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CRP (MD) No.2065 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.07.2023
Pronounced on	21.12.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.2065 of 2022

and

CMP (MD).No.9474 of 2022

H.Shahjahan

... Petitioner/Respondent/Tenant

Vs

M.Mohammed Ali

... Respondents/Petitioner/Landlord

PRAYER: Civil Revision Petition filed under Section 25 of Tamil Nadu Building (Lease and Rent Control Act) seeking to call for the records and set aside the order dated 08/04/2022 in R.C.A.No.5 of 2018 on the file of the learned Rent Control Appellate Tribunal, (Principal Sub Judge), Tirunelveli reversing the fair and decreetal order dated 03.01.2018 passed in R.C.O.P.No. 30 of 2014 on the file of Rent Contoller (1st Additional District Munsif), Tirunelveli and allow this Civil Revision with cost.

For Petitioner : Mr.J.Maria Rubit

For Respondent : Mr.T.Selvan



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ORDER

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2. According to the revision petitioner, the respondent filed a petition in R.C.O.P.No.30 of 2014 before the learned Rent Controller (1st Additional District Munsif), Tirunelveli, for eviction against the revision petitioner from the shop in door No.157 and 158A, situated at Anna Veedhi, Melapalayam, Tirunelveli, which is the subject matter of revision. The revision petitioner was inducted as tenant from the year 1981 and 1984 in respect of the above two shops and from then onwards the petitioner is running a tailor shop in the name and style of Shahjahan Tailors and paying rent without any default. In such circumstances, the respondent insisted the petitioner to enhance the rent or to vacate the premises and failing which he would be forcibly evicted. The petitioner filed the Suit in O.S.No.26 of 2013 which was renumbered as O.S.No.232 of 2013 on the file of the learned District Munsif Court, Tirunelveli, for permanent injunction restraining the respondent or his men from evicting the petitioner from the suit property by force except under due



process of law. The suit was decreed in favour of the petitioner. Thereafter, the respondent filed a petition in R.C.O.P.No.30 of 2014 before the learned I Additional Rent Controller for eviction on the ground of own use and occupation and for demolition and reconstruction by stating that the building is more than 80 years old.

3.The learned counsel appearing for the revision petitioner would submit that the petition property being a commercial building cannot be converted into a residential house. The learned Rent Controller rightly dismissed the petition by an order dated 03.01.2018. Thereafter, the respondent preferred an appeal before the learned Rent Control Appellate Tribunal, Tirunelveli (Principal Sub Court Tirunelveli). The learned Sub Judge, by his order dated 08.04.2022, erroneously allowed the appeal without considering the evidences and materials on record. Aggrieved by this, the present revision is preferred. The learned counsel would further submit that the respondent failed to adduce any evidence to prove his claim that he needs the petition mentioned property for his own use and occupation and also failed to establish that the respondent is about to demolish and reconstruct the property. Since the respondent has failed to make out a case for eviction, the



order passed by the learned Rent Control Appellate Tribunal is liable to be set aside. The learned Counsel would further submit that the respondent failed to satisfy the conditions required for eviction petition filed under Section 10 (3) (a) (iii) of the Act. The respondent failed to establish that he is not owning or occupying any other building in the same locality. In the absence of proof of any of the said conditions, the respondent is not entitled to ask for eviction on the ground of own use and occupation. He further submits that the eviction of non-residential premises can be sought for non-residential purpose only and not for residential purpose. To support his contention he has relied upon the decision rendered in:

- 1. 2018 SCC Online Mad 6119**
- 2. 1999 (3) LW 661**
- 3. 6 Orders in C.R.P(NPD).No.3423 of 2013**

4. On the other hand, the learned Counsel appearing for the respondent would submit that the petition mentioned premises is required by the respondent/Landlord for the purpose of residence and for demolition and reconstruction of petition building which is a bonafide requirement. It is stated that the respondent/Landlord himself is residing in a rented house,



having no other residential property within the town and as the property tax paid in respect of the petition shops is higher, he requires the same for the purpose of residence, which he could achieve by making small alterations in the existing shop. He would further submit that the petition property is more than 80 years old and therefore, the respondent/Landlord intends to demolish the same and construct one or two floors to suit as residence, for which he has necessary funds. Hence, the respondent filed the above R.C.O.P.No.30 of 2014 for eviction under the ground of owners occupation and demolition and re-construction. However, the Rent Control Tribunal dismissed the above petition against which the respondent preferred R.C.A.No.5 of 2018 on the file of the Rent Control Appellate Tribunal, Tirunelveli.

5.The Rent Control Appellate Tribunal, Tirunelveli, allowed the appeal by setting aside the order passed in R.C.O.P.No.30 of 2014. He would further submit that in view of clause (e) of Section 10 (3), the respondent/landlord must establish his claim as bonafide. While seeking eviction of tenant from a non-residential building under Section 10 (3) (a) (6ii) of the Act, the respondent/Landlord should establish that he genuinely requires the premises. Therefore, the learned Rent Control Appellate Tribunal has rightly ordered



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for eviction. Considering the genuine requirements of the respondent/landlord the order impugned calls for no interference.

6.Heard on both sides and records perused.

7.There is no dispute about the fact that the respondent/Landlord does not own any other residential or non-residential building in the same area. But, this would not give raise to automatic cause of action to approach the Rent Controller for eviction under Section 10 (3) (a) (iii) of the Act unless there are other materials to show that his requirement is real, just and out of need. The only point for determination is whether the respondent/Landlord can claim eviction on the ground that the demised premises is required for the owners residential purpose, when the premises was let out for non-residential purpose. The learned Counsel appearing for the revision petitioner would submit that the respondent/Landlord is not entitled to evict the tenant on the ground that the premises is required for residential purpose which was let out for a non-residential purpose. To support his contention he has relied upon the decision cases reported in **2018 SCC Online Madras 6119**.



8. On the other hand, the learned Counsel appearing for the respondent/Landlord would submit that a comparison of Section 10 (3) (a) (iii) and Section 10 (2) would only indicate that the one and only consideration for the Court is to see as to whether the requirement of the landlord is bona fide and if it is bonafide, irrespective of the fact whether it was let out for residential or non-residential purpose, eviction can be ordered.

9. The Respondent land lord has stated that since the suit premise is a non-residential building, the property taxes assessed heavily and therefore he requires the suit premises for demolishing and constructing and converting the same into residential building. Apart from that he require the building for his own residential purpose since he is residing in a rented house and have no other house in the same locality. The above contention of the landlord seems to be genuine on the above submissions. Moreover, the land lord intends to convert the building into residential building only after demolishing and reconstructing. Therefore the settled principle that the landlord cannot ask for residential purpose in a non-residential building, is not applicable to the present case. Therefore, no infirmity is found in the order of the Appellate Tribunal.



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

Consequently, connected miscellaneous petition is closed.

21.12.2023

vsn

To

The District Munsif Court, Thiruvaiyaru.



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