the Rent Controller/Principal District Munsif, Dindigul in H.R.C.O.P.No.9 of 2013 dated 14.03.2017 and allow this revision.

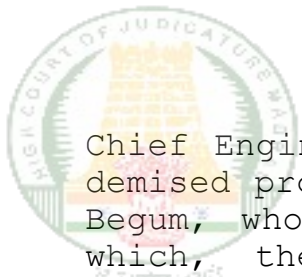
For Petitioners : Mr.A.Hariharan
For Respondents : Mr.H.Lakshmi Shankar

ORDER

The tenant is the revision petitioner before this Court. The above revision has been filed challenging the concurrent orders of eviction suffered by the revision petitioner.

2.The facts in brief are as follows:-

(i) The respondents / landlords had filed H.R.C.O.P.No.9 of 2013 on the file of the Principal District Munsif, Dindigul for eviction of the revision petitioner on the ground of demolition and re-construction. The demised premises is 130 sq ft shop premises situated in a shop complex bearing Door No.139, comprised in T.S.No.156, Big Bazar Street, Dindigul. The respondents would submit that the suit schedule property belongs to them and it was originally the property of V.S.S.Bathimunsha Begum. The respondents are residing at Salem. The rents were being collected by their power agent V.S.Malik. The first respondent is permanently residing at Salem and the second respondent is working in the TANGEDCO as a



Chief Engineer, from which post he had retired on 31.05.2012. The demised property was allotted to the share of the V.S.S.Bathimunsha Begum, who had executed the gift settlement deed. By reason of which, the respondents became entitled to the suit schedule property. The building thereon has been constructed as early as in the year 1930. The walls are all lime and mortar and the building is over 80 years old. The revision petitioner's father was originally a lessee in respect of their property and thereafter, the revision petitioner had occupied the same.

(ii) The second petitioner has retired from service and therefore, he is desirous of demolishing the suit property and putting up a storied building. By reason of this, the rents would increase and the income of the respondents would simultaneously also go on. The petitioner had been sending the rent by money order till May 2012. The respondents had requested the revision petitioner to vacate the premises vide their notice dated 16.07.2012 within period of 30 days and hand over the possession to the respondents. In the notice, it is also stated that the demand of rental advance of a sum of Rs.10,000/-, was in the hands of the respondents/landlords.

(iii) A reply was sent on 23.07.2012 by the revision petitioner/ respondent stating that the building is in a good condition and there is no necessity to put up the new construction. He had also informed that he was ready to pay additional advance and increased rent. The petition premises was not in a dilapidated condition requiring its demolition. The revision petitioner pleaded that the petition lacks bona fides.

(iv) After hearing the contention of both parties, the Rent Controller was pleased to order eviction. The revision petitioner herein had filed R.C.A.No.8 of 2017 on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Dindigul. The Appellate Authority also dismissed the said application. Challenging the concurrent judgment and decree, the revision petitioner is before this Court.

3.Mr.A.Hariharan, learned counsel appearing on behalf of the petitioner would make the following submissions:-

The order of the Court below is bad, since no evidence has been given with reference to the stability of the building, particularly, when the respondents seeks eviction on the ground of demolition and reconstruction, the demised premises is a small shop which is part of a row of seven shops and he would argue that the demolition of a small shop would cause damage to the other adjacent buildings, all of which, are wall to wall constructions. He would further submit that the estimate with reference to the property, has been given without actually visiting the same. The Engineer had not been examined on the side of the respondents/landlords. The petitioner had also taken a stand that the property tax continues in the name



of the predecessor in title of the respondents herein.

4.Mr.H.Lakshmi Shankar, learned counsel appearing on behalf of the landlords, would submit that the revision petitioner had denied the title of the respondents and therefore, he is liable to be evicted on the ground of denial of title as well. He has also argued that the respondents would take the utmost care while demolishing their portion and that apart, it is not for the tenant to canvas the feasibility of the demolition and it is only for the neighbouring owners to do so.

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

6.The petitioner/tenant had even in his counter questioned the right of respondents to the demised property. In fact, he has denied the title which is evident from a reading of ground Nos.11 to 15 of the rent control appeal filed before the Appellate Authority. The main contention of the tenant is that it is not possible for a single shop standing amidst adjoining shops, to be demolished without damage to the other properties and therefore, the request for eviction on the ground of demolition and reconstruction lacks bona fides. With the advancement in technology, it is possible to demolish a small portion of the building and leave the other portions intact. Further, it is not for the tenant to dictate these terms. It is for the adjacent owners to complain about the same. If the argument is accepted, then none of the old row houses having wall to wall construction, can be demolished without all the owners coming together. This argument of the tenant is therefore totally incorrect. Admittedly, the building is over 80 years old and is situated in a busy market area. The landlords have proved that they have necessary wherewithal to demolish and put up construction. Therefore, both the Authorities below have rightly concluded that the landlords had proved their case for seeking eviction on the ground of demolition and reconstruction. This Court, sitting in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, does not propose to re-appreciate the evidence, particularly, when the petitioner/tenant had not made out the case to show that the orders suffers from an infirmity or the same is perverse.

7.In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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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.

To:-

1.The Rent Control Appellate Authority/
Principal Sub Judge,
Dindigul.

2.The Rent Controller/
Principal District Munsif,
Dindigul.

Copy to

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

+1 CC to M/s.A.HARIHARAN, Advocate (SR-1561[F] dated 12/01/2022)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-1541[F] dated 12/01/2022)

C.R.P (MD) No.1021 of 2019
and
C.M.P (MD) No.5642 of 2019
12.01.2022

CK (CO)

KB (18.02.2022) 4P 7C