
(2003) 01 MAD CK 0083

In the Madras High Court

Case No : C.R.P. (N.P.D.) No. 646 of 2001 and C.M.P. No. 3460 of 2001

H. Naina Mohamed

APPELLANT

Vs

R. Gokul

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14, 14(1), 15, 15(1), 15(2)

Citation : (2003) 3 LW 143 : (2003) 1 MLJ 747

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R.L. Ramani, for the Appellant; A.K. Kumarasamy, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The question as to "whether the petition under Sections 15(2) and 16 of the Tamil Nadu Buildings (Lease and

Rent Control) Act, 1960 (hereinafter referred to as "the Act") by the tenant, praying for direction to the landlord for re-delivery of possession of

the petition premises, in view of breach of undertaking given by the landlord through agreement dated 19-1-1996, who took possession from the

tenant that he would hand over the possession of the same after demolition or re-construction, is maintainable before the Rent Controller or not" is

sought to be answered in this revision.

2. R. Gokul, the tenant, the respondent herein, filed a petition before the Rent Controller under Sections 15(2) and 16 of the Act for re-delivery of

possession of the rented premises.

3. The case of the respondent/tenant is as follows:-

(a) The petition premises was used for non-residential purpose, where the tenant was carrying on banking business. The petitioner/landlord

represented the tenant that he proposed to repair and re-construct the building and requested the tenant to vacate the premises assuring that he

would deliver the possession after re-construction. Accordingly, on 19-1-1996, an agreement was entered into between the parties, by which, the

tenant has to vacate the premises and the landlord has to re-construct and re-deliver the possession on or before 30-4-1997.

(b) As per the said agreement, the tenant handed over possession of the premises to the landlord. But the landlord, despite lapse of one year, did

not commence the re-construction work and gave evasive replies to the tenant. Therefore, the tenant is entitled to recover the possession from the

landlord and the landlord is bound to deliver possession of the property in view of breach of undertaking as per the agreement.

4. The case of the petitioner/landlord is as follows:-

Though the agreement was entered into between the parties in January 1996, the petition premises was handed over in June 1996, and since there

was a delay for the other tenants to vacate the premises, the re-construction work was not commenced in time. Moreover, Sections 15 and 16 of

the Act would not be applicable to the present case, since the delivery of possession by the tenant to the landlord was not under Sections 14 and

15 of the Act. Therefore, the tenant has to approach the civil Court for appropriate remedy for breach of undertaking in the agreement. Therefore,

the petition filed by the tenant under Sections 15 and 16 is liable to be dismissed.

5. Before the Rent Controller, the tenant examined himself as P.W.1 and marked Exs.P-1 to P-3. The landlord examined himself as R.W.1 and

one Akilan was examined R.W.2 and Exs.R-1 to R-6 were marked on the side of the landlord. Besides the above documents, Exs.C-1 and C-2,

the Commissioner's report and sketch were marked.

6. On conclusion of enquiry, the Rent Controller allowed the petition and directed the landlord to repair and re-construct the building premises and

hand over possession of the premises to the tenant within six months. Aggrieved by the same, the landlord filed an appeal before the appellate

authority, which in turn confirmed the order of the Rent Controller. Hence, this revision.

7. The point for determination which would arise for consideration, as indicated above, is as to whether the petition under Sections 15 and 16 of

the Act, is maintainable for delivery of possession by the landlord to the tenant as agreed by the landlord in the agreement entered into between the

parties on 19-1-1996.

8. Learned counsel for both sides would make their respective pleas and cite several authorities.

9. Learned counsel for the petitioner/landlord would cite the following authorities:-

(a) Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others, and

(b) Shri Lachoo Mal Vs. Shri Radhey Shyam, .

10. Learned counsel for the respondent/tenant would cite the following authorities:-

(a) Shri Lachoo Mal Vs. Shri Radhey Shyam, ;

(b) Smt. Parvatibai Subhanrao Nalawade Vs. Anwarali Hasanali Makani and others etc., ;

(c) Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, and

(d) 1974 (I) M.L.J. 14 (K.K. CHARI VS. R.M.SESHADRI).

11. I have carefully considered the submissions made by learned counsel for the parties and gone through the orders impugned and other records.

12. There is no serious dispute in the fact that the possession of the petition premises was handed over by the tenant to the landlord only on the

strength of the agreement dated 19-1-1996 on the assurance by the landlord that the petition premises, after re-construction, would be re-

delivered to the tenant within the stipulated time.

13. On going through the evidence, oral and documentary, adduced by both parties, there is also no difficulty in holding that the terms of the

agreement have not been fulfilled by the landlord, even though the tenant has handed over the petition premises to the landlord, hoping that he

would get back the possession from the landlord on the strength of his undertaking. Despite lapse of one year, the construction work had not

commenced and therefore, the tenant was constrained to file the application under Sections 15 and 16 of the Act for re-delivery of possession.

14. The orders passed by both the Rent Controller and the appellate authority,

would indicate that till the disposal of the petition and the appeal, the construction work was not commenced. It is stated that it was because of the order of injunction obtained by the tenant in the civil proceedings in O.S. No. 360 of 1997 against demolition of the superstructure. Now, it is pointed out through the affidavit filed by the landlord in this revision that the entire building premises was demolished and the construction has been completed now.

15. The main thrust of the arguments advanced by learned counsel for the petitioner is that the petition for re-delivery under Sections 15(2) and 16 of the Act is not maintainable, as the possession was not handed over to the landlord in pursuance of an order passed u/s 14 of the Act.

16. According to learned counsel for the petitioner, the Act can be invoked only in cases where the landlord approaches the Rent Controller u/s

14 of the Act for delivery of possession of the building which has to be reconstructed or demolished and after delivery, in pursuance of the order

of the Court, if the landlord fails to hand over the repaired portion to the tenant as per the undertaking given earlier, then only, the tenant can

invoke Section 16 of the Act for recovery of possession.

17. Let us now refer to Section 14 of the Act. Section 14 of the Act provides thus:-

14. Recovery of possession by landlord for repairs or for reconstruction - (1) Notwithstanding anything contained in this Act, but subject to the

provisions of Sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-

(a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated; or

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the

purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of

the building to the landlord before a specified date.

(2) No order directing the tenant to deliver possession of the building under this Section shall be passed-

(a) on the ground specified in clause (a) of sub-section (1), unless the landlord gives an undertaking that the building shall, on completion of the

repairs, be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1) for his reoccupation before the expiry of

three months from the date of recovery of possession by the landlord, or before the expiry of such further period as the Controller may, for

reasons to be recorded in writing, allow; or

(b) on the ground specified in clause (b) of sub-section (1), unless the landlord gives an undertaking that the work of demolishing any material

portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months

from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may, for reasons to be

recorded in writing, allow.

(3) Nothing contained in this Section shall entitle the landlord who has recovered possession of the building for repairs to convert a residential

building into a non-residential building or a non-residential building into a residential building unless such conversion is permitted by the Controller

at the time of passing an order under sub-section (1).

(4) Notwithstanding an order passed by the Controller under clause (a) of sub-section (1) directing the tenant to deliver possession of the building,

such tenant shall be deemed to continue to be the tenant, but the landlord shall not be entitled to any rent for the period commencing on the date of

delivery of possession of the building by the tenant to the landlord and ending with the date on which the building is offered to the tenant by the

landlord in pursuance of the undertaking under clause (a) of sub-section (2).

(5)....

18. A reading of the above said Section 14 of the Act would make it clear that if the Rent Controller is satisfied that the building is "bona fide"

required by the landlord for repairs and re-construction, shall allow the landlord to recover possession from the tenant, on recording an

undertaking from the landlord for re-delivery of possession to the tenant within the stipulated time and even for the said period, such tenant shall be

deemed to continue to be tenant though the landlord shall not be entitled to any rent for the said period.

19. Now, let us refer to Section 15 of the Act. Section 15 of the Act provides thus:-

15. Tenant to re-occupy after repairs -- (1) Where the landlord recovers possession under clause (a) of sub-section (1) of Section 14, he shall, within two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work will be completed. Within fifteen days from the date of receipt of such notice, the tenant shall intimate to the landlord his acceptance of the building offered for his re-occupation and if the tenant gives such intimation, the landlord shall within thirty days from the date of completion of the work of repairs put the tenant in possession of the building on the original terms and conditions. If the tenant fails to give such intimation, his right to re-occupy the building shall terminate.

20. A reading of the above said Section 15(1) of the Act would reveal that the landlord shall give notice to the tenant about the completion of the re-construction and then the tenant shall intimate the landlord his acceptance of building offered for his re-occupation and if the tenant fails to give such intimation, he will lose his right to re-occupy the building.

21. Section 15(2) of the Act provides thus:

15(2): If after the tenant has delivered possession, the landlord fails to commence the work of repairs within one month from the date of such delivery, or fails to complete the work before the expiry of three months from the date of such delivery, or before the expiry of the further period allowed under clause (a) of sub-section (2) of Section 14 or having completed the work fails to put the tenant in possession of the building in accordance with the provisions of sub-section (1), the Controller may, on the application of the tenant made within thirty days from the date of such failure, order the landlord to put the tenant in possession of the building on the original terms and conditions; and on such order being made, the landlord and any person who may be in occupation shall put the tenant in possession of the building.

22. A perusal of the above said Section 15(2) of the Act would show that after the delivery of possession by the tenant, if the landlord fails to commence the work or fails to complete the work or fails to put the tenant in possession within the time stipulated from the date of the order u/s 14 of the Act, the tenant can approach the Rent Controller to order the landlord to put the tenant in possession.

23. Section 16 of the Act provides thus:-

16. Tenants to occupy if the building is not demolished:--

(1) Where an order directing delivery of possession has been passed by the Controller under clause (b) of sub-section (1) of Section 14 and the work of demolishing any material portion of the building has not been substantially commenced by the landlord within the period of one month in accordance with his undertaking under clause (b) of sub-section (2) of Section 14, the tenant may give the landlord notice of his intention to occupy the building the possession of which he delivered. If within fifteen days from the date of receipt of such notice, the landlord does not put him in possession of the buildings on the original terms and conditions, the tenant may make an application to the Controller within eight weeks of the date on which he put the landlord in possession of the building. The Controller shall order the landlord to put the tenant in possession of the building on the original terms and conditions.

24. A perusal of the above said Section 16(1) of the Act would show that if the order directing delivery of possession was passed by the Rent

Controller and the work was not commenced within the period stipulated, then the tenant shall issue notice to the landlord his intention to occupy

the building and after the date of receipt of such notice, if the landlord does not put him in possession, the tenant may approach the Rent Controller

seeking for direction to the landlord to put the tenant into possession of the building.

25. A perusal of the above said provisions of the Act would make it clear that Sections 15(2) and 16 of the Act could be invoked only when an

order has been passed by the Rent Controller u/s 14(1) of the Act. Admittedly, in this case, the landlord had not approached the Rent Controller

seeking orders for recovery of possession from the tenant on the ground of repairs or for re-construction by invoking Section 14(1) of the Act.

26. A conjoint reading of Sections 15 and 16 of the Act would make it obvious that the tenant could seek remedy for re-occupation of the building

only when the order referring to the undertaking given by the landlord passed u/s 14(1) of the Act has not been complied with. In the present facts

of the case, it is not in dispute that the tenant approached the Court under Sections 15(2) and 16 of the Act, seeking for re-delivery of possession

from the landlord only on the strength of the agreement entered into between the parties and not on the basis of any order by the Rent Controller

u/s 14(1) of the Act.

27. None of the decisions cited by learned counsel for both parties would refer to the point in issue and as such, it is not necessary to discuss

about the issues raised thereunder, as they are not relevant to the present facts of the case.

28. The fact remains, as concluded by both the authorities below, that there is a clear breach of undertaking on the part of the landlord given in the

agreement. There are clear materials to show that the landlord has breached the terms of agreement. But that would not create a cause of action

for the tenant to approach the Rent Controller seeking for re-delivery of possession under Sections 15(2) and 16 of the Act. The only remedy for

the respondent/tenant is to go for the other reliefs like damages, etc., by approaching the civil Court. Therefore, both the authorities below have

committed illegality in allowing the petition under Sections 15(2) and 16 of the Act. The Rent Controller has no jurisdiction under the Act to deal

with the case, as there was no order under the provisions of Section 14(1) of the Act and the Rent controller merely passed the impugned order

based on the agreement entered into between the parties.

29. For the reasons stated above, the orders passed by both the authorities below are liable to be set aside and the same are accordingly set aside.

The revision is allowed. No costs. C.M.P. No. 3460 of 2001 is closed.