

(2004) 02 MAD CK 0180

In the Madras High Court

Case No : Civil Revision Petition No. 3921 of 1999 and C.M.P. No. 21937 of 1999

M. Parvathi Ammal and M. Soundararajan APPELLANT
Vs

Jayalakshmi Ammal RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

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

Citation : (2004) 02 MAD CK 0180

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : V. Krishnan, for the Appellant; T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The legal representatives of the tenant are the revision petitioners and the revision is directed against the eviction order passed by the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority. The eviction was ordered on the ground of willful default in payment of rent and that the petition residential premises is required for own use and occupation by the landlady.

2. The Rent Control Original Petition was filed that the tenant Muthusamy Pillai failed to pay the monthly rent of Rs.150/- willfully for the months of June and July 1989 and that the petition residential premises is required for own use and occupation by the landlady. To the notice dated 29.7.1989 no reply was sent by the tenant.

3. The petition was resisted by filing counter that since the tenant refused to pay enhanced rent at the rate of Rs.300/- per month, the landlady refused to accept the rent for the month of June, 1989 when tendered in the first week of July, 1989. However, the rents due after filing of the petition have been paid. It is also stated in the counter that the landlady had been in the habit of collecting the rents once in four or six months by herself or through her agent. As regards the

eviction sought for own use and occupation by the landlady, according to the tenant, the requirement is not bona fide and since before filing of the Rent Control Original Petition, the landlady vacated her house in Kasipalayam Street and leased out the entire house and went to live in Srirangam. The landlady also owns number of residential as well non-residential premises in Tiruchy Town. The petition premises is only one among the six tenements in the building and in fact one of the six tenements is kept locked for the past three years at the time of filing of the counter.

4. The learned Rent Controller considering Ex.A-1, the lawyer notice dated 29.7.1989 and Ex.A-2 served postal acknowledgement of the tenant and the evidence of the landlady and the evidence of the tenant's son R.W.1 and finding that the tenant has committed default willfully in payment of rent for the months of June and July 1989 and that the requirement of the petition premises for own use and occupation of the landlady is bona fide, ordered eviction and it is confirmed by the learned Rent Control Appellate Authority. Therefore, the revision petitioners, who were brought on record as legal representatives of the tenant Muthusamy during the pendency of the Rent Control Appeal, preferred this Civil Revision Petition.

5. In this Civil Revision Petition, the learned counsel for the revision petitioners contended that since the rent when tendered for the month of June, 1989 was refused by the landlady demanding higher rent at the rate of Rs.300/- per month and inasmuch as the entire rent due was deposited in Court in October, 1990, no default much-less willful default as claimed for the months of June and July, 1989 has been committed by the tenant. As regards the requirement of the petition premises for own use and occupation, which is one of six portions, the learned counsel for the revision petitioners argued that the requirement is not bona fide, in that it is a very small house and may not be convenient. Further, it is also contended that the landlady, who was in her own house at Kasipalayam, Street, Tiruchy Town, vacated the same and has been residing in Srirangam. The learned counsel relied on the decision in Ashok Kumar and others - vs. - Rishi Ram and others reported in AIR 2002 Superme Court, 2520 in which the Apex Court has ruled:-

"U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Section 20(4), Expln. (a) - Eviction order for default in payment of rent. Deposit on "first date of hearing". "First date of hearing" means first date when court proposes to apply mind to identify controversy in suit. That cannot be date fixed for filing written statement. The date of first hearing once fixed would not change with every adjournment given."

6. The learned counsel for the landlady/respondent argued that inasmuch as the entire rental arrears was deposited in Court on 13.10.1990 and after filing of the Rent Control Original Petition on 28.8.1989, the tenant committed willful default in payment of rent for the months of June and July, 1989, and in such deposit of rent it cannot be construed that there was no willful default in payment of rent

by the tenant. With regard to the requirement sought for own use and occupation, it is submitted for the landlady that the landlady has been residing in a rented house in Srirangam and that she is not in occupation of any building in Tiruchy Town of her own. With regard to the fact that she was in occupation of her own house at Kasipalayam, Tiruchy Town which she vacated, though it was a big house, it is stated that since it was not lucky for the family of the landlady, it would not be a bar to the landlady from securing the petition premises. He relied on the following decisions:-

(1) A. Mohan and 2 others - vs. - Tmt.Kamalam Ammal and 5 others reported in 1999 3 L W 539, in which this Court has observed:-

"Time and again, the courts have held that it is the duty of the tenant to pay the rent regularly, every month, as enjoined by the statute even without expecting any demand from the landlord. The tenants should have taken care to pay the rent every month as required by law. Having defaulted in payment of rent regularly, the conduct of the tenants amounts to supine indifference and there cannot be any doubt that if such a default is made, the same is willful.

In the instant case, it may be a default of one month, but it shall be noticed that the landlords have demanded the amount orally, but the amount of rents was not paid for the months of January to June. This necessitated the landlords to issue the notice on 13.7.1987. Despite the receipt of several notices, the tenants have not paid the rent nor any proper explanation offered before the Court."

(2) Nazeer - vs. - N.T.Thayammal reported in 2000-3 Law Weekly 901 in which this Court has held:-

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 25. When bona fide requirement of landlady (respondent) is proved the contention of the tenant-petitioner that it is below her status to reside in the scheduled building has no merit. Eviction order not liable to be interfered with when concurrent finding by two Courts as to bona fide requirement of landlady is arrived. Inconvenience or lack of amenities is a matter on which tenant has no say. Landlady wants to occupy her own building and a feeling that one is under one's own roof and as of right, is recognised and protected by law and legal institutions."

7. The Rent Control Original Petition was filed on 28.8.1989 stating that the tenant has committed default willfully in payment of rent for the months of June and July, 1989. The respondent was set ex parte on 29.9.1989 and the ex parte order of eviction was passed on 6.10.1989. The ex parte order of eviction was set aside as per order in I.A.No.269 of 1989 dated 13.8.1990 and on 9.1.1991, the tenant filed counter and posted for enquiry on 20.3.1991. Before filing of the Rent Control Original Petition, the landlady caused lawyer notice under Ex.A-1 dated 29.7.1989 and the same was served upon the tenant as per postal acknowledgement Ex.A-2 dated 1.8.1989. It appears, according to the tenant, the rent of Rs.150/- when tendered for the month of June, 1989 it was refused. Hence, it is stated that he could not pay the rent and however he deposited the

entire rental arrears due on 13.10.1990, viz., Rs.2,400/- and even before filing of the counter and as such, he has not committed default much-less wilful default in payment of rent. The landlady caused lawyer notice on 29.7.1989 under Ex.A-1 stating that the rent for the month of June, 1989 was not paid and so the tenant has committed default in payment of rent for the month of June, 1989. The notice was served upon the tenant under Ex.A-2 on 1.8.1989. No reply was sent. The Rent Control Original Petition was filed on 28.8.1989. The notice was served on the tenant. But however he remained ex parte on 29.9.1989. The ex parte decree was passed on 6.10.1989. The ex parte order of eviction was set aside as per order in I.A.No.269 of 1989 on 13.8.1990. Only thereafter, it appears, the tenant deposited a sum of Rs.2,400/- towards the rent for the month of June, 1989 to September, 1990, however, before filing of the counter on 9.1.1991. As per the Explanation to Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent. Admittedly, the tenant in this case has not paid or tendered the rent for the month of June, 1989 and within two months after the issuance of notice caused under Ex.A-1 which was served upon the tenant under Ex. A-2. The tenant deposited the rent as set out above only on 30.10.1990 after the ex parte order of eviction was set aside. Though it is the case of the tenant that since the rent for the month of June, 1989 when tendered was refused he could not pay the rent thereafter, it is admitted by R.W.1, tenant's son in his evidence that he did not send rent by money order and no steps were also taken for deposit of rent as contemplated u/s 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Therefore, it is clear that there have been supine indifference and callousness on the part of the tenant in not paying the rent for the months of June and July, 1989 and as such, such default is to be construed as willful. The case of Ashok Kumar and Others Vs. Rishi Ram and Others, arose out of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972). Section 20 of the said Act reads:-

"20. Bar of suit for eviction of tenant except on specified grounds:-

(1) TO (3) XXX XXX XXX XXX (4) In any suit for eviction on the ground mentioned in clause (a) of sub Section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground"

But there is no such provision in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and as per the explanation to Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control Act, 1960, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent.

8. As regards the requirement of the petition residential premises for own use and occupation, it is admitted by the tenant that the landlady has been residing in Srirangam after vacating the house owned by her at Kasipalayam, Tiruchy Town. The landlady as P.W.1 has stated in her evidence that since the house at Kasipalayam was not lucky, she vacated the house and has been residing in the rented house which is not suitable to her. It is not the case of the tenant that the landlady has been in occupation of the house owned by her in Tiruchy town or that she kept any other house in Tiruchy Town. Though it is stated in the counter that one of the portions have been locked and kept vacant that has been denied by the landlady. Admittedly landlady is now residing in a rented house at Srirangam. It is stated for the tenant that the house in which the revision petitioners are residing is a small house and not suitable for the landlady. It is well settled that it is not the tenant to say so and in fact as admitted by R.W.1 that his house is bigger portion and facing road. Therefore, the finding of the Rent Controller as confirmed by the Rent Control Appellate Authority that the requirement of the petition premises for own use and occupation of the landlady cannot be said to be without bona fide, in that she has been residing in a rented house at Srirangam and she is not in occupation of any residential premises in Tiruchy Town. Therefore, the order of eviction made by the Rent Controller and confirmed by the Rent Control Appellate Authority on both the grounds of wilful default and required bona fide for own use and occupation by the landlady cannot be interfered with in this Civil Revision Petition. Such judgment is to be confirmed.

9. In the result, this Civil Revision Petition fails and is dismissed with costs. Consequently, the petition in C.M.P.No.21937 of 1999 is closed.