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CRP.Nos.4471 and 3994 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.Nos.4471 & 3994 of 2024
and CMP.Nos.24954 & 21928 of 2024

GBV Selvam

... Petitioner in both CRPs

Versus

KR Amaranathan

... Respondent in both CRPs

Prayer in CRP.No.4471 of 2024: Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decretal order dated 21.08.2024 made in RCA.No.1 of 2023 on the file of Apellate Authority/Sub-ordinate Judge, Gobichettipalayam confirming the fair and final order dated 31.01.2023 made in RCOP.No.1 of 2018 on the file of Rent Controller/District Munsif Court, Gobichettipalayam.

Prayer in CRP.No.3994 of 2024: Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 19.09.2024 made in un-numbered E.A.No.-- of 2024 in EP.No.8 of 2023 in RCOP.No.1 of 2018 on the file of Rent Controller/District Munsif Court, Gobichettipalayam and consequently direct the learned District Munsif to number the un-numbered EA.--- of 2024 filed by the petitioner in EP.No.8 of 2023 in RCOP.No.1 of 2018 under Order 21 Rule 26 and Section 151 of Code of Civil Procedure.

Both CRPs



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For petitioner : M/s.P.Saravana Sowmiyan
For Respondent : Mr.S.A.Syed Shuhaibb

COMMON ORDER

Since, the issue involved in these revisions are one and the same, these revisions are disposed of by way of this common order.

2. Challenge has been made to the concurrent findings of the Court below in ordering eviction for own use and occupation of non residential buildings and also demolition of construction.

3. The petitioner was originally inducted as a tenant by the grandfather of the petitioner/landlord. The property devolved upon the landlord as per the will dated 20.10.1995. The tenant is paying the monthly rent of Rs.3000/-. The respondent being an agriculturist and he wants to sell the agricultural products in the premises. Hence, seeks eviction on the ground of own use and occupation. That apart, it is the contention that the property is old and in a dilapidated condition. Hence, sought for eviction for the purpose off demolition and reconstruction. Both the Courts below found that the landlord has established his bonafides for demolition and reconstruction and also for own use and occupation for the purpose



of business. Hence, this revision.

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4. The learned counsel for the revision petitioner mainly submitted that application has been filed under Section 10(3) not under 10(2) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Therefore, ordering eviction for own use and occupation is not maintainable. Further, the petition itself indicates that the landlord has only proposed to open the retail vegetable shop on the date of the eviction petition, he was not carrying on such business. Therefore, eviction cannot be ordered under 10(3)(ii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Further, it is the contention that as to ordering eviction under 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, condition of undertaking has not been given.

5. Whereas, the learned counsel for the respondent would submit that undertaking can be given at any time, even before the eviction. In this regard, he placed reliance upon the judgment of this Court in the case of *V.N.Rajamanickam vs. Sadhuna* made in *CRP(NPD).No.1679 of 2021*. Further, it is the contention that the petitioner is an agriculturists cultivating on his lands, he require the building



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for selling vegetables. Therefore, he is entitled to seek for eviction.

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6. Heard both sides and perused the materials placed on record.

7. The tenancy is not disputed. The petitioner's contention that he is an agriculturists is also not disputed. Though it is argued by the revision petitioner that on the date of petition, the landlord was not carrying on business, however, the fact remains that the respondent/PW1 has clearly established in his evidence that he is cultivating vegetable and he intends to sell vegetables in the shop. Therefore, he requires the property only for the purpose of carrying on business in selling vegetables. When he was already cultivating the vegetables, it is a common knowledge that the vegetables are sold by wholesale or retail. Therefore, the contention of the revision petitioner that he was not actually carrying on a business has no force at all. The vegetables are already sold from the field in one way or other, hence it has to be held that he was carrying on business in selling vegetables. Hence, this ground cannot be sustained.

8. As far as the demolition and reconstruction is concerned, what is required



to be seen is only the condition of the building. The first appellate Court has factually assessed the document and held that the building is more than 60 years of age. When the building is more than 60 years, it has to be held that such building requires demolition and reconstruction. The Constitution Bench of the Hon'ble Supreme Court in the case of *Vijay Singh and others vs. Vijayalakshmi Ammal* reported in (1996) 6 SCC 475 has held that immediate purpose of demolishing does not indicate that the building must be in a dilapidated or decrepit condition requiring its immediate demolition. Age and condition of the building is the relevant factor. Therefore, when the age of the building has been clearly established on the basis of the documents, it cannot be said that the condition of the building has not been established.

9. This Court in the case of *Valli vs. P.V.Rangaraj* reported in (2010) 7 MLJ 95 has held that the landlord seeking eviction on the ground of demolition and reconstruction need not necessarily examine an Engineer to prove the dilapidated condition of the building and the landlord can even demolish the building for the purpose of augmenting his income.

10. The other contention of the learned counsel for the petitioner that as far



as the other tenants, no eviction petition has been filed, therefore, there is no bonafide on the part of the landlord is concerned, the landlord has clearly given his evidence in this regard that other tenants have agreed to vacate the building whenever required, therefore, he has not filed separate applications. That evidence cannot be brushed aside. Therefore, when the petitioner has clearly deposed that other tenants have agreed to vacate the premises, when required, it cannot be said that the respondent is not bonafide.

11. As far as the undertaking required under 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has not been given in the petition is concerned, this Court in the case of Lakshmi vs. M.V.Balamurali and another reported in (2007) 3 LW 148 has held as follows:

"29. Coming to the question of the landlord's not giving an undertaking under Section 14 (2)(b) of the Act, it is true that if no such undertaking is given it is not in consonance with the provisions of the Act. But what is to be decided is whether not giving an undertaking is a rectifiable error or not. This Court has already held in 2006 (2) MLJ 524 (cited supra) that it is only an error and the landlord can be given an opportunity to rectify the error and file an undertaking before the order of eviction is passed and the same can be done in appeal or revisional stage.

12. Similarly, this Court in the case of V.N.Rajamanickam vs. Sadhuna



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made in CRP(NPD).No.1679 of 2021 order dated 09.11.2021 has held as follows:

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" 8.No doubt, the landlord has not furnished such an undertaking in the petition in RCOP.No.8 of 2016. Though the requirement under Section 14(2)(b) is mandatory, the provision is silent as to the stage at which the affidavit of undertaking or undertaking should be furnished. This Court as well as the Hon-ble Supreme Court have held that such undertaking could be filed even at the time of execution of the decree, since the undertaking is only to the effect that the landlord will commence the work of demolition within one month from the date of taking possession and complete it within three months. Therefore the contention of the learned counsel for the petitioner cannot be accepted. "

13. Considering the above, I do not find any merits in the CRP.No.4471 of 2024, accordingly, the revision stands dismissed. No costs

14. As far as CRP.No.3994 of 2024 is concerned, the learned counsel for the revision petitioner submitted that the revision has become infructuous and he made an endorsement in the case bundle to that effect.

15. Accordingly, the revision in CRP.No.3994 of 2024 stands dismissed as infructuous. No costs.

N. SATHISH KUMAR, J.



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Consequently, connected miscellaneous petitions in these revisions are closed.

19.12.2024

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The Sub Judge
Subordinate Court, Gobichettipayalam

2. The Rent Controller
District Munsif Court, Gobichettipayam

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