
(2004) 02 MAD CK 0060
In the Madras High Court
Case No : C.R.P. (NPD) No. 664 of 1997

Janaki Ammal, Yuvaraj, Thangaraj and Chandra	APPELLANT
Vs	
Saminathan (died) and Others	RESPONDENT

Date of Decision : 18-02-2004

Acts Referred:

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

Citation : (2004) 2 MLJ 14

Hon'ble Judges : T.V. Masilamani, J

Bench : Single Bench

Advocate : K. Chandrasekaran, for the Appellant; Mr.P. Valliappan, for Sarvabhauman Associates, for the Respondent

Final Decision : Allowed

Judgement

T.V. Masilamani, J.—This revision petition is filed against the fair and final order passed by the Appellate Authority (Subordinate Judge,

Kumbakonam) in R.C.A.No.8 of 1991 dated 18.9.1995.

2. The revision petitioners are the legal representatives of the deceased landlord Manicka Nadar, who initiated the proceedings before the Rent

Controller (District Munsif), Kumbakonam for eviction of the 1st respondent/tenant (since deceased) from the demised premises on the ground of

bona fide requirement of the premises for running the dhal business run by his wife, the 1st petitioner herein in a rented premises belonging to Sri

Rajagopalasamy Temple at Kumbakonam. Having analysed the evidence adduced on either side and upon hearing the arguments of both the

counsel, the learned Rent Controller passed an order of eviction holding that the requirement of the petition premises by the landlord for own

occupation is bona fide. The 1st respondent/tenant (since deceased) preferred

the appeal before the Rent Control Appellate Authority wherein the Appellate Authority after analysing the evidence on record and the arguments advanced on either side allowed the appeal by setting aside the order of eviction passed by the Rent Controller. Hence the revision.

3. The petition for eviction was filed by the landlord with the specific plea that his wife Janaki Ammal, 1st petitioner herein was selling dhal in a rented premises belonging to Sri Rajagopalasamy temple for about 40-45 years prior to the filing of the petition and that since the Devasthanam of the said temple requires possession of the said premises from his wife, it has become necessary to file the petition. P.W.1, the 2nd petitioner herein has also produced Ex.P-6, a notice issued by Sri Rajagopalasamy Temple Devasthanam to the 1st petitioner Janakiammal demanding her to vacate the premises and hand over the same to the Devasthanam, along with the receipts for payment of rent by her to the temple under Exs.P-10 to P-17.

4. Similarly, 3rd respondent herein has also candidly admitted in his evidence as R.W.1 that the 1st petitioner herein, landlord's wife was carrying on the business in selling dhal in Big Bazaar Street, Kumbakonam in a rented premises belonging to Sri Rajagopalasamy Temple Devasthanam and that the landlord did not own any non-residential premises of his own in Kumbakonam town. The learned counsel for the petitioners has therefore urged on the basis of the evidence of both P.W.1 and R.W.1 that the requirement of the premises for own use and occupation is bona fide and that therefore, the fair and decretal orders passed by the learned Rent Control Appellate Authority has to be set aside.

5. The factual aspect of the case falls within a narrow compass as narrated above. The learned counsel for the respondents has put forth his main contention that the requirement of the petition premises by the landlord is not bona fide for the simple reason that he did not carry on the business on the date of filing of the eviction petition and he has relied upon the decisions (1) RANGASWAMY NAIDU v. TAMIL NADU HANDLOOM WEAVERSCO-OP. SOCIETY LTD 1982 (I) M.L.J. 130; (2) MUNIAMMAL v. SUNDARA MAHALINGAM 1990 (II) M.L.J. 186; and (3) SP.S.S. MEDICAL HALL v. IBRAHIM & CO 1992 (I) M.L.J. 472 in support of such arguments.

6. On the contrary, the learned counsel for the petitioners has adverted my attention to the facts of the case involved in the said decisions and urged that the ratio laid down therein is not squarely applicable to the facts of the case on hand, as they differ in respect of all particulars. Firstly, he has pointed out that in the case decided in 1982 (I) M.L.J. 130, since the landlord was not actually carrying on any business either by himself or through any one of the members of his family on the date of filing the petition for eviction, it was held by R. SENGOTTUVELAN, J. (as he then was) relying on the ratio laid down in an earlier decision, 1959 (II) M.L.J. 215 (T.K. KRISHNA IYER v. KARUR VYSIA BANK LIMITED, COIMBATORE) that since the essential requirement of the landlord for carrying on the business is not complied with, the requirement of the landlord cannot be said to be bona fide. But on the other hand, in this case, admittedly, the landlord's wife, 1st petitioner herein was carrying on the business in a rented premises for well over 40 years prior to the filing of the petition for eviction. Hence, this Court is of the view that the ratio laid down in the said decision is not applicable to the facts of this case.

7. Nextly, the learned counsel for the petitioners has pointed out that in the case involved in 1990 (II) M.L.J. 186, the landlord did not take steps to commence the business nor had he been carrying on any business on the date when the petition was filed and therefore it was held in the said decision that the landlord has not satisfied the requirement of Section 10(3)(a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as ""Tamil Nadu Act 18 of 1960""). Here also, I am of the opinion that since the tenant himself has admitted in his evidence that the 1st petitioner herein was carrying on the business in the sale of dhal in a rented premises in Big Bazaar Street, Kumbakonam, the ratio laid down in the said decision cannot help advance the case of the respondents herein.

8. Similarly, it is pointed out by the learned counsel for the petitioners that in the case decided in 1992 (I) M.L.J. 474, it was held that since the landlord was in possession of two other godowns to store the goods, the requirement of the petition mentioned godown put forth by him is not bona fide. As has been pointed out above, the facts of this case are entirely different for the reason that admittedly neither the landlord nor his wife

owned any other non-residential building in Kumbakonam town and therefore, this Court is of the considered view that the ratio of the said decision also cannot be made applicable herein.

9. In view of the above reasons, on point of law also, the learned counsel for the respondents has not convinced this Court to accept the plea that the requirement of the demised premises by the landlord is not bona fide within the meaning of the provision u/s 10(3)(a)(iii) of the Tamil Nadu Act 18 of 1960.

10. The next contention of the learned counsel for the respondents is that the requirement of the premises must be for the benefit of the landlord himself so as to maintain the petition under the said provision of law. In this context, the learned counsel for the petitioners has argued rightly that the requirement of the landlord of the premises in question would enure to the benefit of any member of his family, who is not occupying his or her own premises for the purpose of business which he or she is carrying in the town concerned. He has placed reliance on the decisions (1) V.

Radhakrishnan Vs. S.N. Loganatha Mudaliar, and (2) Dwarkaprasad Vs. Niranjan and Another, .

11. A careful reading of the said decisions would make it abundantly clear that the requirement of the premises by the landlord would also be a requirement for and on behalf of any member of his family, who is running the business in a rented premises and does not own any such non-residential building in the town or city concerned.

12. The Hon"ble Supreme Court has laid down the law in this point in V. Radhakrishnan Vs. S.N. Loganatha Mudaliar, cited supra as follows:-

On a plain reading of Section 10(3)(a)(iii) of the Act, it appears to us that the legislature intended that a landlord seeking eviction of the tenant could be disentitled from claiming possession of the non-residential premises where he requires those premises for his own use, if he is occupying a non-residential building of his own. Similarly, the landlord would also be disentitled from claiming possession of non-residential premises for the benefit of a member of his family, if that member of the family was in occupation of a non-residential building of his own. Any other interpretation of this Section would not only be doing violence to the plain language of the Section but would result in absurdity inasmuch as the benefit of the

provision would stand denied to the family members of the landlord, who do not occupy any premises of their own and for whose benefit eviction

is sought, if the landlord himself is in occupation of a non-residential premises of his own. The fact that the landlord, who seeks eviction for the

benefit of a member of his family is himself occupying a building of his own, cannot operate as a bar to the landlord seeking eviction for the benefit

of a member of his family, who does not occupy any premises of his own.

13. Similarly, the Apex Court laid down the ratio in *Dwarkaprasad Vs. Niranjan and Another*, as follows:-

In the case in hand the landlord is the head of the family being the eldest amongst the brothers. All the brothers and sisters including mother of the

landlord live with him as members of the joint Hindu family. It is his obligation to settle his younger brothers in business as it is his obligation to

settle his children in business. Therefore, he can legitimately seek eviction of a tenant by pleading that he needs demised premises to settle his son

and his younger brothers in business. This being the legal position, the conclusion is inevitable, i.e, the plaintiff landlord must succeed and a decree

for eviction is liable to be passed in his favour for the entire demised premises.

Thus, it requires no further elaboration on this aspect of the matter that the requirement of the petition premises by the landlord is bona fide.

14. The learned counsel for the respondents has put forth yet another contention in the course of his argument that even though the landlord has

occupied the eastern pial of the petition premises to park cycles as well as to enable the visitors to sit for some time, the same could have been

utilised as a business place for selling dhal even if he is liable vacate the rented premises.

15. On the contrary, it is well settled proposition of law that merely because the pial is under the occupation of the owner of the premises, the

tenant cannot dictate the landlord to use it in a particular way for non-residential purpose. Hence this Court is of the view that such contention put

forth on the part of the respondents cannot be countenanced.

16. Similarly, a feeble attempt has been made by the learned counsel for the respondents that since the 1st petitioner who was running the business

did not file the eviction petition, the requirement is no longer said to be bona fide. On this aspect of the matter, the learned counsel for the

petitioners has drawn my attention to the decision A.PERUMAL AND 4 OTHERS v. P.MOHAMMED SARBUDDEEN 1998 2 L.W. 556 in

support of his contention that subsequent to the death of the landlord, the 1st petitioner herein being his legal heir is entitled to maintain the petition

for two reasons, the first being the family member carrying on the business in a rented premises and secondly, as a legal heir of the landlord who

proved his bona fide requirement of the premises for own use and occupation. Hence, in view of the ratio set out in the decision cited above, the

contention put forth on behalf of the respondents has no force in this respect.

17. In any view of the matter, it is abundantly clear that the petitioners have pleaded sufficiently and adduced categorical evidence both oral and

documentary to prove the bona fide requirement of the demised premises within the meaning of the provision u/s 10(3)(a)(iii) of the said Act. For

the above reasons, this Court is of the considered view that the impugned order passed by the learned Rent Control Appellate Authority is liable to

be set aside.

18. Thus, the Civil Revision Petition is allowed setting aside the order passed by the Appellate Authority and restoring the order passed by the

Rent Controller. However, the parties are directed to bear their respective costs. The respondents are given time till 30.6.2004 from this day to

vacate and hand over the property subject to the condition that they file an affidavit within ten days from today giving an unconditional undertaking

that they will vacate the property on or before 30-6-2004 failing which the petitioners will be at liberty to execute the order of eviction.