



C.R.P.No.2781 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-01-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

C.R.P.No. 2781 of 2024

- 1.Khujem Badruddin
- 2.Mrs.Lulula Dehgamwala
- 3.Firoz Dehgamwala
- 4.Ali Asgar Dehgamwala
- 5.Fatema Dehgamwala

..... Petitioners

-Versus-

M/s. Allied Sales (India)
Rep by its Partner,
Mr. Pradeep Kumar Sekhani,
No.158, Linghi Chetty St, Chennai 1.

..... Respondent

Petition filed under Section 25 of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, praying to set aside the order and decree dated 04.04.2024 made in R.C.A.No.151 of 2022 on the file of the learned VII Judge, Court of Small Causes at Chennai, reversing the order of eviction dated 20.10.2022 made in R.C.O.P.No.665 of 2018 by the learned XV Judge, Court of Small Causes at Chennai.

For Petitioners : Mr.Mohammed Fayaz Ali

For Respondent : Mr.Sandeep Kumar S.Shah

ORDER



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This civil revision petition is directed against the order dated 04.04.2024 made by the learned VII Judge, Court of Small Causes at Chennai, allowing the R.C.A.No.151 of 2022 thereby setting aside the order of eviction dated 20.10.2022 made by the learned XV Judge, Court of the Small Causes at Chennai in R.C.O.P.No.665 of 2018.

2. The petitioners are the landlords and the respondent is the tenant. The 1st petitioner herein is the brother of Mohamedi Badruddin. The said Mohamedi Badruddin, who originally filed the eviction petition along with his brother 1st petitioner-Khujem Badruddin is no more and he died pending eviction petition. The legal heirs of the deceased -Mohamed Badruddin were brought on record as respondents 3 to 6 in the eviction petition.

3. The petition mentioned premises is a non-residential/commercial building and the petitioners filed a petition in R.C.O.P.No.665 of 2018 under Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as it requires for own occupation for the purpose of carrying on their own business.

4. The facts leading to the filing of the eviction petition by the petitioners/landlords in brief are as follows:

(a) The petition mentioned premises is a commercial property situated in



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the ground floor of the Northern wing in the building known as “ZILLE-E-Mohammed” Old No.158, New No.325, Linghi Chetty Street, Chennai 600001, measuring an extent of 1697 square feet. It was originally belonged to T and B Dehgamwala Estate, represented by co-owners Badruddin Mohamedally and others. The said property was leased out to the respondent on 01.07.2011 by the T and B Dehgamwala Estate on a monthly rent of Rs.33,000/- and a sum of Rs.3,30,000/- was paid by the respondent towards security deposit.

(b) The said property was subsequently allotted to the 1st petitioner and his brother - Mohamedi Badruddin by decree and judgement dated 19.12.2017 passed by this court in C.S.No.193 of 2014. Thus the 1st petitioner and his brother have become the absolute owners of the petition mentioned premises. After the judgement, a legal notice was issued by the 1st petitioner and his brother to the respondent demanding payment of rent, the respondent has started making payment of rent to the petitioners.

(c) The brother of the 1st petitioner along with his sons and the son of the 1st petitioner were carrying on business of manufacture of valves under the name and style of M/s.AMCO Industrial Valves, a partnership firm at No.6, Thandava Moorthy Street, Royapuram, Chennai 600 013. The said premises is in a mixed residential zone. Therefore, the son of the 1st petitioner and the brother and brother's son of the 1st petitioner decided to use subject premises,



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which is a commercial building in order to expand their business from manufacturing to retail trade. Therefore, they required the premises leased out to the respondent for their own occupation for the purpose of carrying on their own business as they did not have any other commercial property in Chennai for their trading business. The subject premises would be suitable for their business venture. Therefore, the 1st petitioner and his brother issued a notice and filed the eviction petition.

5. The respondent company filed their counter opposing the petition though it admitted the jural relationship between the petitioners and themselves. The respondent contended that they have been in possession only in respect of 1000 square feet. The respondent opposed the eviction petition mainly on the ground that eviction was sought on a wrong provision of law and that the petition filed under section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not applicable and only Section 10(3)(c) alone would be applicable. The eviction petition lacks *bona fide* as the 1st petitioner and his brother demanded an enhanced rent of Rs.1,61,000/- per month and as the demand for enhanced rent was not fulfilled by the respondent/tenant, the landlords filed the eviction petition.

6. Before the Rent Controller, on the side of the revision petitioners/landlords, 1st petitioner/landlord himself examined as P.W.1 and



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marked Ex.P.1 to Ex.P.12 while on the side of the respondent/tenant one of the partners-Mr.Pradeep Kumar Sekhani examined himself as R.W.1 and marked Ex.R.1 to Ex.R.5. Based on both oral and documentary evidence, the learned rent controller held that the requirement of the petition mentioned premises for the own occupation of the revision petitioners for carrying on their business and ordered for eviction of the respondent/tenant. Though a contention raised on the side of the tenant that the requirement of the petition mentioned premises was not bonafide and that the provision of law for own occupation of the premises had been wrongly quoted, the learned rent controller while rejecting such contention held that mere quoting of a wrong provision of law will not deprive a person from the relief sought for, if he is entitled to get the same. However, on appeal before the learned rent control appellate authority, the order of eviction passed by the learned rent controller was reversed. Aggrieved by the reversal judgment and decree, the revision petitioners/landlords are before this court.

7. Heard Mr.Mohammed Fayaz Ali, learned counsel appearing for the revision petitioners/landlords and Mr.Sandeep Kumar S.Shah, learned counsel for the respondent/tenant.

8. The learned counsel appearing for the revision petitioners would submit that



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(i) the jural relationship between the parties is not in dispute. Though the petition for eviction was filed under Section 10(3)(a)(i) of the Rent Control Act, 1960, mere quoting of the wrong provision of law will not deprive the landlords of the relief sought for.

(ii) eviction was sought for own occupation for the purpose of carrying on their own business by the landlords in the petition mentioned premises, a non-residential building. The revision petitioners/landlords did not have any other commercial building of their own within the city of Chennai. The revision petitioners/landlords have clearly established their bona fide requirement; however, the learned rent control appellate authority has been swayed by the mere fact that the revision petitioners sought enhancement of rent for the rented premises, there was no bona fide on the part of the landlords.

(iii) even if any such demand was made for enhancement of rent that by itself could not be put against the landlords to hold that such a demand by the landlords for enhancement of rent will not disprove their requirement.

9. The learned counsel appearing for the revision petitioners would, in support of his submissions, rely upon the following judgements:-

(1) Brooke Bond India Limited v. R.Raghavan 1996

SCC OnLine Mad 61 : (1996) 1 LW 670; and

(2) M/s.Akthars v. Hitesh V.Shah, [(2000) 1 MLJ 413]

10. Per contra, the learned counsel appearing for the respondent/tenant



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would contend that to attract the provision for eviction under Section 10(3)(a)(iii) of the Rent Control Act, 1960, a landlord should establish that he is not occupying any non-residential building of their own within the city, town or village. Whereas averments in the eviction petition itself would show that the revision petitioners are carrying on their business at No.6, Thandava Moorthy Street, Royapuram, Chennai 600 013. Therefore, the revision petitioners are not entitled to seek eviction of the respondent under Section 10(3)(a)(iii) of the Rent Control Act, 1960. Section 10(3)(c) will also not attract since the landlords are not in occupation of any portion of the tenanted premises.

11. Further, according to the learned counsel for the respondent, there is absolutely no evidence to show the bonafide requirement and that the revision petitioners sought enhancement in rent and also sent a draft agreement to the respondent for signature which was taken note of by the rent control appellate authority. Therefore, the order of the appellate authority does not require any interference at the hands of this court.

12. This court has considered the rival submissions and also perused the available records carefully.

13. The jural relationship of landlords and tenant between the revision petitioners and the respondent is not in dispute. The petition mentioned premises is admittedly a non-residential building. The respondent was



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originally inducted as tenant into the premises on 01.07.2011 by T and B Dehgamwala Estate on a monthly rent of Rs.33,000/-. The tenanted premises was later on allotted to the share of the 1st respondent/landlord by a decree and judgement dated 19.12.2017 made in a partition suit in C.S.No.193 of 2014. After the same, there were exchange of correspondences between the parties and that the respondent has started paying monthly rent to the revision petitioners.

14. It is the specific case of the revision petitioners that at present, they are carrying on their own business at No.6, Thandava Moorthy Street, Royapuram, Chennai. Since they did not have any other commercial building in the city of Chennai, they had no option except to seek eviction of the respondent from the tenanted premises.

15. The respondent did not dispute their tenancy. The only contention that was taken by the respondent is that eviction sought under Section 10 (3)(a)(i) of the Rent Control Act, 1960 was not maintainable and that Section 10(3)(c) alone would attract.

16. Be that as it may, a careful reading of the pleadings in the eviction petition would make it clear that eviction was sought in respect of a non-residential building by the landlords only for the purpose of carrying on their own business. According to the revision petitioners/landlords they did not have



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any other commercial building of their own within the city of Chennai. This aspect of matter was also clearly pleaded in the eviction petition by the revision petitioners/landlords.

17. Though it is stated by the revision petitioners/landlords that at present they are carrying on business at No.6, Thandava Moorthy Street, Royapuram, Chennai, that premises does not belong to the revision petitioners. Further, though it is stated in the petition that the petition mentioned premises is situated in a mixed residential zone, nowhere it was stated in the petition that they own that building premises.

18. P.W.1 during the course of his examination has clearly spelt that the premises at No.6, Thandava Moorthy Street, Royapuram, Chennai is situated in a mixed residential zone. In his cross examination, P.W.1 has clearly stated that the said premises was allotted to the share of his brother. Even at the time of filing the application that property was allotted to the share of his brother. This has been asserted by P.W.1. Therefore, when the tenant who took a stand that the landlords have had another commercial building premises, was expected to prove the same. Whereas no contra evidence whatsoever was brought on record by the tenant. The allotment of subject premises to the landlord in a family partition is not in dispute. Therefore, merely because it was stated in the proof



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affidavit that the building premises at No.6, Thandava Moorthy Street, Royapuram, Chennai, was owned by their family in a mixed residential area and that the same was not sufficient to carry on their business that evidence by itself cannot be taken advantage by the tenant to contend that the landlord has other non-residential building premises in which he is carrying on business.

19. When 1st petitioner/P.W.1, who is one of the landlords himself, has clarified the same in his evidence that the property at No.6, Thandava Moorthy Street, Royapuram, Chennai, was already allotted to his brother and there was no contra evidence produced by the respondent/tenant, therefore, it has to be held that the landlords have established the fact that other than the subject premises, the landlords do not have any other commercial building within the city of Chennai for the purpose of carrying on their own business.

20. The fact that the petitioners carry on their own business was also not disputed in the counter by the respondent/tenant. The ingredients that are required to be established in the matter of eviction of a tenant from the tenanted premises for own occupation for the purpose of carrying on business of their own business are (1) The building should be non-residential in character; (2) The landlord should be carrying on business on the date of application for eviction; (3) That the landlord is not occupying any other building belonging to him as owner or to the possession of which he is entitled, in respect of the



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business; and (4) That the landlord's claim is bona fide for his business needs and is not founded on any indirect or oblique motive for evicting the tenant. If only the above ingredients are satisfied, a landlord is entitled to obtain possession of the tenanted premises.

21. As far as the first condition that the building premises should be a non-residential character is concerned, it is not in dispute by the respondent that the rented building is non-residential character.

22. The fact that the landlords were carrying on business on the date of the petition was also clearly established, and the respondent/tenant did not disprove the same.

23. The landlords have also clearly established, as discussed above, that they did not have any other non-residential building of their own within the city of Chennai. Therefore, merely because the landlords have already been carrying on their business in the premisses at No.6, Thandava Moorthy Street, Royapuram, Chennai, which was originally belonged to the family, and that later on, it was allotted to his brother. This has been explained by the 1st petitioner (P.W.1) in his evidence and therefore, it cannot be said that the building is owned by the 1st petitioner. This court is, therefore, of the view that the landlords have satisfied all the ingredients as required under the Act. As



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such now it has to be seen whether the claim for eviction is bonafide one.

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24. The rent control appellate authority has given undue weightage on Ex.P.2, legal notice dated 10.03.2018 issued by the landlords to the tenant demanding enhanced rent, arrears of rent and enclosing a draft lease agreement whereunder, the landlords called upon the tenant to enter into a fresh lease agreement with renewed terms on enhanced rent.

25. It is relevant to note that subject property was allotted to the landlord only on 19.12.2017 by a civil court decree. Thereupon, the landlords have caused a legal notice under Ex.P.2 demanding arrears of rent and requesting to pay the future rents to them and also demanding enhanced rent. However, it appears that the respondent/tenant did not agree for the enhanced rent and there were exchange of notices and reply notices between the parties particularly under Ex.P.2, Ex.P.3 and Ex.P.4. At last, a notice was issued on 31.05.2018 by the landlords for eviction on the ground of own occupation as they have decided to shift their own business to the premises rented out to the respondent/tenant.

26. It is relevant to note that the petitioners/landlords have every right to demand a reasonable increase in rent. The petitioners/landlords would have been satisfied with the reasonable rental income from the rented-out premises



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and would not have thought of shifting their business, if the tenant had agreed to that increase. As a result, just because the landlords demanded a higher rent, it does not mean that they were not sincere in seeking possession for their own occupation in order to conduct their business. In the instant case, the respondent/tenant having failed to accept and pay the enhanced rent cannot take advantage of the demand made by the landlords to contend that there was no bonafide on the part of the landlords in their claim for possession of the rented premises back for their own business purposes and the landlords are prohibited from seeking possession of the rented premises. The bonafide has to be tested on the context of real requirements—whether the landlords were actually doing their own business on the date of the eviction petition, and once it was established that the landlords were carrying on their own business, it has to be necessarily held that tenanted premises are required for the landlord(s) for their own occupation for the purpose of carrying on their own business.

27. As already discussed above, the revision petitioners have established that they require the subject premises for their own occupation for carrying on their business. It has to be held that the subject premises is required for the revision petitioners for own occupation for the purpose of carrying on their own business. Therefore, merely because a demand for enhancement of rent was made earlier by the landlords, it cannot be said there was no bonafide.



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28. It is relevant to apply the judgement of this court in the case of

Brooke Bond India Limited v. R.Raghavan 1996 SCC OnLine Mad 61 :

(1996) 1 LW 670 to the facts of the instant case wherein it was held that even if there is a demand for payment of enhanced rent, that would not show that the demand for eviction is lacking in good faith. The relevant portion of the judgement is as under:-

“16. The appellate authority has entered a factual finding that the petition for eviction has been filed in good faith. The circumstances pleaded in the petition also show that there is no ground to impute bad faith in the landlord. The landlord is doing business in partnership as well as his own business in money-lending. Even though they are in possession of other buildings, all of them have been tenanted. That fact is also not disputed. The landlord says that he wants a suitable building for his business. The suitability of the building is also not a matter in dispute. The only contention that was put forward by the tenant was that there was a demand for increased rent. The same has also been explained in the petition. For years together, the landlord was demanding the tenant to vacate the premises and they agreed to vacate the same on getting a suitable accommodation. Increased rent was volunteered by the tenant, and the same was accepted by the landlord.



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Even otherwise taking into consideration the inflation, the original rent that the tenant was paying will not be sufficient and even if there is a demand or payment of enhanced rent, that will not show that the demand for eviction is lacking in good faith. No other circumstance has been made out by the tenant to show otherwise.”

29. In the case of **M/s.Akthars v. Hitesh V.Shah, [(2000) 1 MLJ 413]** it was held by this court that mere demand for higher rent by the landlord does not necessarily indicate that the eviction petition lacks bonafide. The relevant portion of the judgement of this court reads as under:

“12. It has been held by a single judge of this Court reported in *A.Khan Mohammed v. Narayanan Nambiar*, 99 L.W. 966, that what is to be proved for the purpose of disentitling the landlord when he states that he is not in possession of any property of his own for the purpose of carrying on his business is that he is actually occupying for the purpose of his business a property of his own.

13. In this case it has not been the suggestion nor it has been established that the landlord is occupying a premises of his own for the purpose of his business. In this connection, it is argued that it is admitted by the landlord that there was a demand for higher rent from the tenant and therefore this fact would point out that there is no bonafide in this application.



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14. Here in this case, the fact that there was a demand for higher rent and it has been complied with, are not disputed. The demand was made by the father of the landlord, when the petitioner was a minor. It is not the case that the petitioner after attaining majority, made any demand. Further, merely from the factum of demand of higher rent, one cannot jump to a conclusion that there is any lack of bona fide in the application. If the landlord feels that the rent paid by the tenant is not commensurates with the market rate of rent, it is always open to the landlord to ask for more. Just because the property has been rented out to a tenant, it does not follow that the landlord can never ask for higher rent. Therefore, asking for higher rent is not a sum nor it can be equated to any unreasonable demand. Nor from that an inference of mala fide can be drawn. It may be case of genuine demand for higher rent. Therefore, from the mere fact of earlier demand of higher rent, one cannot conclude, much less to hold that there is lack of bona fide in the application filed by the landlord. A similar view has been taken by a single judge of this Court reported in *A.Gopalakrishna Chettiar v. T.K.A.Yakub Hussain*, A.I.R. 1998 Mad. 253.

15. It has been held in the decision reported in *Abdul Rahman v. Sadasivam*, (1984) 1 ML 410, that in a case where the application is filed by the landlord under



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Section 10(3)(a)(iii) of the Act and if the landlord is not occupying for the purpose of business any non-residential premises of his own, in such a case, Rent Controller has no jurisdiction to consider whether the requirement is bonafide and if the conditions set out in Section 10(3)(a)(iii) of the Act are found to be satisfied, the Rent Controller cannot reject the application.”

30. On a careful perusal of the judgement of the rent control appellate authority, this court is of the view that it did not appreciate the evidence available on record in a proper perspective and the finding of the appellate authority that the premises where the landlords are doing business is their own premises was not based on any evidence. On the other hand, the evidence available on record would clearly establish the fact that the business premises of the landlords at No.6, Thandava Moorthy Street, Royapuram, Chennai 600 013, belonged to the brother of the 1st petitioner and the 1st petitioner/landlord did not own any other commercial premises within the city of Chennai. This was not disproved by the respondent/tenant. Therefore, the first appellate court's finding in this regard would go to show that the same was without any evidence.

31. Though the learned counsel appearing for the respondent/tenant would place much reliance on the judgement of this court in the case of **Super Forgings and Steels (sales) Private Limited v. Thyaballyrasuljee [(1995) 1 SCC 410 : 1994 LawSuits (SC) 1101]**, wherein it was held that in the case of



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eviction petition on the basis of bona fide requirement of land, even if during the pendency of the proceedings for eviction on the ground of bonafide requirement, the landlord acquires such rights in other non-residential property, he will not be entitled to eviction of the tenant.

32. On facts, the judgement relied upon by the learned counsel for the respondent/tenant is not applicable to the present case as the landlords have established that the premises rented by them belonged to the brother of 1st petitioner/landlord.

33. Mere quoting of a wrong provision of law would not deprive a person from the relief sought for, if he is entitled to get the same. The eviction of the respondent from the non-residential premises was sought for own occupation by the revision petitioners for the purpose of carrying on their own business in non residential building. Therefore, Section 10(3)(a)(iii) of the Rent Control Act, 1960 alone would attract to the facts and circumstances of the present case. If the ingredients set out in the provision are established by the landlords, they are certainly entitled to evict the tenant. The revision petitioners/landlords in this case have clearly established that the non-residential building where at present they are carrying on their own business was already allotted to the brother of the 1st petitioner and it is in a mixed residential zone and the revision petitioners did not have any other commercial building premises of their own within the



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city of Chennai. This court is therefore of the view that requirement of the landlords is bonafide and therefore, they are entitled to seek possession of the subject premises. This was not taken note of by the appellate authority. Therefore, the finding of the rent control appellate authority requires interference at the hands of this court.

34. In view of the foregoing discussions, the judgment and decree of the rent control appellate authority is liable to be set aside and that the order and decretal order of the rent controller has to be necessarily restored.

35. In the result, the Civil Revision Petition is allowed; the judgment and decree dated 04.04.2024 made in R.C.A.No.151 of 2022 on the file of the learned VII Judge, Court of Small Causes at Chennai, reversing the order of eviction dated 20.10.2022 made in R.C.O.P.No.665 of 2018 on the file of the learned XV Judge, Court of Small Causes at Chennai is set aside and the order and decretal order of the learned XV Judge, Court of Small Causes at Chennai is restored. No costs.

36. After the pronouncement of the order, the learned counsel appearing for the respondent submitted that since the respondent/tenant is running its business in the subject premises, the respondent/tenant requires one year time to locate a suitable place and shift their business to new premises. According to him, if the respondent company is immediately evicted, they may not be in a



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position to recover all their credits.

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37. The learned counsel further submitted that the respondent is ready and willing to file an affidavit undertaking to vacate the premises within the time frame to be fixed by this court. He has also filed an affidavit to that effect.

38. Taking note of the fact that the respondent has been carrying on business in the subject premises for more than 14 years and the affidavit of undertaking filed by the respondent, six months' time is granted to the respondent/tenant to vacate the premises from 01.02.2025. The respondent/tenant shall vacate the premises and hand over the vacant possession to the petitioners/landlords on or before 31.07.2024.

39. It is made clear that that in the event the respondent/tenant fails to vacate and deliver the vacant premises as agreed upon in the affidavit of undertaking filed before this Court, they would be prosecuted further for violating their undertaking.

Index : yes / no
Neutral Citation : yes / no
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To

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- 1.The VII Judge, Court of Small Causes, Chennai.
- 2.The XV Judge, Court of Small Causes, Chennai.



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N.SATHISH KUMAR.J.,
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