

(2006) 03 MAD CK 0115

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 108 of 2006 and C.M.P. No. 903 of 2006

Bhagwan Chand and Co.

APPELLANT

Vs

Utham Chand, Ramesh Kumar and Rajesh Kumar, rep. by
Estate of Shah Ganmal Nermalji

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)

Citation : (2006) 2 CTC 845 : (2006) 3 LW 144 : (2006) 3 MLJ 106

Hon'ble Judges : S.R. Singharavelu, J

Bench : Single Bench

Advocate : P.B. Balaji, for the Appellant; S. Parthasarathi for Vikram Jain Associates, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singharavelu, J.—Tenant is the revision petitioner. Aggrieved over the order of eviction passed on 21.12.2005 in R.C.A. No. 1080 of 2003 on the file of VII Judge, Small Causes Court, Chennai, which reversed the dismissal order dated 18.03.2003 of R.C.O.P. No.2064 of 2000 that was filed for eviction u/s 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter referred to as "the Act") on the file of X Judge, Small Causes Court, Chennai, this revision petition has been filed.

2. Revision petitioner/tenant is occupying 240 sq.ft. for his stationery business in a huge building containing three floors belonging to the respondents/landlords. Admittedly, there are eight shops each in the ground floor and first floor and the other two floors are used for the residential purposes.

3. The respondents/landlords were running a business in the sale of scientific and medical equipments and running a lab in that connection. Already they are in occupation of some area and by virtue of the expansion, it was contended that they required an additional accommodation of 1000 sq.ft.

4. The tenant resisted it by contending that when other shops in the said building fell vacant, none was taken use for the required owner's occupation; but it was rented out to different persons and that there is no bona fide in their requirement also because that as against their requirement of 1000 sq.ft., no other rent control original petition was filed against any other tenant in the same building, apart from 240 sq.ft.of area occupied by this revision petitioner/ tenant.

5. Learned counsel for the tenant submitted that in the absence of pendency of any other eviction petition against other tenant, the mere eviction of this tenant may not satisfy the requirement of 1000 sq.ft.of the landlord; because what was occupied by the revision petitioner/tenant is only 240 sq.ft.

6. Learned counsel for the respondents/landlords submitted that the tenant is owning some other building and it is falsely stated by him as if it is owned by his brother R.W.2, who also replied as if he is running some other business of his own in the said building. There is no acceptable evidence that some other building owned by the tenant.

7. In this context, the comparative hardship is to be looked into as laid down in *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, . In this decision, while dealing formulation of comparative hardship it was observed that,

Factors to be considered include the direness of the need for eviction and of the need to stay in the premises, the conduct of the parties, their mutual relationship, prognosis as to how situation would develop in foreseeable future both in event of eviction being allowed and it is being disallowed.

This aspect may only improve the case of the revision petitioner/ tenant and independent of which there is no bona fide on the part of the landlord in requiring the building of 240 sq.ft., when his actual requirement was 1000 sq.ft and especially, when landlord filed no eviction petition against any other tenant in order to satisfy the balance of 750 sq.ft.

8. If only bona fide is found in favour of landlord, the question of comparative hardship will have to be considered inter se the parties; but in a case, where bona fide itself is lacking on the part of the landlord, no question of comparative hardship need be looked into and even if it is looked into, it only goes in favour of the revision petitioner/tenant as he has no other building to run the stationery business inasmuch as the other building that was shown to be used by him was as shown as godown; excepting that no building is available. Hence, I am of the view that the order passed by the Authority below has to be interfered with.

9. For the reasons aforesaid, the civil revision petition is allowed, setting aside the eviction order dated 21.12.2005 in R.C.A. No. 1080 of 2003 passed by the Rent Control Appellate Authority, Madras. No costs. Consequently, connected C.M.P.is closed.