
(2008) 01 MAD CK 0083

In the Madras High Court

Case No : C.R.P. (NPD) . No. 903 of 2004 and C.M.P. No's. 7136 and 7137 of 2004

C.M. Devaraj

APPELLANT

Vs

V. Narasiah Naidu

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 10(4), 23

Citation : (2008) 01 MAD CK 0083

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Jayabalan, for the Appellant; V. Chandrakanthan, for the Respondent

Judgement

M. Venugopal, J.—The revision petitioner is the tenant. The respondent/landlord has filed a petition before the learned Rent Controller,

Ambattur (District Munsif, Ambattur) u/s 10(3)(a)(i) of the TN Buildings (Lease and Rent Control) Act, 18 of 1960 and as amended by Act 1973

bonafide requiring the petition premises for his own occupation and for evicting the revision petitioner/tenant from the petition premises and

directing him to vacate and deliver vacant possession of the same.

2. The civil revision petitioner/tenant filed a detailed counter in the Rent Control Proceedings specifically stating that is employed as a Senior

Officer in the Tamil Nadu Cooperative Milk Producers Federation Limited, which is classified as a Essential Service and as such he is entitled to

protection u/s 10(3)(i) and 10(4)(i) of the Rent Control Act.

3. The learned Rent Controller after considering the oral and documentary evidence let in on both sides came to the conclusion that the petition

premises is required bonafide for the occupation of respondent/landlord/petitioner and held that the civil revision petitioner/ respondent/tenant is entitled to get the benefit u/s 10(4)(i) of the Act and resultantly dismissed the petition.

4. The respondent/landlord preferred the appeal R.C.A.No.7 of 2002 before the learned Appellate Authority viz., Sub Judge, Poonamallee u/s 23

of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23/73 and 1/1980 and the learned Appellate Authority by his

order dated 11.12.2003 has allowed the Rent Control Appeal without costs in setting aside the order and decree passed by the learned Rent

Controller and ordered eviction by giving a direction to the civil revision petitioner/ tenant/respondent to put the respondent/landlord/petitioner in

possession of the petition premises within two months from the date of the order.

5. The learned Counsel for the civil revision petitioner/tenant urges that the learned Appellate Authority has not given any finding regarding bonafide

requirement of the landlord and that there is no discussion in the order of the Appellate Authority as to the requirement of bonafide of the landlord

and that the subsequent development in the matter is that the civil revision petitioner/tenant has retired from service after attaining the age of

superannuation pending civil revision petition and therefore, prays for allowing the civil revision petition.

6. Contending contra, the learned Counsel for the respondent/landlord/petitioner submits that when the learned Appellate Authority viz., Sub

Judge, Poonamallee has allowed the Rent Control Appeal by his order dated 11.12.2003, he has impliedly confirmed the order dated 03.08.2002

passed by the learned Rent Controller, Ambattur (District Munsif, Ambattur) in respect of the bonafide requirement of the landlord in the Rent

Control Proceedings in R.C.O.P.No.29 of 1999 and therefore, the order of the learned Appellate Authority does not suffer from any infirmity in

the eye of law.

7. It is further represented on behalf of the Revision Petitioner/tenant that as per Section 23 of the TN Buildings (Lease and Rent Control) Act,

1960 any person aggrieved by an order passed by the Controller can file an appeal before the Appellate Authority having jurisdiction in the matter

and in that perspective, the revision petitioner/tenant is legally competent to

prefer an appeal viz., the present R.C.A.No.7 of 2002 and in the said appeal, the revision petitioner/tenant is legally entitled to canvass the issue of bonafide requirement of the landlord, which was not admittedly adverted to specifically by the learned Appellate Authority viz., Sub Judge, Poonamallee in R.C.A.No.7 of 2002 dated 11.12.2003.

8. Generally, as per Section 10(3)(a)(i) of the TN Buildings (Lease and Rent Control) Act, 1960, the respondent/landlord/petitioner is bound to establish that he is not occupying residential building of his own or that of the members of his family in the Town or City. As a matter of fact, the expression "is not occupying a residential building of his own" means that the landlord is not occupying a residential building of which he is the absolute owner.

9. It is relevant to point out that Section 10(4) of the TN Buildings (Lease and Rent Control) Act, 1960 prescribes a mandatory direction fettering the Rent Controller to pass any eviction against the person who comes within the ambit of Section 10(4) of the Act. In this connection, it is useful to refer to the decision in 1976 TLNJ 106 (M. Govindarajulu v. N. Jayaraman) wherein it is inter-alia held that "when there is such a mandatory direction prohibiting the Court to pass any eviction order against that person who comes squarely u/s 10(4) of the Act, the finding on other issues regarding the bonafides must be construed as abinitio void".

10. In 1969 (2) S.C.J. 123 the Hon"ble Supreme Court has observed that "it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject matter of the suit. It's jurisdiction must include the power to hear and decide the question at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

11. In Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, it is held as follows:

It is open to a Court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If, however, final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point - each of

which by itself would be sufficient for the ultimate decision - the decision on each of these points operates as res judicata between the parties.

12. In Sri Rajagopal Transports (P.) Ltd. Vs. The Presiding Officer, Labour Court and Others, it is held thus:

In industrial disputes, there is a specific interdict on tribunals to entertain and adjudicate upon disputes, to be cautious in cases where the question of jurisdiction is raised. If once such a tribunal comes to the conclusion that it has no jurisdiction to entertain and a fortiori to adjudicate upon the subject before it, then the ban becomes operative and it has no further right to deal with the subject-matter. If however it considers further its finding can be treated as an equation of non est. The want of jurisdiction in matters tried by the quasi-judicial or judicial tribunals, is one which goes to the core of the matter and if its absence is unchallenged, then there is no foundation for such tribunals to proceed further, hear parties and record findings on the so called merits of the case.

13. The learned Appellate Authority viz., Sub Judge, Poonamallee was of the view that the protection u/s 10(4) of the Act which was available to

the civil revision petitioner/tenant, when he was employed as Senior Officer in Tamil Nadu Milk Cooperative Producers Federation Limited,

notified for the Government as an Essential Service was not available to him when he was transferred from Chennai to Madurai and in that view

ordered eviction of the revision petitioner/tenant and allowed the Rent Control Appeal filed by the landlord.

14. During the pendency of civil revision petition before this Court, the civil revision petitioner/tenant is said to have retired, as informed by the

learned Counsel for the petitioner/tenant, a subsequent development of which this Court can certainly take note of in the eye of law.

15. In view of the fact that there is a prohibition u/s 10(4)(i) of the TN Buildings (Lease and Rent Control) Act, 1960, the finding on the point in

regard to bonafide requirement of the landlord by the learned Rent Controller in R.C.O.P.No.29 of 1999 dated 03.08.2002 should be construed

as ab initio void and in view of the subsequent development during the pendency of civil revision petition that the civil revision petitioner/tenant has

retired from service, this Court in the interest of justice, remits the matter back to the learned Rent Controller, Ambattur (District Munsif,

Ambattur) to go into the issue of bonafide requirement of the respondent/ landlord/petitioner in respect of the residential building for his own occupation and deal with the matter de novo and decide the R.C.O.P.No.29 of 1999, after giving due opportunity to both parties to adduce oral and documentary evidence in the manner known to law and in that view, the Civil Revision Petition is allowed. Resultantly, the order of the learned Rent Controller in R.C.O.P.No.29 of 1999 dated 3.8.2002 and the order passed by the learned Appellate Authority in R.C.A.No.7 of 2002 dated 11.12.2003 are set aside.

16. Since the Rent Control Proceedings is of the year 1999, the learned Rent Controller is directed to dispose of the same within a period of four months from the date of receipt of a copy of this order. Having regard to the facts and circumstances of this case, the parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.