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CRP. No.2237 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. Nos. 2237 of 2021

1 B.VEERARAGHAVAN

...Petitioner

Vs.

1 S.KASTHURI(DIED)

2 K.RANI

3 K.DEIVANAI

4 K.DHARANI

5 K.SAKTHIVEL

6 K.RAJA

6 K.RAJA

(Sole Respondent died. Respondents 2 to 6 are brought on record as legal heirs of the deceased sold respondent viz. S.KASTHURI vide court order dated 20.09.2023 made in CMP No. 18501 of 2021 in CRP No. 2237 of 2021 by TVTSJ)

...Respondents

PRAYER : This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act 1960, to set aside the Judgment and decree order dated 03.09.2021 passed in RCA No. 485 of 2015 by the Honble VII Judge Small Causes Court Chennai confirming the



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order decreetal order of eviction dated 12-08-2015 passed in R.C.O.P. No. 667 of 2014 by the Honble XVI Judge Small Causes Court Chennai and allow the C.R.P.

For Petitioner : Mr.L.Dhamodharan
For Respondents : Mr.M.Arun Kumar

ORDER

This petition has been filed to set aside the Judgment and decree order dated 03.09.2021 passed in RCA No. 485 of 2015 by the VII Judge Small Causes Court Chennai confirming the order decreetal order of eviction dated 12-08-2015 passed in R.C.O.P. No. 667 of 2014 by the XVI Judge Small Causes Court Chennai.

2. The respondent herein/landlord filed RCOP No. 667 of 2014 for evicting the tenant and to direct the petitioner/tenant to vacate and deliver vacant possession of the schedule mentioned property. The said petition was contested by the petitioner herein/tenant by filing counter. After considering the submissions on either side, the rent controller ordered for eviction. Against which, the petitioner herein/tenant filed RCA No. 485 of 2015 before the VII Court of Small causes, Chennai, and the said Court also confirmed the findings of the rent controller. Challenging the same the



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petitioner/tenant filed this Civil Revision Petition. During the pendency of the proceedings landlord Kasthuri was died her legal heirs were impleaded as respondents herein.

3. The learned counsel for the petitioner prayed to set aside the findings of the Courts below on the following grounds:

i. The courts below failed to take note that the landlord failed to fulfill the ingredients as envisaged under section 10(3)(a)(iii) of the Act. As such, the order passed by the courts below is not proper

ii . The courts below has committed error in passing an order of eviction even though the respondent owns the property bearing No. 37, Ballamman Koll Street, Villivakkam, Chennai - 600 049 other than the petition property bearing No. 20, Ballamman Koll Street, Villivakkam, Chennai-600 049.

iii . The Hon'ble Rent Controller passed an order of eviction that the tenant has not produced the document in proof of ownership of properties by the landlord bearing No. 37, Balamman Koi Street, Villivakkam, Chennai - 600 049. When the revision petitioner filed an application bearing MP No. 512 of 2017 for reception of documents and filed the settlement deeds dated 15-09-2011 in proof of ownership of the property by the landlord, the Rent Control appellate Authority ordered eviction on the misconception that on execution of the settlement deed title will pass on to the settlee. Particularly the settlement deed executed by the landlord is not an absolute settlement and life interest has been retained by him. As such, the order of the Hon'ble Rent Controller and confirmation of the order of eviction by appellate authority is not proper.

iv. The Hon'ble appellate authority committed error in rendering a finding that the execution of settlement deed amounts to transfer of title. Even though the landlord retained right of life- interest till his life-time and



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after his demise, the title and ownership will pass on to interpretation of the Hon'ble Rent Control Appellate Authority not proper

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v. The Hon'ble Rent Control Appellate Authority failed to take note of subsequent event with regard to vacancy of adjacent shops and non-utilization of the same by the respondent and let out for the tenant.

vi. The courts below failed to take note that the landlord has not spelt out any valid or cogent reason for the non-suitability of other shops which fell vacant during the pendency of rent control proceedings. As such the order of the courts below is not on appreciation of facts.

vii. The courts below failed to take note that the landlord lack bonafide requirement in occupying the shop premise in which revision petitioner has been carrying on business.

viii. The courts below failed to take note that the intention of the landlord has been smacked with malafides to get rid of the tenant from the shop premise.

4. Further to support his contention the learned counsel for the petitioner relied the following judgment in the case of D.Periyagopal alias Gopal Vs. K.Viswanathan reported in 2006 MLJ page 663 :

"13. In this case there is absolutely no reason or purpose mentioned for the landlord's action of shifting and re-shifting his residence from the first floor of the petition mentioned property. Therefore it becomes an act to hoodwink the opposite party and also the Court which naturally will deprive the element of bonafides in his requirement. The mind of the revision petitioner is filled with the aim of throwing the respondent/tenant out of the tenement, rather than requiring the building for running his tailoring business."

5. Further, he relied the judgment of this Court reported in 2002 MLJ



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If really the petitioner/landlord requires any non-residential building for doing retail business, he would not have let out the building, which is situate behind the petition mentioned building, to a third party. The above vital aspect of the case was not properly considered by the Rent controller and the Appellate authority. It is thus, seen that even though the building suitable to do retail business was available, the landlord without taking possession of the same has let out the building to a third party before filing the RCOP. He has not even pleaded in the petition as to why he let out the godown which is situate behind the petition mentioned building, to a third party when it fell vacant. In the above circumstances, the findings of the Rent controller that the tenant failed to prove that the landlord doing business cannot be sustained. The findings of the Rent controller and Appellate authority on the question of own occupation are vitiated by perversity.

6. By submitting the above grounds, the learned counsel for the petitioner submits that the Courts below failed to appreciate the facts and evidence and erroneously passed the order of eviction and the same was confirmed by the lower appellate Court by dismissing the appeal without assigning any reason as such is liable to be set aside. Besides, the rent controller failed to take note of the fact that the land lord is having other property, in that property the landlord is entitled to carry out his business but with a malafide intention to vacate the tenant the land lord filed the petition to vacate the petitioner as such is not maintainable in law. But the



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Rent Controller erroneously ordered for eviction and same was confirmed by the lower appellate authority which is also liable to be set aside. Hence, he prayed to allow this petition.

7. By way of reply, the learned counsel for the respondents/land lord submits that after retirement the land lord wants to run cool drink shop in the petition mentioned property which is under the occupation of the petitioner/tenant and also convenient her the same was rightly appreciated by the rent controller which needs no interference of this Court. Further, he argued that at the time of filing the RCOP the land lord has not possessed any other property to run the business and other shops also under the occupation of her son and another shop was under the occupation of another tenant and the same was rightly ordered by the rent controller which was confirmed by the lower appellate Court which needs no interference. Further, he would submits that during the pendency of the proceedings one of the tenant was vacated the premises the same cannot be taken into consideration for the reason that for the convenience sake the landlord approached the rent controller in the year 2014 in order to run the business in the petition mentioned property and also the land lord carried out business in the some other places at ICF. After retirement the landlord



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wants to run the said business in the petition mentioned property. Hence, the landlord sought that premise which was under the occupation of the tenant/petitioner. Therefore, as a tenant the petitioner has no right to evict the land lord. Accordingly, prayed to dismiss this petition.

8. Considering the submissions on either side, the facts reveals that the landlord Kasthuri let out shop in Door No.20 at Balamman Koil Street, Villivakkam, Chennai along other shops. At the time of filing RCOP the contention of the petitioner is that after her retirement she intended to start fancy and cool drinks store in the petition mentioned property in Door No. 20 which is nearby her residence and it is more comfortable for his business. So, with bonafide requirements the landlord approached the rent controller for eviction after issuing notice to the tenant. The contention of the tenant/petitioner is that the land lord owned another shops in door No. 21 which is nearer to the landlord's residence but the landlord has not filed any case against that shop. Further, the petitioner is having building at Door No. 37., Balamman Koil Street, Villivakkam, Therefore, his requirement is not bonafide one. Further, the landlord failed to comply the requirements as required under Section 10 (3) (a) (iii) of the Tamil Nadu Buildings (lease and Rent) Control Act. Before filing the case, the rent was fixed that rent



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was paid by him by the tenant which is an admitted fact. The petitioner seeking eviction under the said provision which is extracted below:

- i. the building should be non-residential in character
- ii. the landlord should be carrying on business on the date of his applying for eviction
- iii. the landlord should not be occupying any other non-residential building belonging to him for the purpose of his business, and
- iv. the landlord's claim in bonafide for his business needs and not based on oblique motives like trying to obtain more rent or to harass the tenant.

9. Admittedly, the petition mentioned premises is a non residential in character in which tenant also running the fancy stores. Further, to comply the second requirements, the land lord relied the Ex.B3 to Ex.B9, the said documents shows that the land lord carrying out business on the date of filing of eviction petition. The contention of the land lord is that she took license for running cool drink shop to that effect he relied the EX.B3 to Ex.B8, which clearly shows that the landlord availed stall allotment from ICF on 05.02.2014 prior to filing of the RCOP proceedings and also remitted cash to ICF under Form A, and also produced Ex.B8 receipt for payment to Railways, the above documents shows that the landlord has already doing business. Further, in respect of third conditions, the land lord



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should not have any other non residential building at the time of eviction proceedings, for that petitioner/land lord gave evidence that she have three shops in his name of which one shop was allotted to the present tenant and another shops was allotted to another tenant and another one allotted to his son. Hence, on the date of filing of the petition the land was not owned any common building in commercial nature. The last condition is landlord requirements must be bonafide. As he filed for licence to run the business. Now, he wants to shift the business in his own building for his convenience sake. Therefore, all the conditions required under the said Act was complied and the same was rightly appreciated by the rent controller by granting order of eviction. The objection raised by the tenant is that during the pendency of the proceedings another tenant vacated the premise, if he really wanted to shift his business, the land lord can availed that shop but she tried to vacate the petitioner from the petition mentioned premises. Therefore, his requirements is not bonafide one as his intention is only to vacate the petitioner from the premises but the Court failed to appreciate the facts. In fact, at the time of RCOP proceedings another shop was under the occupation of some other tenant but for her convenience sake landlord wants



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the present petition mentioned premises. Therefore, on the date of filing the petition, the requirements of the landlord was bonafide one, as he was not owned any other commercial building, subsequent event need not be considered, to that effect objection raised by the tenant is unjustifiable.

10. The another objection raised by the tenant is that during the pendency of the proceedings the landlord executed settlement deed in favour of the son hence he has no locus standi to proceed with the matter. During the pendency of the proceedings land lord died her legal heirs were impleaded as parties they are entitled to proceed with the matter. Even as per the settlement deed, the description of the property denotes that the property was gifted by the landlord to her legal heirs. In respect of execution of gift deed the tenant has no locus standi to dispute the same as it is illegal in which respondent is entitled to continue the vacation proceedings as legal heirs of the land lord. Furthermore, as per evidence of R.W.1, which clearly reveals that at the time of filing of RCOP the present tenant was under the occupation of Door No. 20 and the son of P.W.1 occupied another shop and another tenant occupied another shop. Therefore petitioner complied the requirements as required under Section 10 (3)(a) (iii) of the Act . On the other hand, tenant also failed to establish that land lordlord owned



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commercial building at the time of filing RCOP therefore the objection raised by the petitioner is not maintainable. Furthermore, the petitioner/tenant also criticized the order passed by the appellate Court but on seeing the order of the appellate Court, which clearly assigned reason to dismiss the petition. As discussed above, both the Court below rightly passed the order which needs no interference. Further, the tenant is directed to vacate the premises within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

12. After pronouncing this order on 09.07.2024, the learned counsel for the petitioner sought time to file undertaking affidavit to vacate the premises. Hence, the matter was posted on 11.07.2024. On 11.07.2024, the petitioner's counsel filed an undertaking affidavit praying to grant six months time to vacate and hand over the premises. The learned counsel for respondent/landlord raised objection and submitted that he has occupied the premises for more than 10 years. But, on seeing the facts, he wanted to look over alternative premises to run the business.

13. Considering his submissions, this Court directs the



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petitioner/tenant to vacate and hand over the premises on or before 31.12.2024 and during the said period, he is directed to pay the rent. The undertaking affidavit filed by the petitioner/tenant is recorded and the same shall form part and parcel of the order. If any deviation in complying the condition, this Civil Revision Petition will be reopened.

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