

(1985) 08 MAD CK 0017
In the Madras High Court

A.W. Dhuruva and Co.

APPELLANT

Vs

P.M. Abdul Rahim

RESPONDENT

Date of Decision : 28-08-1985

Acts Referred:

Citation : (1986) 1 MLJ 363

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—The tenant is the petitioner.

2. The respondent herein has filed an application in H.R.C.No. 753 of 1981 before the learned Rent Controller (XIV Judge, Court of Small Causes) Madras, against the petitioner herein and another petition H.R.C.No. 754 of 1981 against another tenant Raj Sihal under Sections 10(3)(c) and 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) for eviction of the respective tenants on the ground of requirement of the premises for additional accommodation and on the ground of commission of acts of waste that impaired the value and utility of the petition-mentioned premises. The premises is a non-residential building. Both the applications were tried together and a common order was passed. On the side of the respondent herein, he was examined as P.W.I and Exs.P-1 to P-19 were marked. On the side of the petitioner herein and the respondent in H.R.C.No. 754 of 1981, R.Ws. 1 to 3 were examined and Exs.R-1 to R-7 were marked. The learned Rent Controller, for reasons assigned in his order, dismissed H.R.C.No. 754 of 1981 while he allowed the application in H.R.C. No. 753 of 1981, on the ground that the petitioner herein had committed acts of waste while negating the claim on the ground that the respondent herein required the building as additional accommodation. Aggrieved by the said order, the tenant (petitioner herein) preferred an appeal before the learned Appellate Authority (VI Judge, Court of Small Causes at Madras) in H.R.A. No. 1730 of 1981 and met with the same fate. Hence, this Revision.

3. Both the authorities below held that the--petitioner herein has removed one

door in the main entrance and since the door is a permanent fixture to the building and even as per the contention of the petitioner herein, the same is being removed often, to bring articles inside the building, it would definitely cause wear and tear and give way and as such it would amount to causing damage to the building, which will impair the value and utility of the building. Similarly, the tenant herein viz., the petitioner herein, had blocked the drainage system by storing wooden chips and hay-rick, as a result of which, the respondent herein had to pay a sum of Rs. 504 under Ex.P-18 to the Madras Metropolitan Water Supply and Sewerage Board for restoration of the drainage. The third ground alleged is that the act of the petitioner herein in permitting his workmen to use flames to solder is a fire hazard in view of stacking of packing materials like wooden chips and hay-rick, which are combustible and inflammable and the said act also would impair the value and utility of the building.

4. The learned Counsel for the petitioner herein Mr. Damodar Raj mainly contended that the respondent herein has not stated in the petition as to how the three acts alleged would impair the value and utility of the building. It is further contended by him. that the door in the main wall is an old one and it is usual to remove it so as to take the goods inside and again to replace it and there were hinges on the door-frames and even according to the report of the learned Commissioner, the main door which was removed, is kept safely and as such, it cannot be said that the said act would amount to an act of waste. As regards the blocking of the drainage, it is the contention of the learned Counsel for the petitioner herein that the blocking of the drainage has not been referred to in the notice Ex.P-1 sent by the respondent herein and that the learned Commissioner has also not noted in his report and absolutely there are no details as to at what point of time and where it was blocked or about the cause for such blocking, since admittedly the drain water comes from the top floor. The learned Counsel also submitted that the wooden chips and hay-rick can be removed at any stage and there is absolutely nothing in the report of the Commissioner to support the said contention or in Ex.P-1 notice and as such, both the authorities below have not correctly appreciated the evidence and interpreted the meaning of the words "commission of acts of waste which would impair the value or utility of the building".

5. On the other hand, the learned Counsel for the respondent herein submits that this is a case where the learned authorities below, viz., the learned Rent Controller and the learned Appellate Authority have concurrently found on the evidence that the petitioner herein had committed acts of waste and this Court sitting in revision ought not to interfere with the said concurrent finding rendered by both the authorities below, as if it is a case of lack of evidence or that finding suffers from any infirmity. He also submitted that the learned authorities below had taken into consideration the totality of the various acts committed by the petitioner herein and have arrived at a correct finding. He also submitted that necessary allegations have been made in the petition filed for eviction.

6. On going through the materials placed before me and after hearing the arguments of the learned Counsel for either side, I find that even in paragraph 5 of the H.R.C. petition filed by the respondent herein for eviction of the petitioner herein, he has clearly stated that the petitioner herein had removed the door from the portion in his occupation and further, he had also blocked the drainage system and stored hay-rick and wooden chips and such act on the part of the petitioner herein is likely to be a source of fire and thereby cause damage to the building. Even in evidence he corroborated the allegations put forth in the petition and stated that the said acts had impaired the utility and the value of the building.

7. The learned authorities below had also relied on the evidence of the petitioner herein, who was examined as R.W.2, wherein he himself had admitted about the removal of the door in the main entrance; but he would contend that it is being removed frequently to bring the articles inside the building. The learned authorities below observed that since the door is a permanent fixture of the building, if it is removed often, it would definitely cause wear and tear and such an act would damage the building and would impair the value and utility of the building. Further, even the Commissioner, who inspected the premises, had observed that he noticed the main door provided in the ground floor, which is just behind the iron gate of the main building, was removed and only hinges were left alone, and the removed door was kept blocking the iron gate provided to the ground floor. If really the door was being removed for the purpose of taking goods inside the premises, nothing prevented the petitioner from replacing the door at the time of the Commissioner's visit or to demonstrate the same in his presence, especially when the Commissioner has inspected the premises after giving notice to both the parties.

8. As regards the blocking of the drainage system, the Court below relied on the evidence of R.W.2, the tenant -petitioner herein, wherein he has admitted that he is using wooden-chips and hayricks for packing the goods, which resulted in the blocking of the drainage system and Ex. P-18 Bill was issued by the Madras Metropolitan Water Supply and Sewage Board for restoration of the drainage and a sum of Rs. 500 and odd was collected in this regard from the respondent herein. In the face of the above evidence, the failure of the Commissioner to refer to the blockage of the drainage in his report and the respondent herein in his notice, would not in any way affect the case of the respondent herein.

9. Lastly, as regards the fire hazard, the learned authorities below relied on the admission made by R.W.2 himself about the possibility of the wooden-chips and hay-ricks stored in the premises catching fire by the act using flame for soldering the packings. The learned authorities below also observed that it would reveal from the evidence of R.W.2 that he used to do the soldering work only in his place and not in the petition mentioned premises and that he was absent on leave for sometime when the soldering work "was being done temporarily in the petition mentioned premises. The said admission of R.W.2 falsifies the contention

of the petitioner that the said soldering work had been carried on for nearly ten years and there was no need for any fire extinguisher and that there was no necessity for calling for any fire engine on all these occasions and hence, that would not amount to act of waste. Even the learned Commissioner, who inspected the premises, had mentioned in his report that he noticed workmen doing soldering activities with flames. Thus it is clear that the learned authorities below had considered the evidence adduced before the learned Rent Controller and on the basis of the same had arrived at a concurrent finding that the respondent herein had established the above three acts of waste committed by the petitioner herein. In fact, the learned authorities below while assessing the evidence, did not accept the alleged acts of waste by installing the air-conditioning machinery on the ground that the said installation would augment the value of the building and there is nothing to show that the building was damaged in any way by such installation. Thus, the Courts below have applied their minds and arrived at a finding against the petitioner herein.

10. The learned Counsel for the petitioner herein relied on the decision in *P. Thandavarayan v. Y.L. Lakshmi Ammal* (1985) 98 L.W. 332, wherein Nainar Sundaram, J. after referring to the decisions in *Govindaswami Naidu v. Pushpalammal* (1951) 64 L.W.1013, in *Domodara v. Loganatha* AIR 1958 Mad. 54, in *Patel Md. Siddique v. H.H. The Prince of Arcot Endowment* (1964) 77 L.W.87 and in *G. Natarajan v. P.Thandavarayan* (1969) 82 L.W.208 held that:

A particular act of waste as materially (sic) impairing or likely to impair the value or utility of the building cannot be a matter of presumption or assumption, but must be a matter of concrete evidence. A bare and a bald statement that it has materially impaired or is likely to impair materially the value or the utility of the building also will not do. It must be established through proper evidence as to how and in what manner the reprehensible act has materially impaired or is likely to impair the value or the utility of the building. It is possible that what the tenant did may apparently look beneficial both to the building and to the landlord, but it may prove to be deceptive and in due course, the building is likely to suffer in its value or utility on account of the present acts of the tenant. Even then the mischief of the provision would be attracted. But all these features must be borne out by convincing evidence and the authorities under the Act are duty bound to advert to this aspect and render a finding that the acts of waste have impaired or are likely to impair materially the value of the utility of the building.

The learned Counsel for the petitioner relied on the portion in this decision wherein it was observed that:

However harsh it may look from the point of view of the landlord, the rigour of the provisions of the Act, being a beneficial legislation intended for the protection of tenants, could not be watered down by bringing in any extraneous considerations leaning towards the landlord. The act perpetrated by the tenant, if it does not come within the import and implications of Section 10(2)(iii) of the

Act, cannot form a lever for eviction of the tenant, though other remedies may be open for the landlord, such as compensation, rectification of the offending works and restoration too, all at the cost of the tenant.

In the instant case, the authorities below had considered the evidence adduced in the case as to how and in what manner the alleged act had materially impaired or is likely to impair the value and utility of the building and then arrived at a finding and as such, the said decision is not helpful to the case of the petitioner herein.

11. On the other hand, the learned Counsel for the respondent herein, Mr. M.R. Narayanaswamy, drew my attention to the definition of the words "equitable waste" and "voluntary waste" in Woodfall's Law of Landlord and Tenant (Twenty-eighth edition - vol.1) at pages 644 and 645. The relevant portion relied on by him is "Whatever does a lasting damage to the freehold or inheritance is waste; therefore, removing wainscots, floors or other things, once fixed to the freehold of a house, is waste, and if the windows be broken or carried away it is waste, although they were glazed by the tenant himself, for the glass is part of the house". It was also observed therein that an act which would alter the nature of the demised premises is a waste.

12. In Sha Jetmull Genmull Vs. Gocooldass Jamunadass and Co., , Ramanujam, J. had relied on the said passages in the above quoted book and had observed as follows:

Woodfall on "Landlord and Tenant", Volume 2, 27th Edition, at page 1538, has stated: "Waste will include such acts as pulling down any part of the premises, making unauthorised alterations such as new doorways or windows, removing wainscots, floors or any other part of the structure or things fixed to the freehold, making two rooms into one, converting a dwelling house into a shop by removing a partition wall etc., and has quoted Marsden v. Heyes, L.R. (1927) 2 K.B.1 in support. Normally, waste will mean a spoil or destruction to houses, gardens, trees or other corporeal hereditaments and can be broadly divided into two divisions, voluntary waste and permissive waste. Voluntary waste is actual or commissive, as by pulling down houses, or altering their structure, and permissive waste is a matter of negligence and omission as by suffering buildings to fall or rot for want of necessary reparations. In addition to the said two board "divisions of waste" it is also possible to divide it into "ameliorating waste" and "equitable waste". "Ameliorating waste" is such voluntary waste as improves the demised premises as where a tenant puts a new front to his house. "Equitable waste" consists in acts of gross damage, usually the cutting down ornamental timber by a tenant. It has been held by courts that turning two rooms into one or a hall into a stable, building a new house where there was none before, pulling down a house even though it be rebuilt afterwards are acts of waste. It has also been held that it is waste to pull down or remove any part of a house, as the windows, doors or other fixtures annexed to the house either by the landlord or by the tenant.

In the above quoted case Ramanujam, J. had also held:

It is not possible to accept the petitioner's case that so long as the utility of the building has not been affected, he could make any alterations and additions to the building. Having regard to the object of the provisions in Section 10(2)(iii) of the Act, that is, to prevent tenants from making indiscriminate alterations and additions without the consent of the landlord affecting the value and the utility of the building, any alteration made by the petitioner which is likely to reduce the age of the building or its value, the respondent is entitled to an order of eviction even if the additions or alterations have added to the utility of the building. Section 10(2)(iii) talks of acts of waste.

13. The learned Counsel for the respondent also relied on the decision in Sha Nirbhayala Bahadurmal Vs. Krishna Rao M. Nikan, wherein Singaravelu, J. held as follows:

Changing the nature of the demised premises tantamounts to technical waste and the demolition or removal of the door and shutters, pillars etc. are undoubtedly wilful and reckless acts on the part of the tenant. It is not as if the removal of these portions was caused in the course of reasonable use and it is certainly prejudicial to the interests of the landlord in that the tenant has made indiscriminate alterations and additions unilaterally without the consent and approval of the landlord. This also amounts to doing of an act which affects the utility of the building though the tenant might have added to the value of the building by putting up a better appearance. In this view of the matter, the findings of the Courts below that the tenant should be held to have committed "acts of waste" coming under the definition (under Section 10(2)(iii) of the Act) have to be upheld.

(Words in bracket supplied)

In the instant case, both the authorities below have taken into consideration the totalities of the various acts committed by the petitioner herein and arrived at a finding that the petitioner herein committed acts of waste as contemplated u/s 10(2)(iii) of Act 18 of 1960.

14. I do not find any merit in the contention of the learned Counsel for the petitioner herein that all these acts were done in the course of reasonable user of the premises and that it is not prejudicial to the interest of the landlord since the removing of the door, which is a permanent fixture and the blocking of the drainage and doing soldering work with flames where the wooden-chips and hay-ricks were stored and thereby causing fire hazard, are not certainly the acts of reasonable user of the building.

15. The learned Counsel for the respondent also drew my attention to the decision in Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, wherein their Lordships of the Supreme Court observed as follows:

The dominant idea conveyed by the incorporation of the words "to satisfy itself u/

s 25 appears to be that the power conferred on the High Court u/s 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court u/s 115 of the CPC but in the words of Untwalia, J. in *Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval*, it is not wide enough to make the High Court a second court of first appeal.

It was further observed in the above decision:

A concurrent finding, based on evidence, that the landlord did not bona fide require the premises for his own use and occupation is not in our view a finding which can be touched by the High Court exercising Jurisdiction u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

Applying the ratio laid down by their Lordships of the Supreme Court in the above quoted decision, since both the Courts below have concurrently found on evidence that the petitioner herein has committed acts of waste, as per the definition of the Act as already set out above, and as there is no taint of illegality or unreasonableness resulting in miscarriage of justice, no interference is warranted in this revision.

17. Learned Counsel for the petitioner prays that six months time may be granted to the petitioner to vacate the premises. Considering the facts and circumstances of the case and the fact that the petitioner has been in occupation of the premises for a sufficiently long period, I am of the view that six months time can be granted.

18. For all these reasons, the orders passed by the learned authorities below are confirmed and this revision, fails and stands dismissed. There will be no order as to costs. Six months time is granted to the petitioner to vacate the premises, from today, on condition that the petitioner files, within four weeks from today, an undertaking affidavit that he would positively vacate the premises within six months without driving the respondent to execution proceedings and that he would pay the future rent without default.