



CRP(MD)No.1616 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1616 of 2022
and
CMP(MD)No.7009 of 2022

Mohamed Habiba : Petitioner

Vs.

T.V.Karthikeyan
Through his power agent
V.Gomathy : Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease & Rent Control) Act, 1961 to call for the records relating to the judgment and decree dated 16.06.2022 made in RCA.No.3 of 2021 on the file of the Sub Court, Tirumangalam, confirming the judgment and decree dated 13.10.2020 made in RCOP.No.14 of 2018 on the file of the District Munsif, Tirumangalam and set aside the same.

For Petitioner : Mr.B.A.Muruganantham

For Respondent : Mr.S.Thangam



ORDER

The petitioner is the tenant and he filed this revision petition u/s.24 of the Tamil Nadu Buildings (Lease & Rent Control) Act, as against the concurrent findings of the Courts below.

2.The respondent / landlord has filed an eviction petition as against this petitioner in RCOP.No.14 of 2018 u/s.10(3)(a)(i) and 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, before the District Munsif Court, Rent Controller, Tirumangalam. The Rent Controller, by judgment and decree dated 13.10.2006, allowed the petition and passed an order of eviction directing this petitioner to vacate the suit premises and hand over the possession. Aggrieved over the same, the petitioner has preferred an appeal before the Sub Court, Rent Control Appellate Authority, Tirumangalam, in RCA.No.3 of 2021. The Appellate Authority, by judgment and decree dated 16.06.2022, dismissed the appeal and confirmed the eviction order passed by the Rent Controller. As against the same, the petitioner has moved the instant revision petition.

3.Learned Counsel for the petitioner submitted that the respondent / landlord has filed the eviction petition in RCOP.No.14 of 2018 for the relief u/s.



10(3)(a)(i) and 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act.

Both the reliefs sought for are inconsistent with each other and cannot be granted.

However, both the Courts below have failed to consider this aspect and allowed the eviction petition in favour of the landlord.

4.Heard the learned Counsel appearing on either side and perused the available materials.

5.Though the petitioner has raised as many as 17 grounds in this revision petition, the sum and substance of the grounds is that the reliefs sought for u/s. 10(3)(a)(i) and 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act are repugnant to each other and therefore, both the reliefs cannot be maintained in the same petition.

6.For useful reference, Sections 10(3)(a)(i) & 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, are extracted as under:-

“10.Eviction of tenants. -

(3) (a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-



(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of [any member of his family] and if he or [any member of his family] is not occupying a residential building of his own in the city, town or village concerned;”

“14. Recovery of possession by landlord for repairs or for re-construction. -

(1) Notwithstanding anything contained in this Act, but subject to the provisions of sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.”

7.The respondent / landlord has sought for the building for own occupation and also for demolition and reconstruction. This, according to the petitioner, is inconsistent and is repugnant to each other and cannot be maintained in a same petition. This ground raised by the petitioner regarding inconsistency is no longer *res integra* and it has been answered as against him, in more than one occasion.



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8. In this regard, this Court feels it appropriate to refer to the decision of this Court in ***Basile Irou v. International Ayurvedic Health Centre*** [CRP(NPD)No. 461 of 2007, decided on 12.01.2012], wherein, it has been held as follows:-

“12. ... This Court in Nandan Brothers and others vs. Kamaladevi Chandak and others, referred supra, considered this very aspect and dealt with the same elaborately. The facts in the said case, was more or less identical to the facts of the present case. His Lordship Justice M.Srinivasan, as he then was, rejected the contention regarding inconsistency as being without any substance and while rendering such a finding, took into consideration the decision of the Hon'ble Supreme Court in 1965 2 SCJ 608 [Ramniklal Pitambardas Mehta vs. Indradanan Amartilal Sheth], the decision of the Hon'ble Division Bench of this Court in 1967 1 MLJ 289, which decision was referred to with approval by the Hon'ble Supreme Court in AIR 1988 SC 1060, [Hameedia Hardware Stores vs. Mohan Lal Sowcar]. At this stage, it would be useful to refer to the relevant paragraph of the said judgment:-

“4(1)(i) ...

(ii) ... Thus, under Section 10(3)(a)(iii) of the Act, there is no reference whatever to the condition of the building. The section does not prescribe that a landlord who has obtained possession of the building under the Sub-section shall not in any manner alter the super structure, or effect such modifications as may be required



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to suit his convenience. Once the landlord gets possession of the building under the said Sub-section, he is entitled as the owner there of to make such alterations or modifications as necessary for his purposes. The provision for requirement for purposes of demolition and reconstruction is found in Section 14(1)(b) of the Act. Under that Sub-section, the Controller shall, if he is satisfied on an application made by the landlord that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession to the landlord. Under this Sub-section, it is not necessary for the landlord to say that the new building which is to be erected after the demolition of the existing building would be occupied by himself. In fact it is now settled law that under the said Sub-section, an application can be made by the landlord either on the ground that the building is so old and dilapidated that it requires to be demolished immediately or on the ground that he want to augment his income and therefore, requires the building for immediate demolition and erection of a new structure which would fetch him a higher or larger income. That itself shows that a landlord who seeks possession of the building for demolition and reconstruction, is entitled to get an order whether he proposes to occupy the new building himself or let out the same to tenant.

(iii) ...



(iv) ... The learned Judge held that once the bona fide requirement for personal occupation is provided from the mere fact that a reference to Section 14(1)(b) of the Act is made in the petition and an allegation to the effect that the landlord is going to demolish the building to suit his purpose is made, it cannot be stated that the remedy available under Section 10(3)(a)(iii) of the Act is taken away. The learned Judge has taken the view that it is unnecessary to go into the question whether the prayers are mutually exclusive. I am of the opinion that the prayers are not mutually exclusive and they are complementary to each other.

(v) ... The Division Bench also held that so long as the evidence does not justify the finding that the claim is a device and intended to serve an oblique purpose, it will go a long way towards the claim being honest. Very little evidence might be required to find that the claim is an honest one. The said decision was referred to with approval by the Supreme court in *Hameedia Hardware Stores v. B. Mohanlal Sowcar*, 102 L.W. 1(S.C.):A.I.R. 1988 S.C. 1060. Hence I hold that the fact that the respondents herein claimed in the notice that the building was dilapi dated and they proposed to demolish, the same with a view to erect a new one, does not militate against the bona fides of the claim made by the respondents in the petition for eviction....”



13. In view of the above decision which has been rendered by following the decision of the Hon'ble Supreme Court and the decision of the Hon'ble Division Bench of this Court, which has been quoted with approval by the Hon'ble Supreme Court, it is held that there is no inconsistency between the two provisions and it does not prescribe that a petition for eviction on the ground of demolition and reconstruction cannot go along with the plea of own occupation. Therefore, the finding of the learned Appellate Authority stating that these two requirements are inconsistent with each other is incorrect and such finding is contrary to the law laid down in the aforementioned decision.”

9. In view of the aforesaid decision, this Court is not inclined to entertain this revision petition and the same is accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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10.01.2023

To

1. The Subordinate Judge,
Tirumangalam.

2. The District Munsif,
Tirumangalam.



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B.PUGALENDHI, J.

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