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C.R.P.(NPD).Nos.1642 and 1789 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).Nos.1642 and 1789 of 2021
and
C.M.P.Nos.12747 and 13909 of 2021

C.R.P.(NPD).No.1642/2021:

K.Sasi

... Petitioner

VS

1.Mougamadou Sulthan Maricar

2.J.Ravi Rajan

3.M.Shaik Ismail

... Respondents

Prayer: Civil Revision Petition is filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, praying to set aside the Judgment and Decree dated 18.02.2020 made in R.C.A.No.4 of 2018 on the file of the Court of the Appellate Authority under the Rent Control Act (District Judge) at Karaikal, confirming the Order and Decreetal Order dated 10.11.2017 made in R.C.O.P.No.2 of 2010 on the file of the Court of the Rent Controller, Principal District Munsif Court, Karaikal.



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For Petitioner : Mr.T.M.Naveen
for M/s.K.P.Jotheeswaran

For R1 : Mr.Ashwin Prasad
for M/s.V.Srimathi

For R2 : Mr.S.P.Vijayaragavan

For R3 : No Appearance

C.R.P.(NPD).No.1789/2021:

J.Ravi Rajan

... Petitioner

vs

1.Mougamadou Soulthan Maricar

2.M.Shaik Ismail, Masthan Maricar

3.K.Sasi

... Respondents

Prayer: Civil Revision Petition is filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, praying to set aside the Fair and Decreetal Common Order dated 18.02.2020 passed in R.C.A.No.3 of 2018 by District Judge, Karaikal, confirming the Decree and Judgment passed by the Rent Controller, Principal District Munsif Court, Karaikal, in R.C.O.P.No.2 of 2010 dated 10.11.2017 and allow the above said Civil Revision Petition.



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C.R.P.(NPD).Nos.1642 and 1789 of 2021

For Petitioner : Mr.S.P.Vijayaragavan

For R1 : Mr.Ashwin Prasad
for M/s.V.Srimathi

For R3 : T.M.Naveen

For R2 : No Appearance

COMMON ORDER

These Civil Revision Petitions are arising out of rent control proceedings.

2. The tenants are the petitioners. The 1st respondent herein filed Rent Control Eviction Petition against the petitioners on the ground of demolition and reconstruction. The Rent Controller ordered eviction and the appeals filed by the petitioners were also dismissed. Challenging the concurrent findings, the tenants have come by way of these civil revision petitions.



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3. According to the 1st respondent/landlord, he is the owner of non-residential building at Thirunallar Road, Karaikal, bearing Municipal Door Nos.84, 84/1 and 84/2. The Rent Control Eviction Petition was filed against the petitioner in both the revisions and one M.Shaik Ismail. The petitioners and other respondents were tenant of different portions of the same building.

4. The petitioner in C.R.P.(NPD).No.1789 of 2021 was inducted as a tenant in respect of entire portion bearing Door No.84 and he has been engaged in vending of ice cream and beverages in the name and style of 'Modern Ice Parlour'. The petitioner in C.R.P.(NPD).No.1642 of 2021 was inducted as a tenant in respect of portion of building bearing Door No.84/2 and he has been carrying on bakery business in the name and style of 'Grand Bakery'.

5. It is the case of the 1st respondent/landlord that entire buildings bearing Municipal Door Nos.84, 84/1 and 84/2 situated in a prime commercial locality of Karaikal District and almost all the old and ancient buildings in the said locality had been demolished and reconstructed into



single or multi-storeyed shops and shopping complexes. The demised

building is anachronistic in relation to the existing buildings in the locality. It

was also averred by the 1st respondent in his eviction petition that income derived from the demised building was very low and not commensurate with its locational advantage. Therefore, in order to augment income, the 1st respondent wanted to demolish the demised building and reconstruct the same. It was also averred by the 1st respondent that he had necessary financial resources to reconstruct the building and he obtained approval from Karaikal Planning Authority for the proposed construction as early as 18.03.2009. On these pleadings, the 1st respondent sought for eviction of the petitioners.

6. The petitioners filed their respective counter and raised a plea that the building was in good condition and therefore, there was no requirement for immediate demolition. The petitioners contended that eviction petition was filed with *mala fide* intention with the sole object of getting rid of tenants.



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7. Before the Rent Controller, the 1st respondent/landlord was examined as PW.1 and a Civil and Structural Engineer was examined as PW.2. On behalf of the 1st respondent/landlord, 19 documents were marked as Exs.P1 to P19. On the part of the petitioners/tenants, the petitioner in C.R.P.(NPD).No.1789 of 2021 was examined as RW.1 and no documents were marked.

8. The Rent Controller on appreciation of oral and documentary evidence available on record came to the conclusion that 1st respondent was entitled to eviction on the ground of demolition and reconstruction and allowed the petition. Aggrieved by the same, the petitioner in C.R.P.(NPD).Nos.1789 and 1642 of 2021 filed appeals in R.C.A.Nos.3 and 4 of 2018 respectively before the Appellate Authority. The Appellate Authority confirmed the findings of the Rent Controller. Hence, the petitioners are before this Court.

9. The learned counsel appearing for the petitioner in C.R.P.(NPD).No.1642 of 2021 assailed the findings of the Courts below on



following grounds:-

- (a) The learned counsel submitted that single eviction petition against more than one tenants was not maintainable. In support of his contention, the learned counsel relied on the judgement of this Court in ***R.Chinnappan and 2 others vs. Kairunbee*** reported in ***2004-3-L.W. 115***.
- (b) The learned counsel further submitted that the 1st respondent failed to give undertaking to start the construction within a month from the date of recovery of possession as required under Section 12 (3)(b) of the Pondicherry Rent Control Act, 1969.
- (c) The learned counsel further submitted that 1st respondent/landlord failed to prove that building was in dilapidated condition so as to require immediate demolition and therefore, the order of eviction passed by the Courts below is liable to be set aside.

10. The learned counsel appearing for the petitioner in C.R.P.(NPD).No.1789 of 2021 submitted that requirement of the 1st respondent/landlord is not *bona fide* one and hence, order of eviction



passed by the Rent Controller is not sustainable. In support of his contention, he submitted that the building plan approval obtained by the landlord under Ex.P3 was dated 18.03.2009 and the application for eviction was filed only on 23.11.2009. The learned counsel further submitted that the landlord failed to prove his financial capacity and valuation certificate filed by the landlord under Ex.P10 creates a doubt. The learned counsel further submitted that no Engineer's report has been filed to prove that building requires immediate demolition.

11. The learned counsel appearing for the 1st respondent submitted that petition was filed by the landlord seeking eviction on the ground of demolition and reconstruction in order to augment income. The learned counsel further submitted that financial capacity of the landlord was not seriously disputed by the petitioners and the evidence available on record is sufficient to prove the financial capacity and *bona fide* requirement of the landlord.



12. The landlord examined a Civil and Structural Engineer as PW.2, he deposed that building was 70 years old and the A.C. Sheet roofing portion of the building was leaking in some of the places. He deposed that a portion of Madras Terraced Roofing in the building had already been damaged and fallen down and the remaining portion of the roofing had lost its life because of several cracks. He noted that leakages in the entire roof causing heavy dampness in the walls and floors. The landlord also produced Ex.P3-Building Sanction Order from the Local Authority on 18.03.2009 and the same was valid for three years from 18.03.2009.

13. The instant petition for eviction was filed well within three years time limit on 23.11.2009. Therefore, it proves the readiness of the landlord to demolish the building. As far as financial capacity of the landlord is concerned, he produced Exs.P7 to P9, Sale Deeds in his name to prove his solvency. The Valuation Certificate-Ex.P10 issued by Tahsildar, Karaikal would prove the value of the property owned by Landlord. The Exs.P7 to P9 proved that landlord is a person having sufficient means to construct new building. Further, the financial capacity of the landlord was not at all



seriously disputed by the petitioners. The evidence of PW.2 with regard to condition of the building, the preparedness of the landlord by obtaining building sanction order from Local Authority and the documents produced by the landlord to prove his financial capacity etc., would prove the petition for eviction is a *bona fide* one.

14. Though the 1st respondent/landlord examined PW.2-Engineer to prove that building was old and weak. The petitioners/tenants failed to lead any contra evidence by examining any other expert. A reading of oral evidence let in by the parties would also suggest the building is located in a commercial locality and most of the building in the locality are terraced building. As mentioned earlier, portion of the demised building is a old Madras Terraced and remaining portion is A.C. sheeted roof. In such circumstances, the landlord is entitled to seek demolition of the building and reconstruction of the same for the purpose of augmenting his income. The conclusion reached by the Court below that the requirement of the landlord is *bona fide* one is based on proper appreciation of evidence available on record and the same requires no interference by this Court.



WEB CONTENT

15. The contention raised by the learned counsel for the petitioners that landlord failed to give undertaking regarding commencement of demolition as required under Section 12 (3)(b) of the Pondicherry Rent Control Act, 1969 is not acceptable to this Court in view of settled law that such undertaking can be given by the landlord even at the time of execution of the eviction order. Therefore, if the landlord files an undertaking affidavit before the Rent Controller at the time of execution, the same would amount to sufficient compliance of requirement under Section 12 (3)(b) of the Pondicherry Rent Control Act, 1969. In this regard, it would be useful to refer to the decision of the Hon'ble Apex Court in ***R.V.E.Venkatachala Gounder vs. Venkatesha Gupta*** and others reported in ***MANU/SC/0299/2002 : 2002 (4) LW 427***.

16. With regard to the maintainability of single eviction petition against three different tenants is concerned, it is the case of the 1st respondent that the petitioners and other tenants, who were arrayed as respondents 1 and 3 in the eviction petition are occupying different portions of the very same building. In ***R.Venkatesachary and others vs. The Judge, Court of Small Causes***,



Madras and another reported in (1949) 2 MLJ 784, a Division Bench of this Court had taken a view that a single petition for eviction of tenants in occupation of different portions of the same building, which was let out separately was very much maintainable, if the landlord required the entire building *bonafidely* for his occupation. The relevant observation of the Division Bench of this Court reads as follows:-

“1. There is no error of jurisdiction or an apparent error of law on the face of the record. The appellate tribunal has found that the landlord required the entire house for his occupation. Though the definition of a building in the Act includes a portion of a building, it does not mean that the owner of a house, portions of which have been let separately, cannot file an application for obtaining possession of the entire house as a building. What is sufficient for the landlord is not the real question, but whether he requires the entire building bona fide for his occupation. The finding that he requires it in this case is a finding of fact. The application is therefore dismissed with costs.”

17. There was no provision for demolition and reconstruction in the old Rent Control Act, as in the case of present Rent Control Act of the year 1960.



In the above mentioned case, a petition was filed for own occupation by the landlord against the different tenants in occupation of different portions of the same building. The Division Bench held that single petition against different tenants, who were inducted into different portions of the building by separate tenancy agreement was maintainable. There is nothing wrong in extending the very same analogy to the petition for eviction on the new ground of demolition and reconstruction introduced in 1960 Act.

18. In fact, the above ratio of Division Bench was relied on and followed by a Single Judge of this Court in a petition for eviction on the ground of demolition and reconstruction filed against different tenants occupying the very same building in ***P.M.Patel vs. K.Ramanathan*** reported in ***1972 TLNJ 55***, the relevant observation reads as follows:-

“The only plea that was taken was that separate petitions ought to have been filed by the landlord for evicting the tenants even though they occupied the same building, the word building used in composite sense. Reliance was placed on the decisions of a single judge of this Court in 1967-1 M.L.J. 277 and 1969 (2) M.L.J. 452. In both the decisions it has been held that if petitions related to the same building and no prejudice is caused



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a single petition is maintainable. The point is put beyond controversy by a Bench decision of this Court in 1949 (2) M.L.J. 784 which was not brought to the notice of the single Judge. The Bench has held a single petition is competent.”

19. In ***Umsalma Bibi vs. R.Lakkia Gowder*** reported in **1967 (1) MLJ 277**, a learned Single Judge of this Court had taken a view when eviction petition is filed on the ground of demolition and reconstruction against the tenants occupying different portions of the same building separate petition shall be filed against each of the tenants in view of the fact as per the definition of word “building” in the Rent Control Act, a part of the building can also be treated as a building. Even though the learned Judge had taken a view that separate application shall be filed by landlord against each of the tenants occupying different portions of same building, he also proceeded to hold that when no prejudice is caused to the tenants by a comprehensive or composite application filed by the landlord against more than one tenants, the order of eviction need not be disturbed. The relevant observation reads as follows:-

“The point here is that the word 'building' has two distinct



connotations. One if the connotation in the ordinary usage of the English language, to which I shall presently refer. The other is a connotation derived from section 2 (2) of Madras Act XVIII of 1960, which is a definition. By virtue of this definition, 'building' will mean or include a part of a building 'let or to be let separately'. In other words, the Statute embodies a technical definition, which makes building 'equivalent to tenement, as ordinarily understood in law.

But this is not the connotation in the usage of English, apart from a technical context. In Stevens v. Gourley, the learned Judge said:

“I may venture to suggest, that, by a 'building' is usually understood a structure of considerable-size, and intended to be permanent, or at least to endure for a considerable time.”

In other words, it is the unity of the structure and its permanence, which are normal factors in the connotation, according to English usage. Also see the commentary in Stroud's Judicial Dictionary, Third Edition, Volume I, page 347, under the caption “Building.” In Moir v. Williams, Esher, M.R., said that this is always a question of degree and circumstances, but that the “ordinary and usual meaning is, a block of brick or stone work, covered in by a roof”. In the Shorter Oxford Dictionary, the word has been defined as 'a structure, or edifice.'



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As observed earlier the connotation derived from the usage of the language appears to involve the factors of a permanent structure and the unit of that structure. In that sense, there can be no doubt that this was a single building though there are separate door numbers and distinct tenements for distinct tenancies. But, since the Legislature in its wisdom has thought it fit to substitute a technical definition for purposes of the Act, for the connotation derived from ordinary usage, I. am clear that the landlord must file separate applications for each building or tenement as defined in the Act for purposes of section 14 (1) (b) of the Act. When they relate to the composite structure or edifice, though with distinct tenements, it will be proper to treat such applications together, and to dispose of them by means of a common judgment.

But the point is not this. The point is whether, in the present case, assuming: that separate applications ought to have been filed, the fact that the landlord filed a comprehensive or composite application, has worked any prejudice to the tenants (revision petitioners). I am unable to see any prejudice whatever. As laid down by the Supreme Court in R. B. Sugar Co. v. Rampur Municipality, even the question whether a word like “shall” used in a Statute is mandatory or merely directory, has to be determined after taking into account the factor of



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inconvenience or prejudice. I therefore hold that there is no justification for interference in revision in these cases, though I must equally make it explicit that, in my view, where a landlord makes an application under section 14 (1) (b) in respect of a 'building' as defined in the Act, he must make a separate application in each such instance, though all these 'buildings' may be within one structure.

The proceedings are dismissed. However, in view of the great hardship that revision petitioners are bound to sustain, in the matter of finding alternative accommodation for non-residential business purposes, in a congested urban area, I direct that they shall have time for nine months from this date for vacating the premises. The order will be enforced only if they do not shift elsewhere by that period."

20. Therefore, it is clear in cases where a single petition is filed by the landlord against the different tenants occupying different portions of the same building unless, the tenant is able to show such comprehensive single petition caused prejudice to him, the order of eviction passed by Rent Controller entertaining such comprehensive petition need not be interfered in revision. In the case on hand, the learned counsel for the petitioners are unable to show



any prejudice caused to the petitioners by virtue of filing of single petition by the landlord against three different tenants occupying three portions of the same building.

21. In fact, the conclusion reached by Me that eviction order passed by the Rent Controller by entertaining single petition need not be interfered with in the absence of any prejudice to the petitioners/tenants is fortified by the decision of this Court in ***D.Rukmani Ammal and others vs. V.K.Izudden*** reported in ***AIR 1983 Mad 303 : (1983) (1) MLJ 189***. The relevant observation reads as follows:-

“7. Ananthanarayanan, C. J. in Umsalma Bibi v. Lakkia Gowder, 1967 1 MLJ 277, dealt with a case under Sec. 14(1)(b) of the Act, where there were distinct and several door numbers or tenants in a single structure and obviously covered by different and separate tenancies and in occupation of different tenants, and in that context, the learned Chief Justice, taking note of the definition of 'building' under the Act, observed that the landlord must take a separate application in each such instance though all these 'buildings' may be within one structure. Yet, the learned Chief Justice, obviously keeping in mind the cardinal and salutary principle that if no prejudice has



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been or is being caused to the tenant even in such a contingency.
courts shall not throw out such proceedings, declined to
interfere in revision.

8. In all such cases, the real question is whether there has been any prejudice caused to the tenant or tenants by the said procedure of filing a single petition. Ananthanarayanan, C. J. applied the same principle to a case of a single petition under S. 6 of the Act against different tenants in *Govindaswami Naicker v. Kerwar*, (1969) 82 MLW 137, I have also kept in mind this principle while deciding the case in *T. N. Unnamalai Achi v. Saminatha Pathar*, (1980) 93 Mad LW 404.”

22. In ***V.K.S. Raghavan and others vs. K.S.Dayavathi and others*** reported in ***MANU/TN/0191/1986 : 1987-100-LW 303***, the Hon'ble Chief Justice M.N.Chandurkar had taken a very same view in Paragraphs 5 and 6 of the said decision which reads as follows:-

“5. contended that the petition under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960) (hereinafter referred to as the Act) itself was not maintainable because one petition has been filed against all the tenants. The other contention raised by him is that having regard to the Provisions of Section 14(5) of



the Act, the petition filed by the landlords is not maintainable.

6. So far as the first contention is concerned, it is difficult to see how the petitioners can raise any objection to the maintainability of the application. The objection is one more of form than of substance; The premises bear one door number and the different floors are occupied by different tenants. The landlord is the same. The evidence to be given in support of the claim for demolition and reconstruction will in such a case be the same. Even assuming that four separate petitions were filed by the landlords, they would necessarily be consolidated for trial in which case common evidence will be recorded because obviously the evidence in such a case will be common since the demolition of the entire building is in issue. It may also be noted that in the instant case the tenants themselves have filed a common written statement. They are represented by the same counsel and it can hardly be said that they have been in any way prejudiced by the landlords filing one common petition. The objection that one common petition is not maintainable must therefore be rejected.”

23. Therefore, I hold single eviction petition filed by the landlord against different tenants in respect of different portions of the same building is very much maintainable in view of the decision rendered by Division



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Bench of this Court in ***R.Venkatesachary*** case and decision of learned Single Judge in ***P.M.Patel*** case.

24. Even assuming the landlord is required to file separate petition, an eviction order passed by the Rent Controller by entertaining a single eviction petition need not be disturbed in the absence of any prejudice to the tenant as held in ***Umsalma Bibi*** case, ***D.Rukmani Ammal*** case and ***V.K.S.Raghavan*** case.

25. The decision of learned Single Judge in ***R.Chinnappan and 2 others vs. Kairunbee*** reported in ***2004-3-L.W. 115*** holding that single petition by landlord against different tenants was not maintainable had been rendered without considering the judgement of the Division Bench and the other binding precedents stated supra. Therefore, I am unable to subscribe to the view expressed therein, especially when petitioners are not able to show any prejudice by entertainment of single eviction petition. Therefore, the legal submission raised by the learned counsel for the petitioners with regard to maintainability of single petition is repelled.



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26. In view of the discussion made earlier, both the Civil Revision Petitions are dismissed by confirming the order of eviction passed by the Court below against the petitioners. No costs.

27. Having regard to the fact the petitioners are carrying business in the demised premises, this Court is inclined to grant six months time for vacating and handing over the vacant possession to the respondents/landlords on following conditions:-

(a) The petitioners shall file affidavit of undertaking stating they would handover the vacant demised premises to the respondents/landlord on or before 30.09.2024. The affidavit of undertaking shall be filed within a period of two weeks from the date of receipt of copy of this order. In case, the petitioners failed to file affidavit of undertaking, the respondents are at liberty to proceed with execution immediately.

(b) The petitioners shall continue to pay agreed rent starting from February-2024 to till the date of handing over the vacant possession of the



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demised premises. The agreed rent shall be paid on or before 10th of every succeeding calender month. In case of failure of the petitioners to comply with any one of the conditions, the respondents are entitled to execute the eviction order immediately.

22.03.2024

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

1.The District Judge,
Rent Control Appellate Authority,
Karaikal.

2.The Rent Controller,
Principal District Munsif Court,
Karaikal.



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dm

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