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C.R.P.No.3742 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.3742 of 2019
and C.M.P.No.24590 of 2019

Asan Ibrahim

... Petitioner

Vs.

Jannathunisa
Rep by her Power Agent
Parakathunisa

... Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order passed by the Subordinate Court, Thiruvarur, in R.C.A.No.4 of 2018 dated 21.08.2019 partly reversing the fair and the decreetal order passed in R.C.O.P.No.4 of 2012 by the Rent Controller/District Munsif Court, Tiruvarur, dated 06.06.2017.

For Petitioner : Ms.M.Abbirami
For Mr.P.Dinesh Kumar

For Respondent : Ms.V.Abarna
For Mr.B.Ramamoorthy



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ORDER

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This Civil Revision Petition has been filed as against the fair and decreetal order dated 21.08.2019, passed by the learned Subordinate Judge, Thiruvarur, in R.C.A.No.4 of 2018, partly reversing the fair and the decreetal order dated 06.06.2017 passed by the learned Rent Controller, District Munsif Court, Tiruvarur in R.C.O.P.No.4 of 2012, thereby partly allowing the petition filed for eviction.

2. The petitioner is the tenant and the respondent is the landlord. The respondent filed petition for eviction on the ground of different user, owners occupation and demolition and reconstruction of the petition premises. The respondent stated that the petitioner was inducted as tenant to run shoe mart for the monthly rent of Rs.525/-. Thereafter, without any prior permission, the petitioner changed his business into cloth store. Further the petition premises is an old construction with sand and tide roof. Therefore, the respondent is intended to demolish and construct with RCC roof. It also requires for his personal use. Hence, he filed the eviction petition.



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3. The petitioner resisted the same by filing counter and stated that there are four shops and the respondent did not taken any steps to vacate other adjacent shop tenants for demolition and reconstruction. If really the respondent has intention to demolish the petition premises for reconstruction, he would take steps as against all the tenants. Insofar as the different user is concerned, the petition premises is rented out for commercial purpose to run show room. Therefore, there will not any restriction to change the business. That apart, no prejudice would be caused if the tenant changed the business. The respondent also failed to prove that his requirement is bonafide one.

4. On the side of the respondent, he had examined P.W.1 and also marked Ex.P.1 to Ex.P.3. On the side of the petitioner, he examined D.W.1 and no documents were marked on his side. On a perusal of oral and documentary evidence, the learned Rent Controller found that the respondent failed to prove all the grounds and dismissed the eviction petition. Aggrieved by the same, the respondent filed an appeal and the learned Rent Control Appellate Authority partly allowed the petition on the



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ground of demolition and reconstruction. As against which, the petitioner filed this present Civil Revision Petition.

5. Heard Ms.M.Abbirami, learned counsel appearing for the petitioner and Ms.V.Abarna, learned counsel appearing for the respondent.

6. On a perusal of records revealed that the respondent categorically admitted in his cross-examination that the petition premises viz., the super structure alone owned by him and the land belonged to Tiyyagaraja Swamy Temple. Admittedly, there are four shops located adjacent to each shop and the petition premises ad measuring 178 sq.ft. Though the respondent obtained permission from Tiyyagaraja Swamy Temple for demolition and reconstruction, he failed to produce any evidence to that effect.

7. Admittedly, the petitioner was inducted as tenant to run his business of shoe mart. Thereafter, he changed the business into cloth store. In order to prove the ground of different user, the tenant has to engage other



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person to run various business. However, the petitioner only is running the shop and he changed his business from shoe mart to cloth store. It doesn't amount to different user and no prejudice would be caused to the respondent, if the petitioner changed his business. Further, the petitioner is paying rent regularly to the respondent.

8. Insofar as the demolition and reconstruction is concerned, it is not the case of the respondent that the petition premises is in dilapidated condition and it requires immediate construction. The petition premises is a tide roof as such the respondent is intended to demolish the same for put up RCC roof. Further, the respondent also failed to produce any document to show that he has permitted to demolish the petition premises to put up new construction. He also failed to produce any demolition order or any planning permit.

9. Further, the respondent failed to prove the ground of owners occupation. Therefore, the learned Rent Controller rightly dismissed the petition for eviction on all the grounds viz., different user, owners occupation



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and demolition and reconstruction. However, the learned Rent Control Appellate Authority partly allowed the eviction petition on the ground of demolition and reconstruction and owners occupation. Therefore, the order passed by the learned Rent Control Appellate Authority cannot be sustained and it is liable to be dismissed.

10. The learned counsel appearing for the petitioner fairly submitted that the adjacent shop owners are paying monthly rent of Rs. 2,300/- and the petitioner is also ready and willing to pay the rent of Rs.2,300/- per month.

11. Considering the above submission, the petitioner shall pay a sum of Rs.2,300/- as monthly rent from the month of January, 2023. It is also made clear that the respondent is at liberty to take steps to demolish and reconstruction, if he intended to put up RCC building as against all the tenants.



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12. In the result, the Civil Revision Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Subordinate Judge,
Thiruvarur.

2. The Rent Controller
District Munsif Court,
Tiruvarur.



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