



WEB COPY



C.R.P.No.1323 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1323 of 2020

R.Govindaraj

.. Petitioner

Versus

G.Rangaswamy

.. Respondent

PRAYER: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1969 to allow the Eviction Petition filed in R.C.O.P.No.179 of 2009 dated 16.03.2016 on the file of the Rent Controller-cum-Principal District Munsif, Coimbatore, by setting aside the order dated 18.12.2019 passed in R.C.A.No.04 of 2018 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.R.Parthasarathy,
Senior Counsel
for Mr.V.Venkatasamy

For Respondent : Mr.I.Jenkins William



WEB COPY



C.R.P.No.1323 of 2020

ORDER

This Civil Revision Petition has been filed to allow the Eviction Petition filed in R.C.O.P.No.179 of 2009. dated 16.03.2016 on the file of the learned Rent Controller-Cum-Principal District Munsif, Coimbatore, by setting aside the order dated 18.12.2019 in R.C.A.No.04 of 2018 on the file of the learned Principal Subordinate Judge, Coimbatore.

2. The revision petitioner herein is the landlord and the respondent herein is the tenant in RCOP.No.179 of 2009.

3. Heard both sides and perused the materials available on record.

4. The petitioner/landlord has filed RCOP.No.179 of 2009 before the Principal District Munsif Court, Coimbatore, under Sections 10(2) (iii), 10(2) (ii) (b) & 10(3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking a direction to the respondent/tenant to vacate and hand over the vacant possession of the petition mentioned property. After perusing the entire records, the Court below allowed the RCOP by



C.R.P.No.1323 of 2020

order dated 16.03.2016 with a direction to the respondent/tenant to vacate from the petition mentioned property and handover the vacant possession of the same to the revision petitioner. Aggrieved by the said order dated 16.03.2016, the respondent herein/tenant has preferred an appeal before the learned Principal Subordinate Judge, Coimbatore, under Section 23 of the Tamil Nadu Building (Lease and Rent Control) Act, 1969 (hereinafter referred to as the Act, for short). After scrutinizing the relevant records, the Appellate Authority allowed the RCA by order dated 18.12.2019 on the ground that the landlord has not proved his case for eviction on any of the grounds prayed for by him. Challenging the said order dated 18.12.2019, the petitioner/landlord has filed this Civil Revision Petition.

5. It is further case of the revision petitioner that the petition mentioned property was obtained by way of Partition Deed, dated 14.03.1984. The B-Schedule property was allotted to the revision petitioner. The respondent/tenant became a tenant about 35 years ago and he has been running bakery business under the name and style of “M/s.Kavitha Bakery” in the petition premises. After allotment of the petition mentioned property in favour of the petitioner, the respondent



C.R.P.No.1323 of 2020

attorned the tenancy and lease deed has also been executed between them

and the Xerox copy of the lease deed, dated 02.01.2006 was produced

before the Court below and marked as Ex.P2. The lease agreement was

also only for the purpose of the said "Bakery shop". The respondent has

paid a sum of Rs.5,000/- towards advance and the monthly rent payable

was at Rs.4,000/-. The same was increased and as on date, he has been

paying rent of Rs.5,250/-. While so, on 05.01.2009, when the

petitioner/landlord was visited the property, he found that the

respondent/tenant was making alterations in the petition mentioned

property without the consent of the petitioner. The respondent has

removed the flooring tiles and also demolished the Southern East-West

wall of the petition mentioned property. The said wall is the load-bearing

wall, upon which the 1st floor and 2nd floor constructions are resting.

Immediately, the petitioner objected to the conduct of the respondent and

demanding him to restore the same and not to cause any further damage to

the property. The respondent/tenant did not obey the same. Therefore, the

petitioner/landlord filed a suit in O.S.No.89 of 2009 on the file of the

Principal District Munsif Court, Coimbatore, seeking permanent

injunction restraining the respondent from in any manner altering the



C.R.P.No.1323 of 2020

physical features of the petition mentioned property and consequential

reliefs and the respondent is liable to be evicted on the ground of act of

waste. Further, the period of lease also expired on 31.12.2008, but he has

not vacated and handed over the premises with possession. The petitioner

wants the said place, as he is doing business of gym equipments

manufacturing industry and he requires the demised premises which ought

to have been showroom for his business and it is required for his own use

and occupation sought is a bona-fide one. The respondent has changed the

business from Bakery business to fruit business and he had ceased to run

the Bakery business. The respondent has not obtained permission from the

petitioner regarding the nature of change of business and he has put the

premises for different purposes other than for what was leased out. Hence,

the petitioner has filed RCOP seeking eviction on the ground of

requirement of the premises for his own use and occupation under Section

10(3)(a)(iii) of the Act, by committing act of waste under Section

10(2)(iii) of the Act and using the premises for the different purposes

other than for what it was leased under Section 10(2)(ii)(b) of the Act.



C.R.P.No.1323 of 2020

6. Per contra, the learned counsel for the respondent submitted that the respondent admitted the fact that he was inducted as a tenant from the year 1974 onwards and as per the allegations of the petitioner, the respondent has not removed the flooring tiles and the Southern East-West wall did not get damaged. He had not entered into any lease agreement between them for the past 35 years and there is no such claim, as there was any agreement existing on the time of filing of the said petition. The respondent has filed a suit in O.S.No.39 of 2009 seeking a relief that the petitioner could not evict the respondent without following the due process of law and the same is pending before the concerned Court. The petitioner/landlord, suppressing all the above facts, filed a suit before the Court below in O.S.No.89 of 2009, as a counter-blast to the main case and in this case, the created lease agreement dated 02.01.2006 allegedly was filed even though the created agreement is not in force at the time of filing of the suit and the said agreement had expired by efflux of time. The respondent is not entitled for any relief. The petitioner gave a police complaint and it was closed after enquiry. The Petitioner has not produced any records that he was carrying on gym business equipments in a manufacturing industry. The requirement for his own use and occupation



C.R.P.No.1323 of 2020

was only a mala-fide intention to evict the respondent/tenant from the subject property illegally. Further, the respondent has not changed the nature of business and he is running only Bakery business under the name and style of “M/s.Kavitha Bakery” and on what purpose the respondent attorned the tenancy, the same was fulfilled by the respondent. Therefore, after getting any alternative source of income, the respondent could be evicted from the petition premises and he has been paying the rent regularly for the past 35 years and there is no arrears of rent as on date. Hence, he prays for dismissal of the revision petition.

7. It is also seen that the Advocate Commissioner has been appointed and he has filed a report stating that the Bakery shop has been converted into a juice shop, and he has been selling Coke, Pepsi, Fanta and other soft drinks and fresh electrical wiring has been done in the petition mentioned premises, which was also noted by the Advocate Commissioner in his report.

8. On considering all the above aspects, the learned Rent Controller directed the respondent/tenant to vacate the petition mentioned



C.R.P.No.1323 of 2020

property and hand over the possession of the same to the

petitioner/landlord with immediate effect and in the event of failure by the

respondent, the petitioner could execute the order of eviction and

possession in accordance with law. Aggrieved by the order passed in the

said R.C.O.P, the respondent/tenant filed appeal in R.C.A.No.04 of 2018

before the learned Principal Subordinate Judge, Coimbatore by raising

various grounds. The Appellate Authority had framed two issues, viz., (i)

Whether the learned Rent Controller was correct in holding that landlord's

requirement of the premises for own use and occupation is a bona-fide

one? ii) Whether the appeal is to be allowed or not? The landlord sought

for eviction on the ground of requirement of the premises for his own use

and occupation. The petitioner/landlord has produced as Ex.P4 Certificate

of Registration to show that he is running "Sri Kamatchi Engineering

Company". The landlord has claimed that he is manufacturing gym

equipments and therefore, he requires the premises for his own use and

occupation. He has claimed that the petition premises has to be used by

him as a showroom to display the gym equipments. Though at the first

sight, this appears bona-fide, as the landlord has produced the records to

show that he is doing manufacturing business, on a perusal of the



C.R.P.No.1323 of 2020

deposition of the landlord, it is seen that it clearly goes against his claim of bona-fide requirement. The landlord during his cross-examination has stated as follows:-

“...எதிரி மனுதாரரை மட்டும் தான் காலிசெய்யவேண்டி நான் வழக்குப்போட்டுள்ளேன். ஏன் எனில் தென்கிழக்கு மூலையில் ஒரு அடுப்பு வைத்து உயிருக்கு சேதம் செய்யும் நோக்கில் சிப்ஸ் தயாரித்து விற்பனை செய்வதால் மேலும் அது நெடுச்சாலையில் அமைக்கப்பட்ட ஆக்கிரமிப்பு செய்த காரணத்தினாலும் அவரை காலி செய்யுமாறு நான் கோரியுள்ளேன்...”

9. The Appellate Authority has considered the deposition alone and the landlord did not speak about the requirement of the premises for displaying his gym equipments, but the tenant is having a stove in the South Eastern corner of the premises and has been producing chips which would cause dangerous to the premises and therefore, he sought to evict him only for the purpose of act of waste. If it all the landlord's requirement of the premises is a bona-fide one, he would have stated that he requires the premises for displaying his gym equipments and he would not have stated the reasons which are not found in his pleadings. However, the learned Rent Controller has not considered the submissions made by the landlord and held that the landlord requires the premises for displaying his



C.R.P.No.1323 of 2020

gym equipments and this finding is liable to be reversed and eviction ordered on the ground of requiring the premises for his own use and occupation, is liable to be set aside. The respondent/tenant has not taken any steps to deposit rental amount into the Court and he has also committed wilful default in payment of rent. The landlord has not claimed that there is wilful default in payment of rent and it is not known as to on what basis the learned Rent Controller has given such a finding. The landlord has not proved his case for eviction on any of the grounds prayed for by him and the appeal is liable to be allowed. The finding of the trial Court that the landlord requires the premises bona-fide for displaying his gym equipments, was reversed and eviction ordered on the ground of requiring the premises for own use and occupation, was set aside by the Appellate Authority.

10. On a further perusal of the averments of the petition as well as the counter, it could be seen that even the respondent admitted the tenancy from the year 1974 for running a Bakery shop and has converted the same into a "juice shop" and also trying to sell chips by having a stove. The respondent has also admitted that he was inducted as a tenant orally



C.R.P.No.1323 of 2020

and there was no lease agreement for the same. It is settled law that if any person carries on a commercial business, he must have an agreement of lease for running the business. When there is no agreement, the respondent cannot claim that he has been running the same for so many years and he should not be evicted on the ground that there was no wilful default in payment of rent.

11. Further, it is seen that the respondent has paid a sum of Rs.5,000/- towards advance and the monthly rent payable was at Rs.4,000/- per month. The same was increased as on date and he has been paying rent Rs.5,250/-. Thereafter, there was no increased the rent and when the petitioner approached the Courts below, has not stated that the documents produced by the petitioner regarding "gym manufacturing equipments industry" and when the contra evidence was not produced, the Court below cannot, on its own, presume that the petitioner has not given any proper reason for evicting him and only the reason admitted by the landlord that he is having a Bakery shop as well as fruit stall and also manufacturing chips, would cause moving vehicles in that area.



C.R.P.No.1323 of 2020

WEB COPY

12. Considering all the above aspects, this Court is of the view that the petitioner/landlord has given a long rope to the respondent/tenant for running the business from the year 1974, on a very meager rent. The petitioner has sought for his own occupation of the said premises for displaying his gym equipments and the respondent has not made out any case for continuing in the said shop without any valid agreement of tenancy. While that being the case, this Court is inclined to allow this Civil Revision Petition on the ground that the respondent/tenant has been in possession of the petition mentioned property without any valid agreement of lease.

13. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 18.12.2019 passed in R.C.A.No.04 of 2018 by the learned Principal Subordinate Judge, Coimbatore and confirming the order passed in RCOP.No.179 of 2009, dated 16.03.2016 by the learned Rent Controller-Cum-Principal District Munsif, Coimbatore. Furthermore, the respondent/tenant is hereby directed to vacate the petition mentioned property on or before 29.05.2023 and to hand over the key of the said



C.R.P.No.1323 of 2020

premises to the revision petitioner/landlord on 30.05.2023. There shall be

no order as to costs.

03.01.2023

kv

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The Rent Controller-cum-Principal District Munsif,
Coimbatore.
2. The Principal Subordinate Judge,
Coimbatore.
3. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.R.P.No.1323 of 2020

V.BHAVANI SUBBAROYAN,J.

kv

C.R.P.No.1323 of 2020

03.01.2023