



C.R.P.(MD)No.1267 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2023

Pronounced on : 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1267 of 2023

and

C.M.P.(MD)No.6219 of 2023

X.John Kennedy

... Petitioner/
Appellant/
Respondent/
Tenant

Vs.

C.Sornasekar Devadoss

... Respondent/
Respondent/
Petitioner/
Landlord

Prayer : This Civil Revision Petition filed under Section 25 of Rent Control Act, to call for the records relating fair and decreetal order made in R.C.A.No.5 of 2021 dated 17.02.2023 on the file of the learned Rent Control Appellate Authority (Principal Sub Court), Madurai confirming the fair and decreetal order made in R.C.O.P.No.57 of 2016 dated 09.10.2020 on the file of learned Additional Rent Controller (Additional



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District Munsif), Madurai and set aside the same and allow the Civil Revision Petition.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : Mr.S.Kadarkarai

ORDER

The Civil Revision Petition is directed against the order passed in R.C.A.No.5 of 2021 dated 17.02.2023 on the file of the Rent Control Appellate Authority/Principal Subordinate Judge, Madurai, confirming the order passed in R.C.O.P.No.57 of 2016 dated 09.10.2020 on the file of the Additional Rent Controller/Additional District Munsif, Madurai Town.

2. It is not in dispute that the petition mentioned building was owned by the respondent's mother and the revision petitioner has become a tenant under her and that after the death of the respondent's mother and in view of the gift deed dated 22.04.2014 executed in favour of the respondent by his mother, he has become the owner of the building in dispute and the revision petitioner was continuing as a tenant.



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3. The respondent/landlord has filed the petition in R.C.O.P.No.57 of 2016 against the revision petitioner/tenant claiming eviction on the ground of own use and occupation under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The revision petitioner/tenant has filed counter statement raising objections. During trial, the respondent/landlord has examined himself as P.W.1 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The revision petitioner/tenant has examined himself as R.W.1 and exhibited 3 documents as Ex.R.1 to Ex.R.3. The learned Additional Rent Controller, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the order dated 09.10.2020, by holding that the requirement of the landlord for his own use and occupation is bona fide, allowed the petition and directed the revision petitioner/tenant to vacate and handover the vacant possession of the petition mentioned building within a period of two months. Aggrieved by the said eviction order, the revision petitioner/tenant has preferred an appeal in R.C.A.No.5 of 2021 and the learned Rent Control Appellate Authority, upon perusing the materials available on record and on hearing the arguments of both the sides, has passed the impugned order dated 17.02.2023, dismissing the



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appeal and thereby confirmed the eviction order passed by the learned Additional Rent Controller. Aggrieved by the dismissal of the appeal, the tenant has preferred the present civil revision.

4. The only point that arises for consideration is as to whether the findings of the Courts below that the requirement of the petition mentioned building for the own use and occupation of the respondent/ landlord is bona fide is proper and is in accordance with law.

5. Before entering into further discussion, it is necessary to refer the following passage in the judgment of the Hon'ble Supreme Court reported in **(2014) 9 SCC 78 (Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh)**,

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded



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by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”



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6. It is pertinent to mention that the jurisdiction of this Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is confined to legality, propriety and correctness of the orders of the Courts below. The revisional Court under Section 25 of the said Act, having supervisory jurisdiction, should not act as if it was exercising the Appellate jurisdiction, by appreciating the evidence, weigh the same and by that process come to a different conclusion and reverse a finding of the fact arrived at by the Courts below. Even if two views are possible with the same set of facts, the revisional Court cannot substitute its own view so as to interfere with the findings of the Courts below. Moreover, the power under Section 25 of the said Act is not co-extensive with the power of the appellate Court. Bearing the above legal position in mind, let us consider the case on hand.

7. The main case of the respondent/landlord is that he was working as a bank officer in Virudhunagar District and due to his health issues, he voluntarily retired from service and is residing in a building bearing Door No.7A5/3 Jothinagar 4th Street, Kovilpatti, which is not belonging to him or to his family members, that he has been receiving monthly pension at



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Rs.25,000/- (Rupees Twenty Five Thousand only), that he has to pay monthly rent of Rs.5,000/- (Rupees Five Thousand only) and also has to take care of college expenses for his son, who is studying B.E. at that time and also to take care of his medical expenses, that the pension amount is not at all sufficient enough for the above expenses, that the respondent/landlord has then decided to settle at the petition mentioned building and that the respondent/landlord had requested the revision petitioner/tenant to vacate the premises, but since the same was not complied with, the respondent/landlord was constrained to file the above petition seeking eviction.

8. The main defence of the revision petitioner/tenant is that the respondent/landlord's mother, while she was alive, had tried to dispossess the revision petitioner/tenant illegally and forcibly from the petition mentioned building, that he has preferred a complaint before the S.S. Colony Police Station, Madurai, that the police, after enquiry, has warned the respondent/landlord's mother for her activities, that the revision petitioner/tenant has then filed a suit against the respondent/landlord's mother claiming permanent injunction and obtained a decree in his favour,



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that the petition mentioned building consists of a ground floor and first floor, that the first floor portion was leased out to some third party, but the respondent/landlord has not taken any steps to vacate the said person from the first floor portion, that the respondent/landlord is also owning another property in Nagercoil District, that the respondent/landlord with an ulterior motive by suppressing the above fact has filed the eviction petition and that since the intention of the respondent/landlord is not bona fide and the petition mentioned building is not required for the respondent/landlord's own use and occupation, the eviction petition is liable to be dismissed.

9. Though the revision petitioner/tenant has alleged that the respondent/landlord is owning another property in Nagercoil District, he has not produced any iota of materials to prove the same.

10. The contention of the respondent/landlord that he is residing at Kovilpatti in a rental premises was also not specifically disputed by the revision petitioner/tenant. The main contention of the revision petitioner/tenant is that the respondent/landlord has not taken any steps to evict the tenant in respect of the first floor portion of the petition mentioned



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building. As rightly pointed out by the learned counsel appearing for the respondent/landlord, the respondent/landlord got retired from service voluntarily due to his health issues and since he is now residing in a rental premises in Kovilpatti, he is requiring his own building for his occupation. The respondent/landlord has also specifically alleged that he is getting monthly pension of Rs.25,000/- (Rupees Twenty Five Thousand only) and in that amount, he has to pay the monthly rent apart from his medical expenses and college expenses for his son.

11. The learned Rent Control Appellate Authority has rightly relied on the judgment of this Court in *M.Vedapuri Vs. O.M.Raj and another* reported in **2008 (5) CTC 404**, wherein, this Court has specifically observed that merely because the landlords are having some other buildings, their bona fide requirement cannot be disputed on that ground and that the Court has to consider whether the reason, as stated by the landlord is bona fide or not. The learned Rent Control Appellate Authority has also referred the judgment of this Court in *B.Kishore Vs. D.Maragthavalli* reported in **(2007) 4 MLJ 251**, wherein, it has been held that it is for the landlord to chose his buildings he wishes for his own



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occupation and the tenant cannot dictate terms in the wish and will of the landlord.

12. The learned counsel appearing for the revision petitioner/tenant has relied on the judgment of the Hon'ble Supreme Court in ***Abid-Ul-Islam Vs. Inder Sain Dua*** reported in **2022 LiveLaw (SC) 353**, wherein, the Hon'ble Apex Court has held that the landlord has to satisfy two grounds, namely, the requirement being bona fide and the non-availability of a reasonably suitable residential accommodation. No doubt, the above decision was rendered in a case relating to Delhi Rent Control Act and the relevant passages are extracted hereunder;

“12.Section 14(1)(e) carves out an exception to the regular mode of eviction. Thus, in a case where a landlord makes an application seeking possession of the tenanted premises for his bona fide requirement, the learned Rent Controller may dispense with the protection prescribed under the Act and then grant an order of eviction. Requirement is the existence of bona fide need, when there is no other “reasonably suitable accommodation”. Therefore, there has to be satisfaction on two grounds, namely, (i) the requirement being bona fide and (ii) the non-availability of a reasonably suitable residential



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accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant. When the learned Rent Controller comes to the conclusion that there exists a bona fide need coupled with the satisfaction that there is no reasonably suitable residential accommodation, the twin conditions mandated under Section 14(1)(e) stand satisfied.

.....

16.Before a presumption is drawn, the landlord is duty bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant

13. In the case on hand, as already pointed out, the respondent/ landlord has raised necessary pleadings and also adduced evidence with regard to his bona fide requirement of the petition mentioned building in question. As already pointed out, the revision petitioner/tenant has not adduced any evidence to show that there existed mala fide in the action of the respondent/landlord. Moreover, in the said decision, the Hon'ble Apex Court has also specifically observed that the scope of interference by the



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High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision and that there is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

14. It is pertinent to note that the Rent Control Original Petition came to be filed on 04.03.2016 and already 7 years had lapsed. The proceedings before the Rent Controller was pending for 4 years and nearly 3 years before the Appellate Authority. As rightly contended by the learned counsel appearing for the respondent/landlord, the revision petitioner/tenant has already protracted the proceedings successfully for the 7 years and thereby preventing the respondent/landlord from getting the property. Considering the above, the decision of the Courts below in ordering eviction of the revision petitioner/tenant cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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15. In the result, this Civil Revision Petition is dismissed and the revision petitioner is directed to vacate the petition mentioned building in question and handover the vacant possession of the same to the respondent within a period of one month from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

02.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Rent Control Appellate Authority/
Principal Subordinate Court, Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.1267 of 2023
and
C.M.P.(MD)No.6219 of 2023

Dated : 02.02.2024