



CRP(MD)No.2152 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.11.2022

Pronounced on : 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.2152 of 2022
and CMP(MD)No.9971 of 2022

Rajasekaran

... Petitioner

versus

Sivagangai Kaliamman Kovil
and Visvakarma Samuga Sangam,
its present President Ramanathan,
S/o.Manikam,
Bharathan Street,
Sivagangai Town,
Sivagangai District.

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to call for the records of the impugned fair and decreetal order dated 30.01.2019 passed in R.C.O.P.No.3 of 2016 on the file of the Rent Controller (District Munsif), Sivagangai and concurrent decreetal order dated 09.06.2022 passed in R.C.A.No.1 of 2019 on the file of the Subordinate Court, Sivagangai and set aside the same.



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For Petitioner : Mr.RM.Arun Swaminathan

For Respondent : Mr.G.Prabhu Rajadurai

ORDER

This Civil Revision Petition is filed by the petitioner/tenant as against the concurrent findings of the Courts below in R.C.A.No.1 of 2019 dated 09.06.2022 and in R.C.O.P.No.3 of 2016 dated 30.01.2019.

2. The respondent is a Sangam having several properties and the subject property, a shop, measuring to an extent of 906 square feet at Sivagangai Town, was leased out to the petitioner during the period 1995 and the monthly rent was fixed at Rs.60/-, which has been periodically increased. The respondent Sangam filed an eviction petition in R.C.O.P.No.3 of 2014, under Section 10(2)(ii)(b)(iii)&(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, before the Rent Controller (District Munsif), Sivagangai. The case of the respondent Sangam is that the revision petitioner/tenant has misused



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the petition mentioned property and since he has been grinding chilly powder, it is causing nuisance to general public. In support their contention, the respondent Sangam has also examined P.W.1 as an affected general public.

3. The petitioner/tenant contested the said petition that by virtue of a rental agreement, dated 01.04.1995, he was inducted as a tenant, that he is running the flour mill in the subject property for more than 40 years; that after obtaining permission from the landlord, he has also spent money for repairing the building to an extent of Rs.1,03,000/-; thereafter, problems started from the year 2014 and since the respondent Sangam refused to receive the rent, he is also depositing the rent before the Rent Controller in R.C.O.P.No.3 of 2014 and apart from the petition mentioned shop, seven other shops are also available to the respondent Sangam and those buildings are rented for saw mill, flour mill, water service station etc. The respondent Sangam has filed the petition with an ill motive to evict the petitioner from the property,



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where he is doing the same business for more than 40 years.

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4. The learned Rent Controller, by appreciating the evidence adduced on both sides, ordered for eviction, by his order dated 30.01.2019, against which, the petitioner/tenant preferred an appeal before the Rent Control Appellate Authority (learned Subordinate Judge), Sivagangai, in R.C.A.No.1 of 2019 and the same was also dismissed by its Judgment dated 09.06.2022. As against the concurrent findings of the Courts below, the present Civil Revision Petition is filed.

5. The learned counsel appearing for the petitioner submits that the petitioner shop is situated in a complex, where there are several other shops including another flour mill and a saw mill etc. As against the petitioner alone, the respondent Sangam has filed the above application on the ground of nuisance and the Courts below, without framing any issue on the condition of the building, have decided that



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the building is old and dilapidated and it requires reconstruction and ordered for eviction on the ground of nuisance. The Courts below have failed to note that the flour mill is in existence for 40 years and in the same complex, another flour mill is available. The neighbours were not examined to substantiate that the petitioner's flour mill is causing nuisance. Instead, a stranger was examined as P.W.1 that while passing through the petitioner's flour mill, he suffered injury due to the chill power emanating from the petitioner's flour mill. However, no document was placed to substantiate this averment.

6. He further submits that the Rent Controller as well as the Rent Control Appellate Authority have went beyond the scope of the petitioner and have observed on the condition of the building when there is no pleading to the effect and without framing an issue and without considering the fact that the respondent Sangam has not taken any step to evict other tenants in the building.



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7. The learned counsel appearing for the respondent Sangam submits that the petitioner had taken the premises on rent for the purpose of running a flour mill and present rent is fixed at Rs.1,500/-. This premise is situated in a congested place at a junction of about four roads and a Temple is situated nearby. The petitioner though taken the premises for running a flour mill, added a machine to grind chillies and hence, the chilli powder and pungent smell emanating from the flour mill causing problem to the public, particularly to the devotees visiting the nearby temple and the Sangam has received several complaints in this regard. Hence, the Sangam filed the above eviction petition and both the Courts have rightly held that the petitioner, by grinding chillies in a congested place, is causing nuisance to the public. Besides, that the high decibel noise from the grinding machine also cause nuisance to the devotees and to the general public. He further submits that the Sangam had also filed a similar eviction petition against another tenant, by name, one Thiyagarajan, in R.C.O.P.No.4 of 2016 on the ground that the building has become old and therefore, it requires for



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reconstruction. According to him, all other tenants in the building have agreed to vacate the premises, when the Sangam proceeds for reconstruction of the building. Even in the present eviction petition, it is stated that the Sangam is intending to demolish the structure of the building as it is old. The other two rice mills referred by the petitioner are in a different building and not in the subject building and the same cannot be equated.

8. In support of his contention, the learned counsel for the respondent has relied on a Judgment of the Hon'ble Apex Court reported in **(1993) 3 SCC 351**, wherein, it is held as follows:

“15. There are no statutory definitions of 'nuisance' or 'annoyance' which under Section 13(1)(c) of the Act constitute a ground for recovery of possession by landlord of a premises in the occupation of tenant. In the case with which we are concerned, the acts of nuisance or annoyance complained of are committed by the tenant and persons residing with him in the premises which is a tenement (flat) lying amidst other tenements



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(flats) of the one and same storeyed building. The acts of the defendant or persons residing with him in the tenanted premises which are found as acts causing nuisance or annoyance to adjoining or neighbouring occupiers, cannot fall short of being acts of nuisance of annoyance if regard is had to their nature, intensity and duration and the consequential ill-effects which might have been produced by them on the normal living of such occupiers. Further, when the particular acts of the defendant or persons residing with him in the premises (flat) of a storied building, said to have caused nuisance of annoyance to the occupiers of adjoining or neighbouring occupiers of tenements (flats) in the very same storeyed building are seen, they cannot make us think that they were not clear acts of nuisance or annoyance envisaged under Section 13(1)(c) of the Act because of the intolerable inconveniences, sufferings, humiliations which must have been caused to the adjoining or neighbouring occupiers, due regard being given to the locality of the storied buildings, the class of the people living in the tenements of the storeyed building and the nature of living to which they were



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accustomed. Even otherwise the acts, said to have been committed by the defendant and persons residing with him in the premises when are, as stated, found by the fact finding courts to have amounted to acts of nuisance or annoyance entitling the plaintiff under Section 13(1)(c) of the Act to recover possession of the premises from the defendant and when the High Court has refused to interfere with such finding in exercise of its writ jurisdiction there could be no justification whatever for us to interfere with the same in this appeal under Article 136 of the Constitution.”

9. He further submits that the erstwhile President of the respondent Sangam, one Arumugam, had colluded with the petitioner and endorsed the document as if the suit schedule property was leased out for a period of 15 years from 06.06.2019 and the same was renewed for a sum of Rs.1,03,000/- without any authority. According to him, the President is not having any power to execute any lease agreement beyond a period of 11 years.



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10. This Court considered the rival submissions made and perused the materials placed on record.

11. The respondent Sangam filed the eviction petition before the Rent Controller/District Munsif, Sivagangai, under Section 10(2)(ii)(b) (iii)&(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground of nuisance. The respondent Sangam claimed that the petitioner, who was leased out the premises for running a flour mill, is also using the same for grinding chillies, which cause nuisance to the general public. The petitioner claimed that he is in occupation of the premises for the past 40 years. It is an admitted case that the petitioner is a tenant of the respondent Sangam from the year 1995 and the premises was leased out to the petitioner for the purpose of running a flour mill. The petitioner claims that another flour mill is also functioning in the premises, however, the respondent submits that it is in a nearby building belong to the Sangam.



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12. Grinding chilli is not a prohibited one and it may not cause any injury even to the person who is grinding the chilli. As rightly pointed by the learned counsel for the petitioner, though there are several establishments in the building, none of the neighbours have made any complaint against the petitioner that the chilli powder emanating from the petitioner's Mill is causing any nuisance to others. A stranger has been examined that he used to visit a nearby temple passing through the petitioner's premises and suffered injury out of chilli powder. The date of such incident has not been mentioned. It is not known how he has been identified and has been examined. Further, no documents have been placed that he has suffered injury and he was subjected for treatment. Only during the course of trial, the respondent Sangam has taken a plea that the building is an old titled house, which requires renovation and the Courts below have also discussed on the requirement of the building for renovation without framing any issues.



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13. Though there are several shops excepting two, the respondent Sangam has not taken any step to vacate other tenants in the same shopping complex for the purpose of renovating the building. If it is required for renovation purpose, the respondent has to file necessary application for the same by complying with other requirements as per the Act, which has to be decided by the Court after framing necessary issues.

14. Nuisance has not been defined under the Tamil Nadu Building Lease and Rent Control Act 1960. Further, grinding chilli is not prohibited one and it is also form part of any flour mill. In the absence of any evidence from the neighbours, this Court is not inclined to accept the evidence of P.W.1 to hold that there is nuisance caused to the public.

15. Accordingly, this Civil Revision Petition is allowed. The orders passed by the learned Subordinate Judge, Sivagangai, in



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R.C.A.No.1 of 2019, dated 09.06.2022 is set aside. However, a liberty is given to the respondent Sangam to file a fresh petition under the new Act, if any new cause of action arises. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

1. The District Munsif,
Sivagangai.
2. The Subordinate Court,
Sivagangai.
3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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Pre-delivery order made in
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