



C.R.P.No.997 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

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

C.R.P.No.997 of 2019
and C.M.P.No.6611 of 2019

Rengasamy (died)

1. Venkatammal

2. Suseela

3. Jayalakshmi

4. Maheswari

5. Avantham

6. Jothilakshmi

7. Meena

(Cause title accepted vide Court
order dated 07.02.2019 made
in C.M.P.No.2829 of 2019 in
C.R.P.SR.No.124745 of 2018)

... Petitioners

Vs.

VE.A.E.Variavan Chettiar

... Respondent

Prayer :- Civil Revision Petition is filed under Section 25 of the Tamilnadu Lease and Rent Control Act, to set aside the fair and final order of the learned Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai, dated 11.09.2018 made in R.C.A.No.10 of 2017, confirming the fair and decretal order of the learned Rent Controller



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(Principal District Munsif) Mayiladuthurai, dated 09.06.2017, made in R.C.O.P.No.36 of 2014 and dismiss the eviction petition.

For Petitioners : Mr.B.Jawahar
For Mr.M.J.Srinivas

For Respondent : Mr.A.Muthukumar

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 11.09.2018, passed by the learned Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai, in R.C.A.No.10 of 2017, confirming the order dated 09.06.2017 passed by the learned Rent Controller (Principal District Munsif) Mayiladuthurai, in R.C.O.P.No.36 of 2014, thereby allowing the petition filed for eviction on the ground of demolition and reconstruction.

2. The respondent is the owner of the petition premises and he rented out the petition premises to the deceased petitioner for the monthly rent of Rs.525/-. The entire building is totally consisting 8 houses out of which, one of the houses is the petition premises, which has country tiles



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roof. The respondent intended to demolish the existing old construction and put up new construction in the total area of 6831 sq.ft. Therefore, the respondent issued notice and thereafter filed petition for eviction in R.C.O.P.No.13 of 2007 on the ground of demolition and reconstruction. Due to agedness and ill health, the respondent could not proceed the case and it was dismissed for default on 21.01.2008. Subsequently, the present petition has been filed by the respondent on the ground of demolition and reconstruction, in respect of the petition premises.

3. It was resisted by the deceased petitioner by stating that already the respondent filed eviction petition on the ground of demolition and reconstruction and the same was dismissing for default. Therefore, the respondent cannot file another petition on the same ground and it directly hits by res-judicata.

4. On the side of the respondent, he was examined as P.W.1 and marked documents as Ex.P.1 to Ex.P.5. On the side of the deceased petitioner, he examined D.W.1 & D.W.2 and marked Ex.R.1 & Ex.R.2.



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Court document has been marked as Ex.X.1. On a perusal of oral and documentary evidences, the learned Rent Controller ordered for eviction on the ground of demolition and reconstruction. Aggrieved by the same, the deceased petitioner filed an appeal and the learned Rent Control Appellate Authority dismissed the appeal, as against which the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners submitted that Section 19 of the Tamilnadu Building Lease and Rent Control Act, 1960, is clearly barred the respondent to file petition for eviction on the very same ground of demolition and reconstruction. It hits by the principal of resjudicate. The petition premises is in very good condition and it is not in dilapidated condition and it doesn't require any demolition and reconstruction. The respondent also failed to show that the petition premises is in dilapidated condition and it requires immediate demolition. Therefore, his requirement is not bonafide one. He further submitted that the respondent filed petition in R.C.O.P.No.13 of 2007 for eviction on the ground of demolition and reconstruction and the same was dismissed for



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default. After the period of 10 years, the respondent filed this present petition. Therefore, the final order has been passed in the earlier petition and as such the respondent cannot file another petition for eviction on the very same ground.

5.1. He further submitted that the super structure alone is owned by the respondent and the land belonged to Arulmigu Kumarakattalai Subramaniasamy Devasthanam. The respondent being the tenant under the temple, without the permission of original landlord, he cannot demolish the super structure for reconstruction, since he cannot put up any construction without the permission of the landlord. He also failed to produce any piece of evidence to show that he has granted permission to demolish and reconstruct the petition premises. Therefore, he prayed to allow the present Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondent, submitted that there are totally eight tenants and except the petitioner, other tenants are vacated and handed over the petition premises for demolition and



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reconstruction. Further, the entire petition premises is in dilapidated condition and in any time it may collapsed. He further submitted that other two tenants who suffered with the order of eviction also filed Civil Revision Petitions in C.R.P.Nos.2814 & 2749 of 2018 and this Court dismissed the same by an order dated 15.07.2021 and ordered for eviction. He further submitted that once the petition was dismissed for default, it would not be attracted the principle of resjudicata. Therefore, Section 19 of the Tamilnadu Building Lease and Rent Control Act would not apply in the present case and therefore prayed for dismissal of the present petition.

7. Heard Mr.B.Jawahar, learned counsel appearing for the petitioners and Mr.A.Muthukumar, learned counsel appearing for the respondent.

8. Admittedly, the respondent is the owner of the super structure and the land belonged to Arulmigu Kumarakattalai Subramaniasamy temple. The petitioners are the tenant under the respondent and they are paying monthly rent to the respondent. All along the petitioners treated the



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respondent as landlord and now they cannot question the ownership of the respondent. Though the respondent is not the owner of the land, admittedly he had put up the construction and he is the owner of the super structure. Therefore, the petitioners cannot raise objection after the period of several years and they also cannot dispute the ownership of the building.

9. Further, the respondent filed eviction petition in R.C.O.P.No.13 of 2007 on the ground of demolition and reconstruction for the petition premises. However it was dismissed for default on 21.01.2008. Therefore, once the petition was dismissed for default any fresh eviction petition on the very same ground would not hit by the principal of res-judicata. Therefore, the eviction petition filed by the respondent is very much maintainable and the Courts below rightly ordered the eviction petition for demolition and reconstruction.

10. That apart, it is not the case of the respondent that the petition premises is in dilapidated condition. Further it is 100 years old building and it is a tiles house. Due to the development in the locality, the respondent



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intended to demolish the old premises for reconstruction for the purpose of getting more income. The respondent proved his requirement and the same is bonafide one and therefore the Courts below rightly ordered eviction and this Court finds no infirmity or illegality in the order passed by the Courts below.

11. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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WEB COPY

- To
1. The Principal Sub Court,
Rent Control Appellate Authority,
Mayiladuthurai.
 2. The Principal District Munsif
Rent Controller
Mayiladuthurai.



WEB COPY



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G.K.ILANTHIRAIYAN, J.

rts

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