

(2000) 10 MAD CK 0031
In the Madras High Court
Case No : C.R.P.No.3177 of 1997

Buhari Hotels and Motels Pvt. Ltd.

APPELLANT

Vs

Dr. L. Murugam and another

RESPONDENT

Date of Decision : 30-10-2000

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 25

Citation : (2000) 4 CTC 678 : (2001) 2 LW 342

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. M. Liagat Ali, for the Appellant; Mr. Muthukrishnan, for the Respondent

Judgement

1. The revision petitioner is the landlord of a premises in Madras. He sought for eviction of the first respondent in R.C.O.No.3334/89 on the file of

the Rent Controller on three grounds namely, sub-letting, wilful default in the payment of rent and putting the building to a different user than the

one for which it was leased out. The learned Rent Controller ordered eviction only on the ground of sub-letting and different user and dismissed

that petition on the ground of wilful default in the payment of rent. However on appeal in R.C.A.No.307/94 the Appellate Authority confirmed the

finding of the Rent Controller on the ground of wilful default in the payment of rent and set aside the finding of the Rent Controller on the other two

grounds. It is the correctness of the said order of the Appellate Authority that is being challenged in this revision before this Court by the landlord.

2. The second respondent in this revision is stated to be the unauthorised sub-tenant under the first respondent. Heard the learned counsel on either

side. The argument of the learned counsel for the petitioner is that, on the facts

pleaded, proved and established, the tenant is definitely guilty of putting the building to a different user and therefore the Appellate Authority had definitely erred, both in law and on facts, in dismissing the eviction petition on the grounds stated therein, though there may be something to say as far as the ground of sub-letting is concerned. Under these circumstances, the learned counsel for the revision petitioner would contend that the order of the Appellate Authority must be set aside. On the other hand, the learned counsel for the respondents would contend that this Court, being a revisional Court, should not re-appreciate the entire evidence examined and come to a different conclusion, if the conclusion arrived at by the Appellate Authority is a possible conclusion. In other words, the argument of the learned counsel for the respondents is that, simply because this court can arrive at a different conclusion on the same set of facts, this Court should not normally interfere while it exercises the revisional power. As far as the different user is concerned, it is contended by the learned counsel for the respondents that the tenancy is for non-residential purpose in general and without reference to any particular business as it is. This would mean that the tenant would be at liberty to carry on any business as he likes. If the case of the landlord is examined in the context of the above facts, then from the mere fact that in the demised premises a tailoring business is carried on, it cannot be said that the building in question had been put to a different user. Carrying on business in running Veterinary Clinic in the demised premises and carrying on business in tailoring in the same premises, would come within the meaning of non-residential purpose and therefore it cannot be said that the building had been put to a different user. The landlord had not produced any agreement in writing to show that the tenancy was for a particular business purpose and not for non-residential purpose in general. Therefore the Appellate Authority had rightly held that there is no different user. As far as sub-letting is concerned, the argument of the learned counsel for the respondents is that, the second respondent is none-else than the son of the first respondent and the first respondent had not parted with possession of the building in favour of the second respondent. This being the essential requirement to establish sub-letting, even the ground of sub-letting must be held against the landlord.

3. Having regard to the arguments advanced by the learned counsel on either side, I applied my mind to the entire materials available on record. In

the rent control petition, it is categorically stated as follows:

The rental agreement was executed between the petitioner and the first respondent on 9.3.1986. It is submitted that the first respondent has

occupied the petition premises only for the specific purpose of running Veterinary Clinic in the name and style of V.V.Clinic.

In the counter filed by the respondents, it is stated as follows:

The allegation that the first respondent has occupied the petition premises only for a specific purpose of running Veterinary Clinic under the name

and style of V.v.clinic is correct.

The landlord's agent had given evidence as P.W.1 and the second respondent examined himself as R.W.1. Ex.A.2 is the renewal agreement dated

1.1.1988 entered into between the landlord and the first respondent. It evidences that the tenancy had already commenced under a lease deed

dated 9.3.1986 in respect of the demised premises and that the said lease had expired on 31.1.1987. It is further mentioned in Ex.A.2 as follows:

Now both the parties have renewed the said lease deed for a further period of 11 months on the same terms and conditions except the rental

amount All the terms and conditions stipulated in the original lease deed dated 9.3.1986 shall be applicable to both the parties.

P.W.1 in his oral evidence had referred to the 9.3.1986 tenancy agreement and the specific purpose for which the building was let out. It is no

doubt true, as contended by the learned counsel for the respondents, that the original lease agreement dated 9.3.1986 had not been filed before

the Court as an exhibit. But the failure to mark the original lease deed itself would not affect the case of the landlord. If the oral evidence of P.W.1;

the terms of Ex.A.2 and the pleadings extracted above are considered as a whole, it is clear that the landlord had established that the tenancy is for

the specific purpose of running a Veterinary Clinic in the name and style of V.V.Clinic in the demised premises. Therefore it is clear that the

landlord had established that the tenancy is not for non-residential purpose in general but for a specified non-residential purpose.

4. If this much so is clear from the records, then the question that falls for consideration is whether there is a different user? In the counter statement

it is admitted that in the demised premises the second respondent is carrying on business in tailoring. The oral evidence of R.W.1, who is none else

than the second respondent, is that he is carrying on business in tailoring. His admission is also to the effect that from 1987 onwards he is in

occupation of the demised premises. This is referred to in the judgment rendered by the learned Rent Controller. Section 10(2)(ii)(b) of the Tamil

Nadu Rent Control Act reads as follows:

10. Eviction of tenants: (1)

(2) the landlord who seeks to evict his tenant shall apply to the controller for a direction in that behalf. If the controller, after giving the tenant a

reasonable opportunity of showing cause against the application, is satisfied-

(i) *****

(ii) that the tenant has after the 23rd October, 1945 without the written consent of the landlord-

(a) *****

(b) use the building for a purpose other than that for which it was leased;

Similar is the section in Haryana Urban (Control of Rent & Eviction) Act, 1973. The said section as extracted in the judgment of the Hon"ble

Supreme Court of India, in the case reported in Jagdish Lal Vs. Parma Nand, , is as follows:

13(1)

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a

reasonable opportunity of showing cause against the application, is satisfied;

(i) *****

(ii) that the tenant has after the commencement of the 1949 Act, without the written consent of the landlord,-

(a) *****

(b) used the building or rented land for a purpose other than that for which it was leased;

(The letting in that case was for the business of ""Maniyari"" (general merchant) readymade and cloth merchant). The allegation was that the tenant

had used the shop for the purpose of restaurant or for selling sweetmeat. While considering the question whether the building was put to a different

user or not, in paragraph 18 of that judgment, the Hon"ble Supreme Court of India had held as follows:

18. On a consideration of these decisions, it comes out that where the new business started by the tenant in the premises let out to him was an allied business or a business which was ancillary to the main business, it would not amount to change of user. It is true that where a premises is let out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building. But that is not enough. Having regard to the provisions of the Act and the intendment of the legislature in providing that of the tenant would not use the premises for a purpose other than that for which it was let out, the new business should either have some linkage with the original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that business. Where local laws provide a specific prohibition in respect of the use of the premises under the rent legislation and that provision has been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that provision differently.

From the above judgment it is clear that unless the new business, which the tenant starts, is akin or allied or ancillary to the business which the tenant is already carrying on, it must be held that the building had been put to a different user. In other words, unless the new business has some connection, however remote it may be, with the original business started, the tenant cannot escape an order of eviction, if the ground of different user is put against him. Therefore the question that has to be considered in this case is whether the building in question had been put to a different user or not? The records show that at the inception, the building was let out only for running a Veterinary Clinic. The records also establish beyond doubt that the entire building is now used as a tailoring shop. By any stretch of imagination, the business in tailoring cannot be held to be, either akin or ancillary or allied to the business of Veterinary Clinic. Both are totally different types of businesses and there is no similarity whatsoever between the two. There is not written consent on record in favour of the tenant. Therefore the judgment of the Hon"ble Supreme Court of India referred to

supra squarely applies to the case on hand and the Appellate Authority had definitely erred in non-suiting the landlord on the ground that there is no different user. Accordingly the landlord is entitled to succeed on the ground of different user.

5. Even on the ground of sub-letting, the tenancy is between the landlord and the first respondent/chief tenant. The first respondent had not chosen to examine himself in Court. The fact remains that as on date the entire demised premises is in the occupation of the second respondent to the exclusion of the chief tenant. Though he may be the son of the first respondent/chief tenant, yet there is no record to show that the chief tenant has any interest at all in the business that is being carried on by his son. Unless there is privity of contract between the second respondent and the landlord, or atleast it is shown that the chief tenant has an interest in the business of the second respondent, it must be held that the presence of the second respondent in the premises is only as an unauthorised sub-tenant. The presence of the son of the chief tenant in the demised premises without the written consent of the landlord would definitely amount to unauthorisingly sub-letting the demised premises. On this ground also, the landlord is entitled to succeed. Though it is contended by the learned counsel for the respondents that this Court will not normally interfere with the judgment of the appellate authority while exercising the revisional powers, yet on going through the materials available on record, I find that the appellate authority had failed to draw the necessary legal inference and conclusions from the established facts. If such legal inference and conclusions are not drawn, which is definitely an error in law, the revisional Court can always step in and set right the defects. Therefore I find no difficulty at all in restoring the order of eviction granted by the learned Rent Controller. Accordingly the judgment of the Appellate Authority in R.C.A.No.307 of 1994 is set aside and the order of eviction granted by the Rent Controller in R.C.O.P.No.3334 of 1989 will stand restored. The revision is allowed and there will be no order as to costs.