



CRP.No. 1254 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1254 of 2021

and

CMP.No.21829 of 2022

N. Shanthi

.. Petitioner

Versus

S. Guruswamy

.. Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (LEASE AND RENT CONTROL) Act 18/1960 as amended, praying to set aside the order dated 15.12.2020 passed by the learned IX Judge Court of Small causes at Chennai, R.C.A.No.15 of 2018 confirming order passed by the Learned XIII Judge, Court of Small Causes Chennai, in R.C.O.P.No.299 of 2014 dated 09.10.2017.

For Petitioner

: Mr. M.Balasubramanian

For Respondents

: Mr. P.B. Ramanujam



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 15.12.2020 passed by the learned IX Judge Court of Small causes at Chennai, R.C.A.No.15 of 2018 confirming order passed by the Learned XIII Judge, Court of Small Causes Chennai, in R.C.O.P.No.299 of 2014 dated 09.10.2017

2. Brief facts set out in the petition are as follows:

2.1. The Revision Petitioner herein is the appellant and the respondent herein is the respondent in RCA.No. 15 of 2018 before the learned IX Judge, Court of Small Causes Chennai. The Appellant is the tenant in the subject property and the mother of the Respondent is the lessee as the land belongs to Parthasarathy temple.

2.2. The subject property was let out to the Appellant herein for a monthly rent of Rs.6,000/- per month to carry out Air Condition Mechanic work, but the respondent is running Automobile works shop and doing all kind of repairs i.e, finkering painting, polister and creating



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air and noise pollution, which causes heavy sound and pollution. Hence the Respondent's mother who is aged about 89 years was greatly affected.

2.3 The further case of the Appellant/tenant is that his son is fully qualified in developing Computer Software and he wants to develop his business activities in the subject property. Hence the Respondent insisted the petitioner to vacate the subject property, but the petitioner does not vacate the premises and filed R.C.O.P.No.299 of 2014 before the XIII Judge, Court of Small Causes, Chennai, wherein the Rent controller directed the petitioner/tenant to vacate the subject property and handover the same to the Respondent.

2.4 Challenging the same, the the Respondent herein/tenant preferred an appeal in RCA.No.15 of 2018 before the the Learned IX Judge, Court of Small Causes Chennai, who dismissed the appeal vide order dated 15.12.2020 and confirmed the order passed in R.C.O.P.No.299 of 2014 before the XIII Judge, Court of Small Causes, Chennai. Challenging the same the petitioner has come up with this Revision petition.



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3. The learned counsel appearing for the Revision petitioner submitted submitted that the petitioner is using the subject property for which it was leased out and he is not carrying out any other work. He further submits that the mother of the Respondent is only a leasee as the land belongs to the Parthasarathy temple. Hence he prays to allow this petition.

4. The learned counsel for the Respondent submitted that the petitioner is using the subject property for automobile works which causes nuisance to the neighbours and he wants the property to carry out his personal work in the subject property. Hence he seeks a direction of this Court to the petitioner to vacate the subject property.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused materials available on record.



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6. Before advertizing further it would be relevant to extract Section 10(2)(i), 10(2)(ii)(b) and 10(3)(a)(iii) of the Act and the same is extracted hereunder:-

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied-

(i) That the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable or

(ii) that the tenant has, after the 23rd October 1945 without the written consent of the landlord,-

(b) used the building for a purpose other than that for which it was leased, or



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Section 10(3) (I) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(iii) In case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or (any member of his family) is carrying on, a non-residential building in the city, town or village concerned which is his own.

On a bare reading of the above provisions, makes it clear that there was a land lord can insist the tenant to vacate the subject property on applying the above provisions.

7. Two question arises for consideration in this petition (i) Whether the petitioner was default in payment of rent. (ii) Whether the petitioner was using the subject property other than that what it is allotted

7.1 With regard to point No.1 Whether the petitioner was default in payment of rent it is made clear that initially there was a arrears of rent and which was recorded by this Court vide order dated 22.07.2021.



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However, as per the directions of this Court the petitioner has paid the arrears of rent and the same was also recorded by this Court vide order dated 22.07.2021.

7.2 With regard to point No.2 Whether the petitioner was using the subject property other than that what it is allotted. R.W.1 in her evidence admitted that while doing car mechanic work more sound will be produced. Therefore it is determined that respondent is a different user.

7.3 The subject property was let to the petitioner for running a Mechanic shop and the same was admitted by the RW1. Though tenancy is for commercial it does not mean that any sought of business can be carried in rental premises. It is necessary that consent has to be obtained for changing the nature of business in the said premises which is not done by the respondent.

8. Considering the aforesaid facts and circumstances of the case, that the Respondent have let the subject property for rent with a *bona fide* intention and the petitioner ought to have vacated from the premises as the landlord require the subject property.



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10. In view of the forgoing reasons this C.R.P is dismissed and the order dated 15.12.2020 passed by the learned IX Judge Court of Small causes at Chennai, R.C.A.No.15 of 2018 confirming order passed by the Learned XIII Judge, Court of Small Causes Chennai, in R.C.O.P.No.299 of 2014 dated 09.10.2017 is confirmed. This Court further directs the petitioner to vacate from the premises in question and handover the possession of the same to the respondent on or before 30.05.2023 without fail, failing which the Respondent can evict the petitioner/tenant though the help of local police if necessary . There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2023

Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
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To



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1. The IX Judge, Court of Small Causes, Chennai
2. The XIII Judge, Court of Small Causes, Chennai.
3. The Section Officer, V.R.Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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