
(1996) 02 MAD CK 0114
In the Madras High Court
Case No : C.R.P. No. 3260 of 1996

K. Panchavarnammal (Died) and Others APPELLANT
Vs
E. Saraswathiammal and Others RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(3)

Citation : (1996) 2 CTC 98 : (1996) 1 LW 714 : (1996) 2 MLJ 252

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; M. Chinnaswami, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Tenant in R.C.O.P. No. 431 of 1981, on the file of the Rent Controller, Madurai Town, originally filed the revision petition. Later, she died and her legal representatives have been impleaded as additional petitioners 2 to 7, in this Revision.

2. Respondents herein filed the eviction petition on the ground that the tenant has committed willful default in payment of rent, that the building is required by the landlords bona fide for own use and occupation, and on the further ground that the tenant was making use of the premises for a purpose other than the one for which it was let out.

3. Tenant, in her counter, denied that she has committed default in paying the rent. She also disputed the claim of the landlords regarding the requirement of the premises for their own occupation. She said that the claim is only a pretext for eviction. In so far as the allegation that the building is used for a different purpose, her contention was that herself and her husband and their children are doing a family business, and that the lease does not say that the building should be used only for a particular purpose. At any rate, a further contention was raised that the landlords have also acquiesced in the user made by the revision

petitioners. On the above grounds, she prayed for dismissal of the eviction petition.

4. Before the Rent Controller, evidence was adduced by the landlords by marking Exs.A-1 to A-10 and also by examining P.W.I on their side. R.W.I was examined on the side of the tenant. Exs.B-1 to B-12 were marked.

5. In this connection, it may also be noted that on the allegation that the tenant has sub-let the building, another Rent Control Petition was filed as R.C.O.P. No. 101 of 1987. That petition was also tried along with R.C.O.P. No. 431 of 1981 and evidence was taken in this case. A Commissioner was also deputed, to note the physical features, who filed Ex.C-1 report.

6. The Rent Control Court, after discussing the entire evidence, came to the conclusion that the respondents are not entitled to eviction on any of the grounds, and dismissed both the petitions.

7. Against the said decision, respondents filed R.C.A. 126 of 1989 before the Appellate Authority, Madurai. The Appellate Authority confirmed the finding of the Rent Controller that the tenant has not committed willful default. But in regard to other two grounds, i.e., the tenant is using the premises for a different purpose and the building is required bona fide for own use, those points were found in favour of the landlords, and eviction was ordered. It may be noted that as against the decision in R.C.O.P. No. 101 of 1987, the landlords did not file any appeal and that has become final.

8. It is against the eviction order, the tenant has filed this Revision, and on her death, her legal heirs are continuing the proceedings.

9. Learned counsel for the revision petitioners submitted that in so far as the ground for eviction that the building is used for a different purpose, there is absolutely no material either in pleading or in evidence. Learned counsel for the revision petitioner submitted that the only averment that is seen in paragraph 3 of the eviction petition is this:-

Further, it is surprising that the respondent is putting to use the premises for a purpose other than agreed and used hither to before.

According to the learned counsel for the petitioners, there is no pleading regarding the purpose of letting and how the purpose has now changed so as to make this allegation. He also brought to my notice the chief-examination of P.W.I wherein also there is no statement as to the purpose of letting and the use that is now being made. So, on the basis of these two statements, learned counsel for the petitioners wanted me to hold that the finding of the Appellate Authority has to be reversed.

10. In this connection, it may also be noted that in the objection to the eviction petition, in paragraph 5, the tenant has said that herself, her husband and children are doing a family business and the lease docs not say that it should be

used only for a particular purpose. Further down, they say that the present user is also acquiesced by the landlords. According to me, these two contentions are inconsistent. I will deal with the same subsequently.

11. The schedule building is a non-residential one. Immediately after the building was taken on rent, the (original) petitioner herein was making use of the same for the purpose of money lending and pawn broker's business. Long thereafter, a coffee house was started, and the present allegation is that it is now converted into a godown.

12. It is true that in the eviction petition, the details of the purpose of letting are not stated. But this is a matter which the petitioner herself knows and the lack of pleadings is not going to prejudice her in any way, when she is fully aware as to the purpose for which the premises was let out.

13. In this connection, we have to take into consideration the fact that the lease in this case is only oral, and there is nothing on record to show the purpose. Naturally, the immediate use of the building after the letting out will have some relevance to consider that question. R.W.I admitted that for a long time the building was used only for his money lending and pawnbroker's business, and why it was stopped and a hotel business was started, was also spoken to by him. He said that when various Debt Relief Acts came into force, the money lending business could not be carried on and, therefore, they started a hotel business by name "Sangeetha Coffee Bar". Later, that name was also changed and a Coffee Bar by name "Vigneswara Coffee Bar" was started. I have already stated that another Rent Control Petition filed by the respondents as R.CO.P. No. 101 of 1987 was jointly tried along with this R.C.O.P. and evidence was taken in this case. A Commissioner was deputed, and the Commissioner found that it is now being used as a godown. So, the building which was originally used for money lending business was then converted as a Coffee Bar, and now it is being used as a godown. So, from this it is clear that the building is being used for different purposes. What was the purpose for which it was let out is spoken to by R.W.I. He admitted in his cross-examination on 26.7.1987 thus:-

From this evidence, it is clear that the original purpose of letting was for the purpose of pawn broker's business. Later, the tenant appears to have converted the same as a Coffee Bar, and now the present tenants are using the same as a godown. Admittedly, after the conversion as a godown, there cannot be any question of acquiescence since the eviction petition itself was filed in 1981. It was subsequent to the eviction petition, the building was converted and used as a godown. This Court is also competent to take into consideration the subsequent event. In P.A.P. Chidambara Nadar v. C. Ganapathia Pillai, 94 L.W. 777, a similar question came for consideration. That was also a case where the written document was not available. It is a case where the building was let out for a soda factory. But subsequently, it was used as a godown for storing soda. The question was whether there was change of user. In paragraph 12 of the judgment, the learned judge discussed the entire point, following an earlier

decision of a Full Bench of the Punjab and Haryana High Court and held thus:-

The learned advocate for the Civil Revision Petitioner draws my attention to a Bench decision of the High Court of Punjab and Haryana in Chaju Ram v. Tutsi Dass and Anr. where a Division Bench of the Haryana High Court had occasion to deal with a similar question. In that case before the Division Bench of Haryana High Court the landlord sought the eviction of the tenant on the ground that the premises which was leased out for the purpose of a shop was used for the purpose of storing cloth as a godown. The Division Bench of the Haryana High Court, after going into the various meanings of the words "shop" and "Godown" as mentioned in several dictionaries and Law Lexicons, came to the conclusion that storing cloth in a godown cannot fall within the ordinary dictionary meaning of the word "shop" and the purpose of storing goods at a premises is different from the sale of those goods. The Division Bench also observed that even in common parlance of the ordinary people of the trading community "shop" means a shop and "godown" means a godown and the words cannot be intermixed and alternatively used. When independently used, these purposes do not overlap with each other. Eventually, the Division Bench came to the conclusion that using the premises as godown for storing cloth will tantamount to using the building for the purposes other than that of a shop for which it was leased out and came to the conclusion that the landlord is entitled to an order of eviction. This view of the Division Bench is subsequently confirmed by a Full Bench of the same Court in the case reported in Desraj v. Shamlal. In the Full Bench case, the landlord leased out the premises to the tenant for the purposes of a shop and that was used by the tenant for the purpose of a godown. The landlord complained that user of the premises let out for the purpose of a godown will tantamount to change of user. In arriving at this conclusion, the Full Bench, after considering in detail the meanings of the words "godown" and "shop" and after quoting all dictionaries and Law Lexicons, came to the conclusion that in using the premises for godown, the tenant had used the building for purpose other than that for which it was leased viz., for the purpose of a shop on the following reasoning:-

The hypothetical discussion is meant to emphasise that where a demised "building" is identified merely as "shop" then the same can be used only as a "shop" although various kinds of trade could be carried on therein, but if the said demised building came to be used later on exclusively as "residential building" then that would tantamount to the change of user. Similarly, if such a demised "building" was put to use exclusively as a "godown" (for the moment assuming that the expression "godown" connotes a "building") that used for the purposes of only storing provisions therein), then that would tantamount to the change of user. The reason being that when the demised "building" is used as a "shop" it is being put to constant use by the lessee which, by implications, ensures its proper upkeep like timely repair, timely white washing, etc. but when a building is used as a "godown" which is merely used for dumping goods therein such an upkeep may neither be possible, nor, by implication, envisaged as such. A "godown" remains mostly closed, while a shop remains mostly open. The premise used as a

"godown" are bound to deteriorate and a landlord, if had been informed at the time of entering into the lease transaction that the lessee intended to use the demised premises described as "shop", he might not have agreed to enter into the said lease transaction. Hence, when the demised premises are used for a purpose to which having regard to its description as "shop" house, etc., the landlord may not have intended, had the said different purpose, which the lessee had in mind, been made known by the lessee to him, then the landlord may not have agreed to lease the said building for that purpose (see in this connection *Tehuram v. Omprakash Garg*) Hence putting to use the demised premises to a purpose, which, the given description or identification of the demised building in the rent note did not warrant, would tantamount to the change of user. Accordingly, if the expression "shop" and "godown" indicate two diametrically opposite purposes to which the respective premises so described can normally be put, then, when in a given lease deed a building is identified as "shop" without any more, such premises cannot be used as "godown".

14. Even though the petitioner has not pleaded the purpose of letting. In view of the admission made by R.W.I that the building was let out only for pawnbroker's business, lack of pleadings has not prejudiced the tenants in any way. The further question is, whether the respondents herein have acquiesced to the change of user. Learned counsel for the petitioners submitted that Ex.B-1 is a rent receipt book wherein the petitioner (landlord) has signed as a token for receipt of rent, In that book, the name of the hotel is stated. The argument is that once the petitioner (landlord) came to know about the user, and thereafter receives the rent without any protest, acquiescence should be presumed. I cannot accept this argument for two reasons, (1) The Rent Control Act provides that written consent has to be obtained. When Statute provides that written consent has to be obtained, the tenant cannot come forward with a contention that by conduct or silence on that part of the landlord, written consent should be inferred. Again, when the agreement itself is to make use of the building only as a place for pawnbroker's business, any violation by the tenant is at his risk. The landlord need not remind him as to the purpose for which he has let out the building every now and then. So, again, acquiescence is a plea of estoppel. If that be so, the tenant has to prove that on account of the representation by silence, she has acted to her detriment. She has no such case. (2) Even if the building is used for other purpose, the landlord is entitled to collect rent. Mere receipt of rent, which the landlord is entitled to, will not amount to consent. Because, whatever may be the purpose, rent is payable. Either way, the contention of the revision petitioner cannot stand. Learned counsel for the revision petitioners again submitted that unless the landlords are prejudiced by the change of user, they have no cause of action. According to me, the very change of user is prejudicial to the landlords. I do not think any further act is required on the part of the landlords to prove prejudice, especially when the statutory conditions are violated. I confirm the finding of the Appellate Authority that the tenants are making use of the building for a purpose other than the one

for which it was let out. The tenants are liable to be evicted on that ground.

15. The other ground of eviction is, that the building is required for bona fide own use and occupation of the landlord. The averment regarding the same is also found in paragraph 3. It is stated therein that the petitioners and others through their mother are running that business in a rented premises and hence they require the same for their own occupation. P.W.I, while he was examined, said that they are doing a petty business of sale of cool drinks and that is in a rented building. Exs.A-3, A-4 and A-5 are the various licenses taken by the landlord for the year 1982-83 and 1984. For the subsequent period, license could not be renewed. The case put forward by the revision petitioners is that being a rented premises, the landlord therein asked them to vacate and they had no other option but to surrender. They could not continue the business, and only if they get the demised premises, they can continue their business. The Rent Controller, on the above evidence, concluded that since the landlord have not taken licence after 1983, they have stopped the business, and, therefore, they cannot be termed as "carrying on business" for the purpose of getting eviction of a non-residential building. For that reason, that ground was also found against the landlords.

16. When the matter was taken in appeal, the Appellate Authority said that the rights of parties will have to be considered as on the date of petitioner. If that be so, on the date of petition, the landlords were carrying on business. The Appellate Authority did not take into consideration the stopping of business after 1983. The Appellate Authority was of the view that if on the date of petition, the landlords have been carrying on business, that is sufficient for the purpose of granting eviction. Learned counsel for the petitioners submitted that the subsequent event also will have to be taken into consideration for moulding the relief, and when eviction is sought for on the ground of bona fide use, that bona fide will have to continue till the final Court enters the finding. According to the learned counsel once it has been found that after Ex.A-5, i.e., in 1983, the landlords have not taken any step to carry on their business, the statutory condition for getting eviction of non-residential building is absent.

17. At the first blush, the argument appears to be attractive. But, if we go deep into it, the argument seems to be faulty. On the date of petition, and for more than two years, the landlords were continuing the business. They had licence. It was done in a rented building. They wanted the demised building for their business. The tenant refused to vacate. At the same time, the landlords had to surrender the building which they were occupying, to their landlord. So, the non-continuation of the business was not due to any fault on the part of the landlords, but it was due to the attitude of the tenant. Since the tenants themselves are responsible for the stoppage of the business, they cannot say that the landlords have come to Court without bona fides. The stoppage of business has nothing to do with their act. Therefore, the Appellate Authority was right in holding that the subsequent event need not be taken into consideration

in their case. Learned counsel for the petitioners herein also submitted that eviction petitioners 2, 3 and 4 are all employed elsewhere and, therefore, they cannot do any business in the scheduled building. Even in the original petition, what they have said is that the business is being run on behalf of their mother. The petitioners have no case that the mother is incapacitated in doing the business. Hence the finding by the Appellate Authority that the building is required bona fide for the occupation of the landlords is also to be confirmed.

17. In the result, the revision petition is dismissed with costs.