



C.R.P.No.108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.108 of 2023 and
C.M.P.No.828 of 2023

B.K.Vasanth Plastics Industries
Rep by its Prop. S.Badal Kumar [died]

1. B.K.Rajkumar
[impleaded vide order dated
28.10.2010 in M.P.No.285 of 2010] .. Petitioner

VS

1. D.Babulal
2. D.Ramesh Kumar
3. D.Mahendra Kumar
4. D.Parveen Kumar .. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to allow the above civil revision petition, and set aside the fair and decretal order dated 19.12.2022 passed in E.P.No.644 of 2022 in R.C.O.P No.2137 of 2007 by the learned XIV Judge Court of Small Causes, Chennai.

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For Petitioner : Mr.Ashok Menon
For Respondents : Mr.T.T.Ravichandran
for Mr.M.Balasubramanian

ORDER

The civil revision petition has been filed to set aside the fair and decretal order dated 19.12.2022 passed in E.P.No.664 of 2022 in R.C.O.P.No.2137 of 2007.

2. The revision petitioner is the judgment debtor / tenant. The respondent landlord / decree holder instituted proceedings for eviction under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for brevity, “the Act”). The eviction petition was filed on the ground of demolition and reconstruction, since the subject building was very old. It is not in dispute that the revision petitioner / tenant is in occupation in the subject premises for the past 52 years. The landlord took a decision to demolish and reconstruct the building and accordingly approached the Rent Controller for eviction of the tenant. It is not in dispute



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that the R.C.O.P filed by the landlord in R.C.O.P.No.2137 of 2007 was allowed and the R.C.A filed by the revision petitioner / tenant was dismissed.

3. The landlord / decree holder filed E.P.No.664 of 2022 for execution of the decree. The said execution petition was allowed on 19.12.2022 and delivery was ordered and delivery was directed on 20.01.2023. At the stage of the delivery, the revision petitioners have chosen to file the present civil revision petition mainly on the ground that the respondent / landlord failed to furnish a copy of the approved plan from the local authority and therefore, the revision petitioner is not to be evicted from the subject premises.

4. In this regard, learned counsel appearing on behalf of the revision petitioner mainly contended that the respondents have filed an order for demolition issued by the Competent Authorities, but, they have failed to mark any documents regarding the plan approval and therefore, they are not



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entitled to seek possession of the subject premises based on the decree passed by the Rent Controller and the Rent Controller Appellate Authority.

5. In this regard, the learned counsel for the revision petitioner relied on the judgment of the Supreme Court of India in the case of ***Harrington House School Vs. S.M.Ispahani*** reported in ***[2002 (2) CTC 549]***, wherein, the Apex Court made an observation that, “the decree as passed in High Court is sustained, but, it is directed that the landlord shall submit the plans of reconstruction for the approval of the local authority. Only on the plans being sanctioned by the local authority the decree for eviction shall be available for execution. Such sanctioned or approved plans shall be produced before the Executing Court whereupon the Executing Court shall allow a reasonable time to the tenant for vacating the property and delivering possession to the landlord-decreeholders. Till then the tenant shall remain liable to pay charges for use and occupation of the suit premises at the same rate at which they are being paid. Along with the plans the landlords shall also file an undertaking before the Executing Court as



required by clause (b) of Sub-section (2) of the Section 14 of the Act.”

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6. Relying upon the above judgment, learned counsel for the revision petitioner reiterated that the Execution Court has failed to consider the ratio laid down by the Apex Court and thus, the order impugned in the present revision petition is to be set aside.

7. Learned counsel on behalf of the respondents raised an objection by stating that the revision petitioner is continuing in the subject premises for the past 52 years and the lease period already expired long back. The respondent / landlord have decided to demolish the building, since it is in a dilapidated condition. Accordingly, the landlord furnished the copy of the order for demolition of the building alone, since, he has not filed any documents regarding reconstruction and no plan approval issued by any Competent Authority. More so, even in the execution proceedings, if such planning approval was filed, that does not entitle the revision petitioner / tenant for any relief in the execution proceedings.



WEB COPY 8. Learned counsel appearing on behalf of the respondent contended that the judgment relied upon by the petitioner is not applicable with regard to the facts and circumstances of the present case. The facts involved in the judgment of the Supreme Court, cited *supra*, are distinguished and more so, in the said case, there is an observation by the Supreme Court that, “though the plan of the proposed reconstruction is ready with the landlords but the same has not been submitted to the Municipal Authority till now. For this omission the explanation given by the landlords through S.A.Ispahani, P.W.1 is that a substantial amount is charged by the local authority by way of fee for sanctioning the plans for reconstruction and if the reconstruction is not carried out within a limited time the sanction has to be kept renewed periodically for which the local authority again charges a substantial amount by way of renewal fee.”

9. Relying upon the above paragraphs of the very same judgment ***Harrington House School*** case (*surpa*), the learned counsel for the



respondents stated that, in the present case also, the R.C.O.P was instituted in the year 2007 and the execution petition was filed in the year 2022.

Therefore, even in case the plan approval was obtained, the time limit would have expired during the relevant point of time and in the present case, the landlord submitted an order of demolition issued by the Competent Authority for demolishing the building and a separate application was filed by the landlord for the purpose of getting plan approval individually.

10. This Court is of the considered opinion that, admittedly, the respondent / landlord filed an order of demolition issued by the Competent Authority. As rightly contended by the respondents that the proceedings are pending for the past 15 years and the lease expired long back. Even in case the building plan approval was obtained by the landlord in the year 2007, at the time of filing of the R.C.O.P, the time limit would have expired long back. However, in the present case, the landlord filed an order of demolition issued by the competent authority and would be sufficient for the purpose of evicting the tenants. If demolition is carried out, then, the landlord shall file



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an application for obtaining building plan approval and therefore, the said ground raised on behalf of the petitioner is of no value for the purpose of setting aside of the order passed in the execution proceedings.

11. The R.C.O.P and the Rent Controller appeal were decided on merits. More so, the civil revision petition filed before the High Court is also dismissed and therefore, the order of eviction became final after a lapse of 15 years. The revision petitioner / tenant has been in the occupation of the premises for the past about 52 years. The lease period already expired long back. Thus, the tenant has no right to continue in the premises by prolonging or protracting the issues any further. Non-filing of the plan approval by the landlord would not be a ground for seeking continuous occupation in the subject premises as tenants and the landlord admittedly filed an order of demolition which would be sufficient for the purpose of evicting the tenant and therefore, this Court do not find any reason to interfere with the order passed in the execution proceedings.



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12. The Execution Court passed an order on 19.12.2022 and delivery was ordered on 20.01.2023. This being the facts and circumstances, the revision petitioner cannot take any further advantage for the purpose of dragging on the proceedings, since they are in occupation of the subject premises for the past 52 years and the landlord succeeded before all the Courts and eviction was ordered long back and therefore, there is no impediment for evicting the revision petitioner from the subject premises without any further loss of time.

13. With these observations, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There will be no order as to costs.

Speaking Order/Non-Speaking Order.

19.01.2023

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No

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To

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

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S.M.SUBRAMANIAM, J.

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