



WEB COPY



CRP.NPD.No.1955 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.NPD.No.1955 of 2019
and C.M.P.No.12772 of 2019

1.Bhawarlal (died)
2.Lichhma Devi
3.Mahendra Kumar
4.Dinesh Kumar
5.Nirmal Kumar
6.Vimal Kumar
(sole petitioner died. Petitioners 2 to 6 are brought
on record as LRS of the deceased first petitioner vide
order dated 30.08.2023 by VLNJ in C.M.P.No.19895 of 2022)

... Petitioners

Vs.

Bhanumathi (deceased)
1.Hasmukh O.Jain
2.Vikesh O.Jain
3.Sanjay O.Jain
4.Otamal K.Jain
5.Prabha
6.Nirmal Kumar O.
7.Madhubala
8.Sashikala
9.Rajeswari
10.Akash M.Jain
11.Rahul M.Jain
12.Raksha M.Jain

... Respondents



CRP.NPD.No.1955 of 2019

PRAYER: Civil Revision Petitions filed under Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act, 1960, against the order and decreetal order dated 29.03.2019 passed by the learned VIII Judge, Small Causes Court, Chennai in R.C.A.No.290 of 2011 by confirming the fair and decreetal order dated 25.02.2011 made in R.C.O.P.No.1689 of 2008 passed by the learned XI Judge, Small Causes Court, Chennai.

For Petitioners : Mr.T.P.Sankaran

For Respondents : Mr.C.D.Sugumar

ORDER

This civil revision petition arises against the concurrent findings of the courts below ordering eviction.

2. R.C.O.P.No.1689 of 2008 was filed by the respondents. For the sake of convenience, the parties are referred to as landlords and tenant.

3.It is the case of the landlords that they purchased a larger extent which includes the schedule mentioned property. There is no dispute in the jural relationship of landlords and tenant.



CRP.NPD.No.1955 of 2019

4.The tenant was in occupation of shop bearing Nos.8 and 9. These two shops are road facing shops. The landlords wanted the premises for the purpose of business that was being successfully carried on by the third landlord/Mr.Vikesh O.Jain. The premises was let out for non-residential business for running of a sweet Shop. The landlords pleaded that the third landlord was a tenant under one Hemalatha Ben and she wanted him to move out of her premises and consequently, filed R.C.O.P.Nos.962 of 2008 and 1349 of 2008, one for eviction and another for fixation of fair rent. Since one of the landlords faced threat of eviction of the tenanted premises in which he was in occupation, he wanted to take over the possession of shop Nos.8 and 9 for the purpose of doing the business.

5.This petition was resisted by the tenant on the ground that even at the time of purchase of the premise by the landlord in the year 2007, there were two shops namely shop Nos.4 and 6 which were vacant. In shop No.4, a courier service was being operated and in Shop No.6, a new tenant was inducted. According to the tenant, he doubts on the bonafide of the landlords and the eviction petition was a ruse to evict the tenant from the premises where he had been carrying on the business atleast 7 years before the landlords purchased the



CRP.NPD.No.1955 of 2019

property, (i.e.,) from the year 2000 onwards.

WEB COPY

6. Before the learned Rent Controller, two of the landlords were examined and Exs.P1 to P6 were marked. Unfortunately, the tenant did not let in any evidence. Nevertheless, the learned Rent Controller went into the issue of bonafides and to the right of the landlord to get an eviction order as against the tenant for the purpose of doing own business and concluded both the issues in favour of the landlords.

7. Aggrieved by the same, an appeal was preferred before the Rent Control Appellate Authority in R.C.A.No.290 of 2011. The said appeal was dismissed on 29.03.2019 by confirming the order and decretal order in R.C.O.P.No.1689 of 2008. Against these orders of eviction, the present Revision Petition has been filed.

8. Heard Mr.T.P.Sankaran, learned counsel appearing for the petitioner and Mr.C.D.Sugumar learned counsel appearing for the respondents.

9. Mr.T.P.Sankaran, learned counsel would argue the following contents:



WEB COPY

- (i) even on the date of filing of eviction petition, two shops were vacant;
- (ii) the filing of the eviction petition for the premises in which the landlord was a tenant was not proved in accordance with law;
- (iii) there were no pleadings that the landlords had no other premises other than the schedule mentioned property;
- (iv) on the date of filing of the RCOP, no steps had been taken by the landlord for starting of the business and;
- (v) finally, no opportunity had been given for cross examination of the landlord by the tenant.

10. For the aforesaid arguments, he relied upon the following judgments:

- (i) 1988 (2) SCC 513 [*Hameedia Hardware Stores Vs. B.Mohan Lal Sowcar*]
- (ii) 1987 (1) SCC 254 [*Duggi Veera Venkata Gopala Satyanarayana Vs. Sakala Veera Raghavaiah and another*]
- (iii) 2004 (1) CTC 668 [*Kathan Vs Scaw Manak Chand Shohaji*]
- (iv) 1993-1- L.W., [*Ramalingam Pillai (died) and 7others Vs. Murugesan and another*]
- (v) 2004 (1) CTC 94 [*Bata India Limited, rep by its Manager, Vs. M.R.Manickam*]



CRP.NPD.No.1955 of 2019

(vi) 1981 (3) SCC 103 [*Hasmat Rai and another Vs.*

Raghunath Prasad]

(vii) 1981 (3) SCC 36 [*M.M.Quasim Vs. Manohar Lal*

Sharma and others].

11.Mr.C.D.Sugumar, learned counsel appearing for the landlords would rebut all these arguments and would submit that the Courts below have concurrently come to a conclusion that the requirement is bonafide and therefore, this Court cannot re-appreciate the evidence. He would also submit that the very fact that the landlord was facing eviction at the hands of his landlord, for the property in which he was a tenant, proves that the requirement is not only bonafide, but also urgent. He would state that the tenant had not pleaded about the alleged lack of pleadings in the counter filed in the Rent Control Original Petition and would seek for dismissal of the Revision.

12. I have carefully considered the arguments on both sides and gone through the entire records.

13. I have already concluded that the relationship between the parties is not in dispute. In so far as the argument that even on the date of filing of the eviction petition, two shops were vacant and the landlord had not occupied the



same and therefore, this requirement is not *bona-fide*, I have to state the following:-

(i).The landlords have admitted that two shops were vacant on the date of their purchase. However, they would state that these two shops are situated on the rear end of the building. They would state that for the purpose of running their textile and optical business, having a shop at the rear end would not be conducive. According to me, the explanation is reasonable. No one would start a textile business away from the view of the public.

(ii) Furthermore, it is not for the tenant to dictate where the landlord should have his business. It is an admitted fact that the shop of the tenant faces the road and hence the landlord feels that this shop will be conducive for running their business. Therefore, I reject the first argument.

(iii) Vis-a-vis the second argument, it is also not in dispute that the third landlord is carrying optical business in the property belonging to one Hemalatha Ben. As to the submissions of T.P.Sankaran that the landlord must prove the filing of the eviction petition by his landlord against him; on going through the records, I find Exs.P3 and P4 which would show that two RCOP's



CRP.NPD.No.1955 of 2019

have been filed against the landlord as tenant of Hemalatha Ben for eviction and for fixation of fair rent.

(iv) It is quite natural that when a person who is doing a business in a tenanted premises where he owns a property, he would not only have a mere desire, but on facing eviction proceedings, he would also have an urgent need to occupy his own property for carrying on his business. The filing of the RCOP is not in dispute. The mere filing of the eviction petition is sufficient to prove the *bona-fides*.

14.I would have accepted the arguments of Mr.T.P.Sankaran had Hemalatha Ben not proceeded against the 3rd respondent landlord for obtaining eviction of the premises of which she was the owner. In order to substantiate the same, Exs.P3 and P4 have been exhibited before the Court. This petition having been filed, the Court would have to presume that the landlord had initiated steps in order to evict her tenant and that tenant, being the landlord herein, *bona-fide* requires the property that he would recover through the present Civil Revision Petitioner for his own use and occupation.



15. Insofar as the arguments that no real steps have been taken for the purpose of carrying on business, it is here that the finding of the Rent Controller becomes relevant. The Rent Controller has returned a finding that the fact of the 3rd landlord carrying on an optical business is not in dispute. Apart from that, Ex.P5 is the certificate which has been produced before the Court below. In the said certificate, the Government of Tamil Nadu through its Commercial Tax Department, has issued a certificate of registration to the third landlord. The certificate has come into effect during the pendency of the RCOP. This shows that it is not a mere desire of the landlord to occupy the premises but he had taken " some real steps " for the purpose of commencement of the business in textiles.

16. Qua the arguments that there is a lack of pleadings on the part of the landlord to show before the Court that the landlord is not owning any other premises in the area, I have carefully gone through the pleadings in the RCOP as well as the counter. Nowhere, the plea of lack of pleadings has been raised by the tenant. This shows that the parties have "joined in issue" and had contested the proceedings. When the parties have joined in issue, the plea of lack of pleadings becomes irrelevant.



CRP.NPD.No.1955 of 2019

17. Apart from that, I have to remind myself that I am dealing with the eviction proceedings which are summary in nature and not regularly instituted civil suits which are governed by strict law of pleadings under the Code of Civil Procedure. The parties having understood their case and having entered into the witness box, nothing prevented the tenant from eliciting the fact that the landlords are owning other properties. Unfortunately, for the tenant, in this case, he did not avail the opportunity of cross examination.

18. Mr.T.P.Sankaran would submit that he had made an attempt to recall and reopen the evidence of P.W.1, but the applications were dismissed. He would also submit that he had taken steps to review the said order and the review also ended in dismissal. He would state that the tenant agitated this matter by way of a separate ground in the grounds of appeal as well as in the grounds of revision.

19. I feel the argument that a tenant can raise the rejection of his applications to reopen and recall as a separate ground of appeal, is an attempt to telescope the principle of Section 105 in the Code of Civil Procedure Code to rent control proceedings. Rent control proceeding, being summary in nature, all the provisions of Code of Civil Procedure does not apply to the same. The



CRP.NPD.No.1955 of 2019

petitioner ought to have challenged the order dismissing the application to reopen and recall the evidence by way of a separate proceeding or an appeal.

This is because closing the evidence of a party affects his right and any order which affects the right of party is susceptible to an appeal under Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act. He, not having filed an appeal, cannot blame the landlord for the same. Therefore, the opportunity having been granted to the petitioner and he not having availed the same cannot today plead that he has lost the opportunity to let in evidence.

20.I should also states the plea of lack of pleadings and the lack of opportunity have not been raised before the learned Rent Controller and therefore, I am not in a position to permit a new plea to be raised at the time of revision.

21.Qua the arguments, the landlord has not started the business, Exs.P5 and P6 shows that the textile business has been commenced. Apart from that, the tenant has not disputed the landlord to carrying on business in the field optics. Therefore, this argument also fails.



CRP.NPD.No.1955 of 2019

22.The Courts below having consequently found that the requirement of the landlord is *bona-fide*, I am constrained to confirm the same. Therefore, this Civil Revision Petition stands dismissed.

23.Considering the fact that the tenant has been doing business from the year 2000, I am of the view that sufficient opportunity must be given to him to identify a new premises in the said locality. Mr.T.P.Sankaran, learned counsel wanted a period of about one year whereas the landlord was not willing to grant more than three months. In order to balance the interest, I am inclined to grant 9 months time to the tenant to vacate and hand over the possession on the condition that he will file an affidavit of undertaking stating as follows:

- (i) there will be no arrears in the payment of rent
- (ii) the tenant will not put any third party in the possession of the property
- (iii) he will vacate and hand over the possession of the property on or before 30.06.2024.

24. I make it clear that, in case, the affidavit of undertaking is not filed on or before 30.09.2023, the time granted will not enure in favour of the tenant and



CRP.NPD.No.1955 of 2019

the landlord is free to proceed with eviction.

WEB COPY

25. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is also closed.

11.09.2023

Index:Yes/No

Speaking order/Non-speaking order

vk

To

1. VIII Judge, Court of Small Causes, Chennai

2. XI Judge, Court of Small Causes, Chennai



WEB COPY



CRP.NPD.No.1955 of 2019

V.LAKSHMINARAYANAN,J.

vkr



WEB COPY



CRP.NPD.No.1955 of 2019

CRP.NPD.No.1955 of 2019

11.09.2023