



C.R.P.No.270 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2024
PRONOUNCED ON : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.270 of 2024
and C.M.P.No.1349 of 2024

1.J.Senthil Kumar
2.S.Sumithra

... Petitioners

Vs.

M.B.Balakumar

... Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to set aside the judgment and decree dated 20.09.2023 in RCA.No.65 of 2023 on file of the VII Small Causes Judge at Chennai confirming RCOP.No.1582 of 2017 dated 16.03.2023 on the file of the XI Small Causes Judge at Chennai

For Petitioners : Mr.V.Raghavachari
Senior Counsel
for Mr.G.Ilangovan

For Respondent : Mr.N.Palanikumar



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ORDER

The petitioners/tenants filed this revision petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter referred to as “the Act”] challenging the order passed in RCOP.No.1582 of 2017 dated 16.03.2023 which was confirmed in RCA.No.65 of 2023 dated 20.09.2023.

2.The facts of the case is that the respondent/landlord filed a petition under Sections 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 in RCOP.No.1582 of 2017 seeking to evict the petitioners/tenants on the ground of wilful default for owner's occupation. The petitioners, running a business in the name of M/s.J.S. Paradise Homes India Private Limited, entered into a rental agreement dated 20.01.2016 with the landlord for 11 months, the agreed rent payable is Rs.60,000/- per month and the advance amount is fixed at Rs.4,50,000/-. The condition agreed is that rent to be paid on or before 10th of every English Calender month. The tenants defaulted in payment of monthly rent during September 2017 and October 2017. Further, the landlord required the portion; of the rented



property for his own occupation to set up a hospital for his son M.B.Dinesh.

Before the Rent Control Court, the landlord and his son examined themselves as P.W.1 and P.W.2, Ex.P1 to Ex.P8 marked and on the side of the tenants, R.W1/Manager and Authorized Representative of the petitioners and R.W.2/Photographer examined and two documents Ex.R1 and Ex.R2 marked. The Rent Control Court allowed the petition and directed the tenants to evict the premises. The Rent Control Appellate Authority confirmed the findings of the Rent Control Court.

3.The contention of the learned senior counsel appearing for the petitioners is that the petitioners/tenants never defaulted in payment of rents. In fact, the petitioners renovated the building with the consent of the landlord. He would submit that the respondent/landlord is having other property to a larger extent in Astalakshmi Nagar, Porur where a hospital can be constructed which would be more ideal, on the other hand, the tenants were occupying only 1500 sq.ft. and running a business were forced to evict on a false pretext. In the second floor, the landlord's wife is running a business in the name of Mithra's Bridal. Further, the tenant filed a petition in I.A.No.3 of 2023 to appoint an Advocate Commissioner to prove that



Mithra's Bridal is occupying one portion of the property but the same was dismissed. He would further submit that without giving sufficient time to prefer a revision, the Rent Control Court in a hurried manner passed the final order in RCOP.No.1582 of 2017. He further submitted that the Rent Control Court failed to consider the fact that the tenants paid Rs.1,50,000/- to the landlord as additional advance. There is no wilful default on the part of the tenants and as per the calculation of the landlord, the tenant is default to a sum of Rs.4,20,000/-, admittedly an advance amount of Rs.4,50,000/- is lying in the hands of the landlord including the additional advance of Rs.1,50,000/- and hence, there is no default on the side of the tenant. He would further submit that the entire area available in Saligramam is to the extent of 4275 sq.ft., with this limited area never a Multi Speciality Hospital can be constructed as projected by the landlord. Further, no document produced to show that steps have been taken to construct a hospital in the said place. The tenants renovated the entire building with the consent of the landlord by fixing supporting columns, roof pasting, flooring, compound wall and covered the place by asbestos roofing and incurred an expenditure of Rs.40 lakhs.



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4.The learned senior counsel further submitted that when the tenants had specifically pleaded in the counter in RCOP.No.1582 of 2017 that the landlord had suitable place at Ashtalakshmi Nagar, Porur and the same was not denied by the landlord, the burden of proof to disprove the same is on the shoulders of the landlord and hence, the Rent Control Court ought to have invoked Section 106 of the Indian Evidence Act and dismissed the petition. Further, the Rent Control Court had gone by the evidence of R.W.1 wherein he answered that during October 2021 and December 2021 due to heavy rain, the rent was reduced from Rs.60,000/- to Rs.40,000/- by the landlord and thereafter, they have been paying Rs.40,000/-, on the contrary the Rent Control Court had given a finding that no documents or any materials produced to substantiate such a claim and further, it had taken that it is admitted by the tenant that Rs.20,000/- paid less than the agreed tenancy amount which would constitute default. Further, the default committed during September 2017 and October 2017 also clubbed and it has been projected that the tenants committed default in payment of rent. The landlord's son who was examined as P.W.2 admitted that he wants to construct a Multi Speciality Hospital and such hospital cannot be built in the premises approximately measuring 4050 sq.ft. When the landlord had not



disputed the specific plea taken in the written statement that the landlord is owning other property within the City, the finding given by the Rent Control Court that no documentary evidence submitted to prove the same is not proper. The evidence of R.W.2 has not been considered and rejected on the sole ground that he is unable to quote the address of the property he visited to take pictures and the Rent Control Court failed to consider that R.W.2 had clearly stated that the property situated in a street opposite to Prasad Studio. Even in the petition before the Rent Control Court, the property is ascribed near Prasad Studio. He further submitted that the the petition filed by the landlord for evidence under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not maintainable and the petition ought to have filed under Section 10(2(i). The Rent Control Court without assigning any reason had negated the tenants' contention. Against which, the petitioners preferred an appeal and the Rent Control Appellate Court confirmed the default period as September 2017 and October 2017 and thereafter again relying on the evidence of R.W.1 that for the month of October 2021 to December 2021, for a period of three months rent was not paid due to heavy rain and natural calamity not considered and reduction of tenancy amount from Rs.60,000/- to Rs.40,000/- not specifically denied by



the Landlord and gave reason that there is no written document. The Rent Control Appellate Court had not considered the additional advance amount and calculated that there has been arrears of rent and default committed by the tenant.

5.The learned senior counsel further submitted that the Rent Control Court erred in holding that the petitioners committed default in rent during eviction proceedings in the absence of any pleading put forth by the landlord. The admission made by the authorized representative of the tenants with regard to the reduction in rent during the pendency of the eviction proceedings was considered by the Rent Control Court to hold that the tenants committed default in payment of rent. Both the Courts below failed to see that the rent for the demised premises for every month during the eviction proceedings with deduction in quantum of rent paid and the same was accepted by the landlord. The recording of the Court below that there is no Court order to that effect in reduction of the tenancy amount is not proper. Further the landlord and his son were examined as P.W.1 and P.W.2 during October 2021 and March 2022, neither of them spoken to anything about non-payment of rent and reduced monthly payment. Had



there been dispute in reduction of payment, both P.W.1 and P.W.2 could have very well stated about the same in their evidence. Further the Courts below not considered the fact that the tenants have made structural repairs, renovated the damages and modified the building with the consent of the landlord and incurred an expenditure of Rs.40 lakhs and after heavy rain during October 2021, the tenants incurred expenditure of another Rs.20 lakhs. The landlord enjoyed the renovation and expenditure incurred by the tenants had now conveniently denied the same. Further Ex.R2/photographs would confirm the renovation and expenditure incurred by the tenants. As regards the owners occupation under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 the eviction petition ought to have been dismissed at the threshold for the only reason that material pleadings as contemplated not made in the petition and the same not proved by the landlord. The landlord if intended to built a hospital for his son, he could very well construct the hospital in Porur where a vacant site and adjoining building for more than 12000 sq.ft. is available with the landlord. Both the landlord and his son not denied that they are not owning any residential premises in Ashtalakshmi Nagar, Porur. He further submitted that the petition RCOP.No.1582 of 2017 was filed on 17.11.2017. On



04.08.2017, the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 came into force and as per Section 47, the old Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 had been repealed. Hence, both the Courts below ought to have not entertained the petition. Alternatively, he would further submit that the landlord had rented out the property to the tenant for commercial use, the rented property has been exclusively used for trade and commerce and further, the Commercial Courts Act came into force on 23.10.2015, hence appropriate suit ought to have filed before the Commercial Court.

6.In support of his contentions, the learned senior counsel for the petitioner relied upon the following decisions:

- 1) ***Bengal Trading Co., rep by its Partner, Radhakrishna Rathi vs. G.M.Natarajan and two others [C.R.P.No.4589 of 1983 dated 13.02.1991]*** for the point that petition filed by the landlord ought to have been filed under Section 10(3)(c) and not under Section 10(3)(a)(iii) of the Act.
- 2) ***Jagmohan Behl vs. State Bank of Indore*** reported in ***MANU/DE/2930/2017***



3) *Ambalal Sarabhai Enterprises Ltd. vs. K.S.Infraspace*

LLP and Others reported in *MANU/SC/1378/2019*

4) *Bhagwati Prasad Jhujhunwala (HUF) and others vs.*

UCO Bank and another reported in *2021 SCC Online*

Cal 2722 for the point that disputes arising out of agreements relating to immovable property when used exclusively for trade and commerce would qualify as commercial dispute.

7.The learned counsel for the respondent/landlord submitted that the tenants occupied a portion in the ground floor and south portion with two halls and three rooms in the first floor and running a business in the name of M/s.J.S. Paradise Homes India Private Limited. The landlord and the tenants entered into a rental agreement on 20.01.2016 for 11 months, the agreed rent payable was Rs.60,000/- per month and an advance amount of Rs.4,50,000/- was paid. As per the agreed terms, on or before 10th of every English Calendar month, rent has to be paid. This being so, during September 2017 and October 2017, there was a default in payment of rent. Further the landlord's son who is a Doctor by Profession required the place



for constructing a hospital. Hence, on the ground of wilful default and owners occupation, petition was filed before the Rent Control Court in RCOP.No.1582 of 2017. The Rent Control Court found the tenants defaulters and the landlord entitled for owners occupation directed the tenants to evict and hand over vacant possession to the landlord within two months from the date of order i.e. 16.03.2023. Thereafter, the tenants preferred an appeal in RCA.No.65 of 2023 and the same was dismissed by judgment dated 20.09.2023. Against which, the present revision filed under Section 35 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The landlord and his son examined themselves as P.W.1 and P.W.2, Ex.P1 to Ex.P8 marked, on the side of the tenants, the Manager and Photographer examined as R.W.1 and R.W.2 and two documents Ex.R1 and Ex.R2 marked. Prior to filing of the petition, notice was served to the tenants. During the trial, tenancy agreement termination notice, reply notice of the tenants, the landlord's son educational credentials and a certificate to show that he is qualified to start a hospital produced. The Rent Control Court considered the evidence and finding from the own admission of the tenants that default in rent committed during September 2017 and October 2017 and again in the year 2021 during October 2021 to December 2021. Further



lessor amount of Rs.40,000/- paid as against the agreed amount of Rs.60,000/-, directed the tenants to evict the premises. The tenants' contention was rejected by the Courts below since it is not supported with any materials.

8.The learned counsel further submitted that the claim of the tenants that the landlord was having a property in Ashtalakshmi Nagar, Porur is not with any documentary evidence. The Rent Control Court framed the issues and answered the same from the evidence available. Both the Courts below dismissed the petitioners' contention and the same has been re-agitated before this Court. This Court in exercise of the revisionary power has to look into the legality, regularity or propriety of decision of Courts below. In the revisional jurisdiction, it has to find out that the finding of facts recorded by the Courts below are in accordance to law and not suffered from any error apparent. He further submitted that as per G.O.Ms.No.63 Housing and Urban Development (HB4) Department dated 02.05.2019, the Rents Court and Rent Tribunal as per the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 was notified only on 02.05.2019 and thereafter cases are filed under RLTOP. He would further



submit that if the contention of the tenants to be taken, then no case in the interregnum period from 04.08.2017 to 02.05.2019 could be filed. The landlord and tenant will be left with no forum to address their grievance is not proper and the same cannot be raised at this stage. He further submitted that the petitioners' contention that it is a commercial activity and only suit before the Commercial Court can be filed is also not proper. The proceedings before the Rent Control Court is a summary proceedings and it is not a suit. By no stretch of imagination, the dispute of landlord and tenant can be termed as commercial dispute.

9. In support of his contention, the learned counsel for the respondent/landlord relied upon the following decisions:

- 1) ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh*** reported in ***(2014) 9 SCC 78***
- 2) ***X. John Kennedy vs. C. Sornasekar Devadoss***
[C.R.P.(MD).No.1267 of 2023 dated 02.02.2024]
- 3) ***Abdul Kadar vs. Packiyaraj (Died) rep. by its LRs***
reported in 2018 (1) MWN(Civil) 802 for the aspect that it is the choice of the landlord to choose the



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building for doing his business and it is not for the tenant to dictate terms as to how the landlord should choose building for non-residential purpose.

4) *Umedmal B.Jain vs. Suraj Devi*

[C.R.P.(NPD).Nos.1382 of 2021 batch dated

21.09.2023 wherein it is held that the Rent Control

Tribunal is not bound by strict rigour of the Code of

Civil Procedure and for the contention in revision under

Section 25 of Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960, re-appreciation of evidence is not

permitted unless the finding is perverse, illegal or

irregular.

5) *R.Balasubramaniam vs. Abdul Azeez [C.R.P.No.810*

of 2022 dated 23.01.2024 wherein it is held that

Section 10(3)(a)(iii) of the Act provides for eviction of

tenant of a non-residential premises on the ground of

owner's occupation, the only requirement is that the

landlord or the members of his family for whose

business the premises is sought for should not be in



occupation of a non-residential premises in the City.

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10. On considering the rival arguments, the undisputed fact is that the petitioners are the tenants and the respondent is the landlord. The landlord filed a petition seeking eviction of the tenants on two grounds, namely, wilful default under Section 10(2)(i) of the Act and for owner's occupation under Section 10(3)(a)(iii) of the Act. As regards the wilful default, the contention of the landlord is that the tenants committed default in paying the rent for the months of September 2017, October 2017 and for the months of October 2021 to December 2021. The tenants examined their authorized representative and photographer as R.W.1 and R.W.2 and marked two documents Ex.R1 and Ex.R2. The evidence is culled out in the orders of the Courts below, from which it is seen that R.W.1 admits the default committed during 2017 but attempts to give explanation that the default amount is covered in the advance amount lying with the landlord. Likewise, similar explanation given for the default committed from October 2021 to December 2021. It is further admitted that the reduced rent from Rs.60,000/- to Rs.40,000/- was paid regularly and this reduction is by the consent of the landlord. The landlord refutes the claim of the tenants. In the



absence of any material to prove the tenants claim and since no order obtained in this regard, the claim of the tenants rejected and the tenants declared as wilful defaulters. The contention of the tenants that a petition under Section 10(3)(c) of the Act for additional occupation ought to have been filed and not for owner's occupation under Section 10(3)(a)(iii) of Act is rejected by the Courts below since it is not supported with any acceptable materials. With regard to the other contention of the tenants that the landlord is owning property around 12000 sq.ft. in Ashtalakshmi Nagar, Porur and it would be ideal for the landlord's son P.W.2 to construct a Multi Speciality Hospital and not in the rented premises in Saligramam has been rejected by the Courts below that it is not for the tenants to dictate terms as to how the landlord should choose the building for non-residential purpose.

11.In this case, P.W.2, son of the landlord who is a qualified Doctor examined himself and marked Ex.P6 to Ex.P8, namely, Degree Certificate Certificate of Employment and a Certificate by Medical Director of Uma Eye Clinic. From the documents, it is clear that the intention of the landlord and his son to construct a Multi Speciality Hospital proved. Further, in what area it is to be constructed are left to the Municipal and Statutory authorities



and it is not for the tenants to cause doubt and suggest alternate place. The tenants though claim that the landlord is owning property in Ashtalakshmi Nagar, Porur, except for sweeping averments, nothing more produced. Considering all these aspects, both the Trial Court and the Lower Appellate Court rightly held the tenants as wilful defaulters and the landlord is entitled for owner's occupation and ordered eviction of tenants. Further, the contention of the learned senior counsel for the petitioners with regard to filing of petition under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not sustainable. The new Act Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 came into force by G.O.Ms.No.63 Housing and Urban Development (HB4) Department dated 02.05.2019. During the interregnum period, RCOP cases filed before the Rent Control Court as per the Old Act which practice and procedure followed cannot be raised now at a belated stage. The other contention of the learned senior counsel that it is a commercial transaction between the landlord and tenant, hence suit ought to be filed before the Commercial Court is not sustainable since the dispute is between the landlord and the tenant and the tenancy is not a commercial activity. Further, this Court being a revisional Court, its review on facts is limited and it cannot act as an



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Appellate Court and not in a position to re-appreciate the evidence. None of the three vices, namely, perversity, illegality or irregularity found in the orders of both the Courts below. Hence, this Court is not inclined to interfere with the orders of both the Courts below.

12. Accordingly, the Civil Revision Petition stands dismissed. The petitioners are directed to vacate the premises and hand over the vacant possession to the respondent within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1. The VII Small Causes Judge,
Chennai.

2. The XI Small Causes Judge,
Chennai.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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