
(2011) 06 MAD CK 0123

In the Madras High Court

Case No : C.R.P. NPD. No's. 3814 of 2008 and 1720 of 2009

Abdul Jawad

APPELLANT

Vs

M.A. Jacob Furnishing

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (2011) 06 MAD CK 0123

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : M. Kamalanathan, for the Appellant; A.V.KM. Ezhilmalmani, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—The Petitioner in the above C.R. Ps. is the landlord of the premises bearing Door No. 47/22, Evening Bazar, Park

Town, Chennai-3.

2. The Respondent is the tenant under the Petitioner. The Petitioner herein filed R.C.O.P. No. 358 of 2002 u/s 4 of the Tamil Nadu Buildings

(Lease and Rent Control) Act, 1960 for fixation of fair rent to the building.

3. It is the case of the Petitioner that he is the owner of the land and building and the contractual rent was fixed at Rs. 450/-per month. The

Petitioner sought for fixation of fair rent at the rate of Rs. 16,552/- per month.

4. The Respondent herein contested the petition inter alia contending that he had entered into a lease agreement, dated 10.11.1967 with one Mrs.

Kyroon Bi Sahaba for a period of three years with a Clause for renewal.

5. As per the recitals in the lease deed, he is entitled to put up a new

construction or alterations in the premises to suit his needs but subject to the condition that at the time of vacating the premises, he should leave such new construction or alterations as they are without seeking any compensation there for.

6. Accordingly, the Respondent applied to the Corporation of Madras and obtained necessary sanction and approval for demolition and re-construction for a new building. He had put up a new three storey building at a cost of Rs. 2.00 lakhs and as such the Respondent claims to be the owner of the super structure and hence, he contended that the petition filed for fixation of fair rent is not maintainable.

7. Alternatively, the Respondent contended that the fair rent claimed is excessive and high and the fair rent could be only Rs. 750/-per month.

8. Before the Rent Controller, on the side of the Petitioner two witnesses were examined and Exs.P1 to P5 were marked and on the side of the Respondent, the Respondent was examined as R.W.1 and Exs.R1 to R6 were marked.

9. On a consideration of the evidence on record, the Rent Controller held that the petition filed u/s 4 of the Act is maintainable and fixed the fair rent for the building at Rs. 8842/- per month.

10. Being aggrieved by that the Petitioner as well as the Respondent preferred appeals before the Rent Control Appellate Authority. The Petitioner's appeal was numbered as R.C.A. No. 5 of 2004 and the Respondent's appeal was numbered as R.C.A. No. 115 of 2004.

11. The appellate authority holding that since the superstructure was demolished and a new superstructure has been put up by the Respondent/tenant, the petition filed u/s 4 of the Act is not maintainable dismissed the R.C.A. No. 5 of 2004 but allowed the R.C.A. No. 115 of 2004.

12. Being aggrieved by that the Petitioner/landlord has filed the above C.R. Ps.

13. Heard both.

14. The learned Counsel for the Petitioner submitted that the appellate authority has erred in holding that since the tenant/Respondent herein has put up the superstructure after demolishing the existing superstructure, the petition is not maintainable.

15. The learned Counsel further submitted that as per Clause 5 of the lease deed, Ex.R1 the tenant was not permitted to demolish the entire

superstructure but what was permitted was only to alter the premises by putting up additional construction. Clause 8 of the lease deed makes it

abundantly clear that the tenant should not impair the value or the utility of the building but can put additions only.

16. If Clauses 5 and 8 of the lease deed Ex.R1 are read together, it will make it clear that the tenant was authorised only to put up additional

construction but was not authorised to demolish the entire superstructure and put up entirely a new construction.

17. The learned Counsel submitted that it is not in dispute that what was originally leased out was not merely the vacant site but the site along with

the existing superstructure and even if the same had been demolished and new superstructure had been put up, the tenant cannot become the

owner of the superstructure and the Rent Controller will have the jurisdiction to entertain the petition u/s 5 of the Rent Control Act. Therefore,

according to the learned Counsel, the decision of the Appellate Authority reversing the well considered order of the Rent Controller is liable to be

set aside.

18. In support of his aforesaid submissions, the learned Counsel based reliance on the decisions reported in 1963 M.L.J. 60 (Ram swami Pathar

v. Jayankondam Sri Kulumalairatnaswami Devastanam by its Executive Officer T.K. Paramasivam and Anr.) and 1973 T.N.L.J. 377 (S.R.

Muthuswami Gounder v. K.V.N. Venkataramana Swami).

19. In 1963 M.L.J. 60, the Division Bench of this Court has held that adopting the line of reasoning laid down by a Bench of the Madras High

Court in Irani v. Chidambara Chettiar (1932) 2 M.L.J. 221 to the instant case, it will follow that although the actual lease was of the site alone,

since the superstructure was in existence at the time the lease was granted, it can be regarded only as a lease of part of the building and not of

vacant site. Hence, so long as the Madras Buildings (Lease and Rent Control) Act is in force the tenant cannot be evicted from the property by

the civil Court, except in accordance with the provisions of the Act.

20. In 1973 T.N.L.J 377, it has been laid down as follows:

Even assuming that there are some superstructures put up by the tenant that

fact will not affect the petition filed by the landlord for eviction, inasmuch as there was a thatched superstructure on the site which alone was rented out to the tenant. Any additional construction put up by the tenant cannot give him the right to deny the applicability of the Tamil Nadu Buildings (Lease and Rent Control) Act to the case.

21. Countering the aforesaid submissions, the learned Counsel for the Respondent submitted that when admittedly, the superstructure which was existing at the time of execution of the lease deed had been demolished after obtaining appropriate permission from the Corporation of Madras and a new superstructure has been put up by the tenant with the permission of the Corporation of Madras, the tenant is the owner of the superstructure as long as the tenancy continues and only after the termination of the lease and the possession is surrendered to the landlord, the landlord will become the owner of the superstructure and until then the landlord cannot maintain a petition u/s 4 of the Act for fixation of fair rent.

22. The appellate authority taking into consideration the aforesaid aspects has rightly come to the conclusion that the Rent Control Act is not applicable to the present case.

23. The learned Counsel further submitted that as per Clause 5 of the lease deed, the tenant is authorised to put up any construction or make alterations to the existing structure to suit his needs of the business and accordingly, the Respondent after obtaining appropriate permission from the Corporation of Madras, he had demolished the existing superstructure and put up a new construction and the Petitioner had also not objected to the same, and therefore, the petition filed by the Petitioner is not maintainable.

24. In support of his contention, the learned Counsel based reliance on the decision reported in P.L. Mani Vs. M.M. Thenappa Chettiar, . In the said decision, in paragraph 5, it has been laid down as follows:

5. In my view, notwithstanding the fact that at the time of original lease there were structures in the land, the contract or agreement between the parties should be the core of holding that what was leased to the tenant was building or land. If the purpose for which the premises is let out can be served only by putting up a new structure at the choice and cost of the tenant certainly Act will not apply and such a tenancy shall be deemed to be tenancy of the land alone. In this case it has been clearly found as a fact that the

old structures came before actually the tenant began to enjoy the premises and put up the premises into use from day one of the tenancy. Rightly therefore, the courts below have held that the Rent Control Court will have no jurisdiction.

25. The learned Counsel also based reliance on the decision reported in *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, . In the said

decision, the question that arose for consideration was whether the salt works will come under the definition of factory and while considering that

the further question which came up for consideration was whether the premises will include the open land. The said question was considered in the

light of the provisions of the Factories Act and therefore, the said decision has no relevance to the facts of the case on hand.

26. The learned Counsel also based reliance on the decision reported in ILR (1996) MAD 1978 (*Arulmigu Visweswaraswami and Veeraraghava*

Perumal Temple, represented by its Executive Officer, Tirupur, Coimbatore District v. R.V.E., Venkatachala Gounder and Anr.). In the said

decision, it has been held that reliance cannot be placed on the municipal extracts and tax receipt to prove the title of the suit property.

27. Further, the learned Counsel based reliance on the decision reported in (2004) 1 M.L.J. 546 (*R. Rathinam v. P. Nityanandam*), wherein it has

been laid down that unless the right of ownership to the building is established, fair rent petition is not maintainable.

28. I have considered the aforesaid submissions and perused the materials available on record.

29. The decision relied upon by the learned Counsel for the Respondent reported in (1977) 2 M.L.J. 148 cannot be considered to be a good law

in the light of the decision of the Division Bench of this Court reported in 1963 M.L.J. 60, since in this case, it is not in dispute what was originally

let out was the building and the land and not the vacant site alone.

30. The decision reported in (2004) 1 M.L.J. 546 which was relied upon by the learned Counsel for the Respondent is not relevant. Further, as it

is not the case of the of the Respondent that the Petitioner was not the owner of the building and the land which was originally leased out to him,

the decision relied upon by the learned Counsel for the Respondent reported in ILR 1996 MAD 1978 is not relevant.

31. The appellate authority has found that originally the tiled building and the site on which the building stands was leased out to the Respondent

and after obtaining appropriate permission from the Corporation of Madras, the Respondent has put up a new construction and therefore, has

come to the conclusion that the petition filed u/s 4 of the Act is not maintainable. The said finding of the appellate authority is against the law laid

down in 1963 M.L.J. 60 by the Division Bench of this Court.

32. If the facts of the case reported in 1963 M.L.J. 60 are considered it could be seen that in that case, although the actual lease was of the site

alone, since the superstructure was in existence at the time of lease was granted, the Division Bench has held that the lease can be regarded only as

a lease of part of the building and not of a vacant site and accordingly, the Rent Control Act is applicable.

33. In this case, admittedly, as per Ex.R.1, lease deed, what was leased out was the existing building and the site on which it was standing and it

was not of the lease of the vacant site alone and therefore, even if the existing superstructure had been demolished and a new superstructure had

been put up by the tenant, still, the Rent Control Act will apply as per the aforesaid Division Bench of this Court and therefore, the finding of the

appellate authority to the contrary cannot be sustained and accordingly, the same is set aside.

34. Since the appellate authority has disposed of the appeals holding that the Rent Control Act is not applicable and has not gone into the merits of

other contentions put forth on either side, namely, as to whether the fair rent fixed by the Rent Controller is correct or not, the matter has to be

remitted back to the appellate authority for fresh disposal on merits.

35. Accordingly, the above C.R. Ps are allowed setting aside the common order of the appellate authority and the matter is remitted back to the

appellate authority to decide the question of fair rent payable for the petition premises after giving an opportunity to both the sides.

With the above directions, the above C.R. Ps. are allowed. No costs.