



C.R.P.(NPD)Nos.1382, 1385, 1386, 1387, 1388 & 1389 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)Nos.1382, 1385, 1386, 1387, 1388 & 1389 of 2021
and CMP.Nos.10705, 10744, 10746, 10750, 10755 & 10764 of 2021

CRP(NPD)No.1382 of 2021

Umedmal B. Jain

.. Petitioner

VS

Suraj Devi

.. Respondent

Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the Judgment and Decree dated 01.12.2020, passed by the Learned VII Court of Small Causes at Chennai, Appellate Authority, in RCA.No.712 of 2017, confirming the fair and decretal order dated 31.08.2017 made learned X Court of Small Causes, Chennai in RCOP.No.1990 of 2011 and thereby dismiss the petition filed for eviction.

(In all CRPs)

For Petitioners : Ms.Tanya Kapoor

For Respondent : Mr.A.Ilaya Perumal



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COMMON ORDER

These civil revision petitions have been preferred by the tenants.

There is no dispute in the jural relationship of landlady and tenants. For the sake of convenience, the parties will be referred to as landlady and tenants.

2.The landlady launched applications in R.C.O.P.Nos.1990, 1992, 1993, 1994, 1995 and 1998 of 2011 on the ground that her sons Kiran Raj Jain, Dinesh Kumar Jain and Praveen Kumar Jain are carrying on business in a rented premises. According to her, her sons' business is growing in very huge volumes and therefore they are not in a position to find enough space to accommodate their goods and to consult and meet their clients. She would state that the existing rented premises in which they are currently carrying on business i.e. No.56, Narayana Mudali Street, Sowcarpet, Chennai is not suitable for expansion of the business. She also stated that she has no other buildings in the City of Chennai and existing business would be sufficient for the business purposes of her sons. Even on the date of filing of the RCOPs, the landlady was about 63 years old.

3.On being served with notice each of the tenants entered appearance and filed a detailed counter. The stand that they had taken in



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the counter is that there is a vacant shop in the ground floor of the premises and another shop had been vacated recently by one firm by name “Sangeetha Toys” and that there is a suppression of facts by the landlady to overcome the statutory provisions relating to additional accommodation and also that the Court has to consider the relative hardship between the eviction of the tenants *vis-a-vis* their continuance in the property.

4.The tenants also pleaded that the landlady is the owner of the premises in Moolakadai, Vepery High Road, Kondithoppu and several other places. They would also state that the sons themselves are owners of other premises and therefore, they are not entitled to seek for eviction. The tenants will plea that they are in occupation of the premises for more than 20 years and therefore, if the petition filed for eviction is allowed, they would be put to cause irreparable hardship.

5.The matter went to trial before the learned Rent Controller, who recorded the summary of proceedings. The Rent Controller was satisfied that the requirements of Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (in short 'Act') have been satisfied and consequently ordered eviction.

6.Aggrieved by the same, the tenants filed R.C.A.Nos.712, 713,



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714, 715, 716 & 718 of 2017. The Rent Control Appellate Authority agreed with the findings returned by the Rent Controller and ordered eviction.

7. Against the concurrent findings on both the bonafide requirement of the landlady as well as on the orders of eviction, these civil revision petitions have been presented before this Court.

8. When the matter came up before this Court, notice was issued to the respondent and has been listed today before me for the purpose of admission.

9. I heard Ms. Tanya Kapoor, learned counsel appearing for the petitioners/tenants and Mr. A. Ilaya Perumal, learned counsel appearing for the respondent/landlady.

10. Ms. Tanya Kapoor launched several attacks against the findings of the Rent Controller as confirmed by the Appellate Authority. They are as follows:

(i) The landlady had vacant shop in her possession in the ground floor and subsequently another tenant has vacated the premises. The landlady's sons did not occupy the said premises, which tells upon the bonafides of the requirement.

(ii) Two shops having become vacant, the landlady is deemed to be



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in possession of the property and therefore, Section 10(3)(a)(iii) of the Act is not the applicable provision, but the applicable provision would be Section 10(3)(c) of the Act.

(iii) The landlady's family has other premises and therefore, it does not satisfy the statutory requirements of Section 10(3)(a)(iii) of the Act.

(iv) The trial Court as well as the lower Appellate Court did not consider the comparative hardship that the tenants would suffer in case of eviction as against the requirements of the landlord.

(v) Expanding on the previous point, Ms.Kapoor would submit that the tenants have developed a fantastic reputation in the market and therefore, if eviction is ordered, they will suffer serious prejudice.

(vi) She would point out that the landlady having filed a petition for fixation of fair rent is not entitled to seek for eviction on the grounds of bonafide requirement.

(vii) She would then point out the lack of pleading on the part of the landlady with respect to the buildings owned by her sons in other areas in Chennai and therefore, it does not satisfy the statutory framework of Section 10(3)(a)(iii) of the Act.

(viii) She would submit that two shops that the landlady had subsequently let out was found to be on an understanding that they will



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vacate and handover possession on the other eight tenants vacating and this understanding have not been proved.

(ix) In fine, the argument of Ms.Kapoor is that the bonafide requirement of the landlady had not been proved and therefore, she wants the civil revision petitions to be allowed and the orders of eviction should be set aside.

11. I have carefully considered the arguments of Ms.Tanya Kapoor, I will have to address each one of them separately.

12. Insofar as the requirements of the landlord under Section 10(3)(a)(iii) of the Act, the Rent Control Appellate Authority has correctly laid down the position of law, namely, that the landlord must prove the following:

(i)The building that had been let out is for non-residential purposes.

(ii)The landlord or any member of his family should be carrying on business on the date of application for eviction.

(iii)The landlord should not be occupying any building belonging to him or his family members on his own within the City of Chennai.

(iv)The claim should be bonafide and not found to be a false attempt to throw out the tenant from the premises.



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13.Let us apply the law that has been laid down above to the facts of the present case. It is not in dispute that the landlady's sons are doing business at No.56, Narayana Mudali Street, Sowcarpet, Chennai. The nature of their business is dealing with paper products and supplying it to their customers in and around the said area. The landlady's sons are occupying shops which belong to a third party. They are tenants in someone else property for the business that they are doing. In order to prove that they are tenants under one Padmini Bai, who is the owner of No.56, Narayana Mudali Street, Sowcarpet, Chennai, they have marked Ex.P8, which shows that the aforesaid property had been leased out to the landlady's sons for business purposes.

14.In order to prove that they are doing business, they have marked Exs.P8, P9, P10 and P32 to show that one Masseyes Enterprises is having a business dealing with their entity, M/s.Million Papier Private Ltd. These documents bring forth to the Court, the factum

(i)that the landlady's sons are carrying on business on the date of filing of the petition,

(ii)that they are in occupation of rented premises belonging to Padmini Bai and

(iii)that the business is being carried on in a bonafide manner.



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15.The tenants did not let in evidence to show that the landlady's sons are not carrying on business and that it is an invented story by the landlady in order to throw them out of the premises unfairly.

16.Insofar as the argument that two shops have been kept vacant on the date of filing of the RCOP and the landlady's sons did not occupy the same, the answer is found in the evidence of PW1. He has categorically stated that there are totally 10 shops in the building which belongs to the landlady, which are the subject matter of eviction proceedings. All the shops put together will bring about 1200 sq. ft. in which they can store upto two tonnes of paper material. If the landlady's sons want to do business, they cannot occupy the premises one by one and thereafter expand the same. As seen from above, the petition itself was meant for the purpose of expansion of the business which they are carrying on in a rented premises.

17.The factum that they are storing materials at Royapuram has been brought about during the course of evidence. The landlady's sons are utilising the premises situated at Old No.32, New No.17, North Railway Terminus Road, Royapuram for the purpose of a warehouse. The evidence of PW1 read with the documents of business make it clear that most of their business requirements are met with in and around



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Sowcarpet area where the petition mentioned premise is situate.

WEB COPY 18. It is too much on part of the tenants to expect that the landlady's sons must pay third party rentals and also suffer huge transportation cost for the purpose of transportation of goods from Royapuram to Sowcarpet, when their own premises at Sowcarpet is available and when it is easier to store their materials therein.

19.The result of this discussion is that the two shops which were vacant are not suitable for storing their entire materials which they are currently having in Royapuram. If I were to accept the arguments of Ms.Kapoor, then not only should the landlord continue to pay Rs.34,831/- as rents for the warehouse in Royapuram, but, they should store materials also in the premises at Sowcarpet. That will be a logistical nightmare for the landlady's sons to do their business. The landlady's sons need not suffer in order to satisfy the whims of the tenants to prove their bonafide. The shops being 100 sq. ft. each, it is hardly sufficient for the landlady's sons to store their materials. Therefore, the requirement of the entire shops for expansion of their business and shifting of their business from rented premises to the own premises of the landlady is a bonafide requirement.

20.The next aspect which Ms.Tanya Kapoor argued was that the



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petition should have been filed under Section 10(3)(c) of the Act and not under Section 10(3)(a)(iii) of the Act. This is on the ground that two shops having been vacated, it should be deemed to be in possession of the landlady and therefore, since she is occupying a portion of the premises, Section 10(3)(a)(iii) of the Act is inapplicable and the provision applicable is Section 10(3)(c) of the Act.

21. Section 10(3)(c) of the Act requires the landlady to be in actual possession of the premises and not in legal or constructive possession thereof. The fine distinction between the legal possession and actual possession is not one contemplated under Section 10(3)(c) of the Act. A landlord who is in occupation of a portion of a premises is entitled to ask for eviction only on the ground of Section 10(3)(c) of the Act. However, in the present case, the landlady has not occupied the premises which fell vacant pursuant to the “Sangeetha Toy Shop” vacating. Since the landlord is not in actual possession of the premises, the appropriate application that should have been filed is only under Section 10(3)(a)(iii) of the Act and not under Section 10(3)(c) of the Act.

22. This will also dispose of the other argument on comparative hardship. The relative hardship is a requirement under Section 10(3)(c) of the Act and not under Section 10(3)(a)(iii) of the Act. Therefore,



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neither the Rent Controller nor the Appellate Authority fell in error in not taking into consideration the said aspect. The requirements of Section 10(3)(a)(iii) of the Act have been set forth above and comparative hardship is not one such requirement by the statute.

23.Ms.Tanya Kapoor then would turn to the argument that the landlady's sons are in occupation of other premises. It has been recorded by the Rent Controller as well as by the Appellate Authority that the landlady does not have any other property in her name in the City of Chennai. She has also made the requisite pleading in paragraph No.4 in the petition for eviction. Reading Section 10(3)(a)(iii) of the Act according to me, the petitioner who seeks for eviction should not own any other property. If I were to read the way Ms.Tanya Kapoor wants me to read the provision, then, if the landlady's sons had own property then, the landlady would not be entitled to file an application for eviction. Such a requirement is not found in the Act.

24. Insofar as the argument that the petitioners will suffer hardship because the civil revision petitioners have developed a very good reputation in the market is concerned, I feel this argument goes in favour of the landlady and not in favour of the tenants. If the tenants have built a good reputation in the business, then the customers will flock to them,



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wherever they go. It is not dependent upon the place of business. In other words, if the tenants were to move to an adjacent or nearby premises in Sowcarpet, the customers will continue to come to them and they will not stop on account of the fact that there are peculiarities in the building which is occupied by them presently, which brings the customers for the purpose of their business.

25.Furthermore, if such a reputation has been built and even if comparative hardship were to apply, then I would have to see whether the hardship of a person doing a business in the rental premises is less than the hardship of a person, who has garnered very good reputation in the market. The answer to this question is that the hardship of the landlord would be more for he will not only be paying for the purpose of transportation of his materials, but also incurring huge cost in a rented premises for storing his materials.

26. Insofar as the argument that the filing of the fair rent petition shows that the landlady does not have bonafide requirements for eviction, in this too, I am not with Ms.Tanya Kapoor.

27.Filing of the Rent Control Original Proceedings for fixation of fair rent is an exercise of a statutory right by the landlord for the property which is under the occupation of the tenants. Exercise of a statutory right



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conferred on a landlord cannot militate another provision namely,

Section 10(3)(a)(iii) of the Act. It has been seen over the period of nearly six decades that the Rent Control Act was in force, that a landlord can simultaneously launch an application for eviction as well as file a petition for fixation of fair rent. It will be too much on my part to state that the landlord till the eviction proceedings are over, cannot seek for fixation of fair rent. The landlady has only gone above exercising her statutory right and therefore, I will not put Section 4 against Section 10(3)(a)(iii) of the Act.

28. Furthermore, Section 10(3)(a)(iii) of the Act does not have any such statutory bar. If I were to agree with Ms.Kapoor, then I will be re-writing the Statute stating, filing an application under Section 4 of the Rent Control Act would be a bar for filing a petition under Section 10(3) of the Act. Such a provision being absent and since I am not having the powers to amend the statute, I am constrained to reject the said argument.

29. The next submission was on the lack of pleadings on part of the landlord. Insofar as the lack of pleadings is concerned, I have to recollect that I am dealing with a Rent Control proceeding which is, but a summary proceeding. The tribunal is not bound by the strict rigours of the Code of Civil Procedure.



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30. I have gone through the pleadings and I find, all the necessary statutory requirements were pleaded and therefore there is no requirement to dismiss the petition on the ground of lack of pleadings. In addition, the argument of Ms.Tanya Kapoor that the landlady has not pleaded that she does not have any other premises is erroneous. I see from paragraph No.4 there is a specific pleading to that effect. It is not the requirement of the Rent Control Act that the landlady should give the details of all the properties hold by her family members for the purpose of seeking eviction under Section 10(3)(a)(iii) of the Act. I have already held, if the landlady does not have any other property in her name, she can seek for eviction on the grounds of Section 10(3)(a)(iii) of the Act, irrespective of the fact that her sons might own other properties.

31. Finally I turn to the argument of Ms.Tanya Kapoor the understanding with the new tenants, who had been inducted, that they will handover possession of the property on the eviction petitions being allowed, has not been proved. Nothing prevented the tenants to summon the new tenants, who have been inducted in the vacant shops measuring about 100 sq. ft. each to the Court and demonstrating by giving positive proof that there was no such understanding. The understanding is between the landlord and the new tenants and the landlord had entered



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the witness box and had stated so. The Rent Controller, who had the benefit of seeing the witnesses has been convinced with the statement.

The Appellate Authority, which is the final Court of facts, has also appreciated the said evidence and has come to the conclusion that the understanding exists.

32. Sitting in revision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, I am not in a position to re-appreciate the evidence. I can interfere with the findings only if they have been perverse, illegal or irregular. None of these three vices are found in the impugned orders of the Courts below. Consequently, I am not inclined to interfere with the orders passed by the Courts below.

33. In fine, these civil revision petitions are dismissed. Time for eviction is three months. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

1.The VII Court of Small Causes, Chennai.

2.The X Court of Small Causes, Chennai.



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V. LAKSHMINARAYANAN,J.

VS

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