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C.R.P.(NPD)No.3244 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.3244 of 2019
and CMP.No.21122 of 2019

J.L.Pathy (Deceased)
Prop. M/s.Pathy Electricals
Sargunam

... Petitioner

VS

Madras Sarvodaya Sangh
Rep. by its Secretary
K.Gopal
No.199, Linghi Chetty Street,
Chennai 600 001

.. Respondent

Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973, against the order and decree dated 16.07.2019, passed in M.P.No.53 of 2019 in R.C.A.No.176 of 2011 on the file of the VIII Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.AR.L.Sundaresan
for Mr.Sivakumar
For Respondent : Mr.S.R.Rajagopal
for Mr.T.Srikanth

ORDER

RCOP.No.2091 of 2004 was presented by the respondent on the ground of Section 14(1)(b). Eviction was ordered on 20.01.2011.



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Aggrieved by the order of eviction, an appeal has been preferred which has been pending for the past 12 years.

2.The RCA was taken on file in RCA.No.176 of 2011. When the RCA was ready for disposal, an application was filed in MP.No.53 of 2019. The application is for appointment of an Advocate Commissioner to inspect the entire petition buildings including the portion which is under the occupation of the petitioner and to enable the Commissioner to take photographs of the entire property and to file a report. The said application was dismissed by the learned Appellate Authority.

3.I heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.Sivakumar, learned counsel appearing for the petitioner and Mr.S.R.Rajagopal, learned Senior Counsel for Mr.T.Srikanth, learned counsel appearing for the respondent.

4.The primary point which Mr.AR.L.Sundaresan would argue is that the appointment of an Advocate Commissioner will reveal the lack of bonafides of the landlord. According to him, a demolition plan has been obtained for premises, but the re-construction plan is one for residential purpose. Whereas in the averment made in the counter affidavit, the petitioner has stated that the tenants other than the revision petitioner have agreed to vacate and handover the vacant possession of



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the property on the condition that fresh tenancy, on a fresh rent on the completion of the construction of a new building. He would state the fact that plan has been applied for residential purposes when the plea in the counter shows that the tenants are going to be given for non-residential purposes speaks loud above the bonafides of the landlord.

5.Mr.S.R.Rajagopal would submit that it is not necessary for an appointment of Advocate Commissioner in the facts and circumstances of the case. I have carefully considered the argument on either side and I have gone through the records.

6.There is no dispute between the petitioner and the respondent regarding the status jural relationship of landlord and tenant. There is also no dispute that eviction was ordered on 20.01.2011. Pending the RCOP, no steps were taken for appointment of an Advocate Commissioner for the relief which MP.No.53 of 2019 has been filed.

7.The argument that bonafides can be found out from the report of the Advocate Commissioner, I feel slightly farfetched. Bonafide is a point which can be argued on the evidence which has already been connected by the Court below, before the lower Appellate Court.

8.It is not the duty of the Court to assist a party to fish for evidence and on that basis enable him to make submissions before the



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Court.

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9.The matter in dispute is under Section 14(1)(b) and for the purpose of proving bonafides, the prayer for appointment of an Advocate Commissioner is absolutely irrelevant.

10.The Rent Control Appellate Authority has given the correct reasons in paragraph 10 of the order. It does not require any interference. This civil revision petition is dismissed.

11.The Rent Control Appellate Authority is requested to take up RCA.No.176 of 2011 and dispose of the same on or before 31.10.2023 and submit a report to this Court on compliance.

12.It is made clear that I have only dismissed the application for appointment of an Advocate Commissioner. All contentions are open to either parties and may be addressed before the Appellate Court.

13.This CRP is dismissed. No costs. Connected miscellaneous petition is closed.

02.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The VIII Judge,

Court of Small Causes, Chennai.



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V. LAKSHMINARAYANAN,J.

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