



CRP.No. 1206 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 1206 of 2020

Tajunnissa Bivi

... Petitioner

Versus

Jainudin

.. Respondent

Civil Revision Petition filed under Section 25 of Tamil Nadu Lease and Rent Control Act 18 of 1960, praying to set aside the fair and final order made in RCA. No. 8 of 2018 on the file of Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai, dated 27.01.2020 reversing the fair and final order made in RCOP. No. 6 of 2014 on the file of Rent Controller (District Munsif), Sirkali, dated 12.10.2018.

For Petitioner	:	Mr. B. Jawahar
For Respondent	:	Mr. A. Muthukumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order made in RCA. No. 8 of 2018 on the file of Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai, dated 27.01.2020 reversing the fair and final order made in RCOP.No. 6 of 2014 on the file of Rent



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Controller (District Munsif), Sirkali, dated 12.10.2018.

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2. The revision petitioner herein is the landlord and the respondent herein is the tenant in RCOP No. 6 of 2014.

3. The revision petitioner has filed RCOP. No. 6 of 2014 under Sections 10 (2) (i), 10 (3) (a) (iii) and 10 (2) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 praying to direct the respondent-tenant to vacate and hand over the vacant possession of the property in question on the grounds of (i) wilful default in payment of rent (ii) causing damage to the property and (iii) for owner's own use and occupation.

4. According to the revision petitioner, during the year 1991, the premises in question was let out to the respondent herein for rent for carrying non-residential business, where the respondent has been running a fancy store. Initially, a rental agreement was entered into between the parties and lastly it was renewed on 08.05.2011 as per which the rent for the premises in question was Rs.3,000/- per month. According to the revision petitioner, contrary to the agreement, the respondent failed to pay the admitted rent for a period of one year between May 2013 and February 2014 and therefore, the petitioner had



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deducted a sum of Rs.30,000/- out of Rs.79,000/- paid as advance. Thereafter, when the petitioner demanded the respondent to vacate and handover the vacant possession, the respondent agreed to do so, however, she had sent a notice dated 13.08.2013 through her advocate with false and untenable averments. In the notice dated 13.08.2013, it was falsely averred as if rent was paid month after month without any default. Therefore, on 12.11.2013, revision petitioner sent a reply notice stating that the rent was not paid for a period of one year and that the respondent indulged in acts of waste and causing damage to the property by converting it without her consent. It was also stated that the children of the revision petitioner are without any employment and therefore, to enable them to carry on their own business, the petition mentioned premises is required for her own use and occupation. On receipt of the reply dated 12.11.2013, the respondent sent a rejoinder dated 25.11.2013 with vexatious averments. Notwithstanding the same, the respondent also filed RCOP No. 9 of 2013 under Section 8 (5) of the Act praying to permit her to deposit the rent into the Court by projecting as if the revision petitioner refused to receive the rent. Thereafter, the petitioner has filed the instant case in RCOP No. 6 of 2014 for the reliefs stated supra.



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5. The respondent filed a counter opposing the relief prayed in RCOP No. 6 of 2014 by contending that from July 2013, the revision petitioner refused to receive the rent without any reasons and therefore, it led to exchange of notice between the parties. It is further stated that on 22.10.2013, a money order was sent to the revision petitioner for Rs.9,000/- towards rent for three months from July, August and September 2013, but she refused to receive it. In such circumstances, the respondent was forced to file RCOP No. 9 of 2013 and deposited the rent. Thereafter, the respondent filed a memo on 18.03.2016 stating that she is willing to receive the rent and based on the same, an order dated 02.04.2016 was passed directing the respondent to pay the rent. In the counter, the respondent also denied the averments relating to acts of waste or damage caused to the petition mentioned property. It was also stated that the demand for vacating the property on the ground of owner's own use and occupation is not bona fide but mala fide inasmuch as the sons of the revision petitioner are already carrying on their business selling betel nut, beeda and fancy store. Therefore, the respondent prayed for dismissal of the Original Petition.

6. Before the Rent Controller, Mr. Mubarak Ali, son of the revision petitioner was examined as PW1 and Exs. P1 to P12 were marked. On behalf



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of the respondent, Mr. Jainudeen was examined and Exs. R1 to R3 were marked. Exs. C1 and C2 were also marked as Court Exhibits.

7. The Rent Controller, on appreciation of the oral and documentary evidence concluded that the respondent cannot be regarded as a wilful defaulter in payment of rent inasmuch a sum of Rs.79,000/- was in the hands of the landlord towards advance besides that the respondent has filed RCOP No. 9 of 2013 and proved her bona fides. As regards the acts of damages caused to the petition mentioned premises, the learned Rent Controller, based on Exs. C1 and C2, report of the advocate commissioner, concluded that the respondent-tenant has installed Air Conditioner in the premises and for installation thereof, she had caused damages to the premises. It was also concluded that before installing the air-conditioner, the respondent did not obtain prior permission from the landlord. The Rent Controller also concluded that the demand of the revision petitioner-landlord for handing over the property to enable her sons to carry on business in the premises in question is bona fide. Accordingly, the Rent Controller allowed the Original Petition on the grounds of (i) causing acts of damages to the petition mentioned premises and (ii) owner's own use and occupation and directed the respondent to handover the vacant possession of the premises within two months.



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WEB COPY 8. Challenging the order dated 12.10.2018 passed in RCOP No. 6 of 2014, the respondent filed R.C.A. No. 8 of 2019 before the Appellate Authority. The Rent Control Appellate Authority allowed the appeal on the ground that installation of air-conditioner will not amount to causing damages to the rented premises. In support of such conclusion, the Appellate Authority relied on the decision of this Court in the case of *Lingam and another vs. Dhandayudapani* reported in 2004 (3) *Law Weekly* 369. As regards the plea of the landlord that her sons are unemployed and the premises is required for her own use and occupation, the Appellate Authority, pointing out the admission of PW1 concluded that already one of the sons of the revision petitioner-landlord is running a fancy store business but that was suppressed in the Original Petition. Accordingly, the Appellate Authority concluded that the demand of the landlord to use the premises in question for carrying on business for her sons is not bona fide. Consequently, the Appellate Authority allowed the Rent Control Appeal filed by the respondent herein.

9. The learned counsel for the revision petitioner submits that the Appellate Authority failed to note that it is not for the tenant to dictate to the landlord as to in which place or building her sons could carry on a business of



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their choice. The demand made by the revision petitioner to induct her sons into business in the petition mentioned premises cannot be said to be mala fide purportedly to vacate the respondent-tenant from the premises. The Appellate Authority, on the basis of admission of PW1, has only concluded that one of the sons of the revision petitioner is carrying on fancy store business. However, the Appellate Authority failed to note that if the premises in question is vacated, her sons could re-locate the business and carry on the business in the premises in question without payment of rent. The Appellate Authority failed to take note of the report under Exs. C1 and C2 wherein it was clearly stated that damages have been caused to the floors. Further, the tenant has stated that she had obtained consent from the landlord during 10th June 2014 for installation of air-conditioner, but she has filed the Original Petition on 21.03.2014 itself. When Original Petition was filed against the landlord, it shows that dispute had arisen among the parties and thereafter, it could only be imaginary that the landlord permitted the tenant to install the air conditioner in the premises in question. In any event, the order passed by the Appellate Authority, reversing the well considered order of the Rent Controller, is perverse and contrary to the evidence made available. Therefore, the learned counsel for the revision petitioner prayed for allowing this revision.



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10. Per contra, the learned counsel for the respondent-tenant would submit that the Appellate Authority has rightly held that merely installing air conditioner will not amount to causing damages to the property. It is also not the case of the revision petitioner that extensive damages were caused to the property by any other means, except installation of air-conditioner. Further, the Appellate Authority, on the basis of admission of PW1 has rightly held that the demand of the revision petitioner to vacate and handover the property to enable her sons to carry on business is not bona fide. Such a conclusion has been arrived at by the Appellate Authority on the basis of evidence made available. While so, interference of this Court is not warranted in exercise of the powers conferred under Section 25 of the Rent Control Act and prayed for dismissal of the revision petition.

11. Heard the counsel for both sides and perused the evidence on record.

12. The relationship between the parties as landlord and tenant is not in dispute. It is also not in dispute that the respondent is a tenant under the petitioner since 1991 where she is running a fancy store.

13. In this revision petition, both sides did not canvass the ground with



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respect to willful default in rent. In other words, the trial court dismissed the

Original Petition relating to the plea of wilful default in rent and it was not appealed against before the Appellate Authority. Before the Appellate Authority, only two grounds have been urged namely (i) whether the respondent is guilty of causing damages to the petition mentioned premises and (ii) whether the plea of the revision petitioner to vacate and handover the possession of the property for being used for her own use and occupation is bona fide or not.

14. With respect to the plea of causing damages to the petition mentioned premises, the respondent would contend that on 10.06.2014, oral permission was obtained from the son of the revision petitioner for installation of air conditioner. However, the Original Petition was filed on 21.03.2014. After filing the Original Petition, it cannot be said that the respondent would have obtained the oral permission or the revision petitioner or her son permitted the respondent to install the air-conditioner. When there are exchange of notices between the parties in which the revision petitioner demanded the property to be vacated, it cannot be gainsaid that son of the revision petitioner could have consented for installation of air conditioner on 10.06.2014. This was rightly appreciated by the learned Rent Controller in



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para Nos. 18 to 22 of the order. As already noted, after exchange of notices between the parties, the respondent said to have orally obtained the consent of the son of the revision petitioner to install the air-conditioner in the premises. Even though installation of air-conditioner may not materially alter the structure of the building, yet, it is proved that without any consent or knowledge of the landlord, the air-conditioning was installed during which damages were caused to the floors. This was noticed by the advocate commissioner in his report under Exs. C1 and C2. Therefore, on this ground also, the revision petitioner is bound to succeed. As already noted, after exchange of notices between the parties, the respondent said to have orally obtained the consent of the son of the revision petitioner to install the air-conditioner in the premises. Even though installation of air-conditioner may not materially alter the structure of the building, yet, it is proved that without any consent or knowledge of the landlord, the air-conditioning was installed during which damages were caused to the floors. This was noticed by the advocate commissioner in his report under Exs. C1 and C2. Therefore, on this ground, the revision petitioner is bound to succeed.

15. As regards the plea of owner's own use and occupation, on appreciating the deposition of PW1, the Rent Controller concluded that PW1



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was not specifically cross-examined as to the door number of the shop where he is carrying on business etc., Thus, the Rent Controller concluded that the suitability of the shop where PW1 or his brother are carrying on business are not elucidated. The fact remains that the sons of the revision petitioner are carrying on non-residential business and if the petition mentioned premises is vacated, they may re-locate their business. Further, the respondent is a tenant since 1991 and at that time, there may not be any necessity for the revision petitioner to think that their sons may also carry on business. Now, the sons of the revision petitioner have grown and to enable them to carry on business, without payment of rent, a bona fide request was made to the respondent to vacate the petition mentioned premises. Further, the respondent has not produced any evidence to show that the revision petitioner owns other properties where she can accommodate her sons to carry on business. However, the respondent has not produced any documents to prove that the landlord is also having other lands in the same locality which she can utilise for her sons to carry on the business. In the absence of such evidence, the requirement of the revision petitioner must be held to be *bona fide*. However, the Appellate Authority, on an isolated reading of deposition of evidence of PW1, concluded in para No.13 that the landlord suppressed the fact that one of her sons is already carrying on fancy items business. The Appellate Authority



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did not go into the fact as to whether the landlord is having any other property of her own in the same locality to accommodate her sons to carry on business.

Therefore, the order passed by the Appellate Authority is legally not sustainable.

16. In the result, the order dated 27.01.2020 passed in RCA. No. 8 of 2018 on the file of Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai is set aside and the order dated 12.10.2018 passed in RCOP. No. 6 of 2014 on the file of Rent Controller (District Munsif), Sirkali, dated 12.10.2018 is restored. Consequently, the Civil Revision Petition is allowed. No costs. The respondent is directed to vacate and handover vacant possession of the property in question to the revision petitioner within a period of three months from the date of receipt of a copy of this order.

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Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

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- To
1. The Rent Control Appellate Authority (Principal Sub Court),
Mayiladuthurai.
 2. The Rent Controller (District Munsif), Sirkali.
 3. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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