
(1994) 04 MAD CK 0057

In the Madras High Court

Case No : Civil Revision Petition No's. 1575 to 1581 of 1993

Mohammed Gani and 2 others

APPELLANT

Vs

S. Rathinavel and 2 others

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, 115

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1)(b), 25

Citation : (1994) 04 MAD CK 0057

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; M. Santhanam for Mr. M.N. Muthukumaran, for the Respondent

Judgement

Abdul Hadi, J.—These seven Civil Revision Petitions have been filed by three different tenants under the Tamil Nadu Biddings (Lease and Rent Control) Act, 1960 hereinafter referred to as "the Act"), occupying seven different contiguous "buildings" under the Act. Aggrieved by the concurrent eviction orders passed against them u/s 14 (1) (b) of the Act, they have preferred these revision petitions. The respondents - landlords, three in number, are common in all the Civil Revision Petitions. The leant Mohammed Gani is the petitioner in C.R.P. Nos. 1575 and 1579 of 1993, while Edward Dannasingh is the petitioner in C.R.P. Nos. 1577, 1578, 1580 and 1581 of 1993 and the tenant Mohammed Khaja Mohideen is the tenant in C.R.P. No. 1576 of 1993. (Door numbers involved in these civil revision petitions are 267, 269, 270, 271 and 272). The Authorities below have mainly found that the condition of the building in each case warrants demolition and reconstruction and hence ordered eviction.

2. The same Counsel appears for the petitioners in all the revision petitions and his submissions are:- Enhancement of rent is alone the motive for the landlord's filing these petitions Even the 2nd respondent, who admittedly manages the Buildings, has not been examined. The landlords have not secured the

sanctioned plan for the proposed new construction. The Authorities below erred in relying on the commissioner's reports Exs. C.1 to C.6 to arrive at the condition of the building. In one report pertaining to C.R.P. No. 1577 of 1993, the Commissioner reports that he has not even gone inside the building since it was locked. In another report, he says that only change of roof required. Further, the objections to the commissioner's reports have not been taken into consideration. The Authorities below erred in relying on the photographs Exs. A. 6 and 7 for coming to a conclusion regarding the condition of the building. The landlords have not proved that they have the required means for putting up new construction. Further, according to the said Counsel, in order to decide the bona fides required in a case u/s 14 (1) (b) of the Act, the totality of all the above referred to circumstances should be considered. But according to him the Authorities below have not done so. He also relies on a passage in P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited[OVERRULED],

3. On the other hand, Learned Counsel for the respondents made the following submissions Taking into account all the relevant factors, there: will be no difficulty in holding that the claim of the landlords is bona fide for seeking eviction u/s 14 (1) (b) of the Act. The said Learned Counsel also relied on a passage in P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited[OVERRULED], . No objection at all was filed for the commissioner's reports. At any rate, it being evidence the Authorities below rightly relied on those reports. Learned Counsel also referred to K.K. Sah rania Sah v. A. Sampath (1991) I.M.L.J. 351. He also points out the relevant portions of the oral evidence. He also submits that there was no denial in the counter regarding the means of the landlords for putting up the construction.

4. I have considered the rival submissions. In my view, there is absolutely no difficulty in concurring with the eviction order that has been passed by both the Authorities below. Let me first of all deal with the condition of the building. Exs. C.1 to 6 really point out the very bad conditions of the buildings in question. Ex. C.1 which deals with door No. 272/whose portions are the buildings in C.R.P. Nos. 1577, 1578 and 1580, mentions inter alia there are cracks in the roof and the rafters made up of palmyra trees are damaged and that the tiles thereon are also damaged. Similar observations are found in other commissioner's reports also. Those details are mentioned in the orders of the Authorities below and it is also mentioned therein that no objection was filed to the Commissioner's reports by either parties. Since Learned Counsel for the petitioners asserted that objection was filed, lower court records were called for and the said counsel, after verification of the said records ,found that no counter was filed to the Commissioner's reports by either side. There could be no doubt that the commissioner's reports could be received as evidence. (This principle is also laid down in O. 26, R. 10, C.P.C.). Therefore, the Authorities below are quite justified in relying on Commissioner's reports to come to a conclusion regarding the condition of the buildings. In the above circumstances, even if Exs. A. 6 and A. 7 photos are not taken into consideration, there is enough material to hold that the

condition of the buildings requires demolition and reconstruction. R.W. 1, the tenant Edward Danasingh has admitted in cross-examination thus:

No doubt in so far as C.R.P. 1578 of 1993 only, Ex. C. 3, the commissioner's report says that the building in question (which consists of only a room) was locked as the unripened banana bunches were kept inside. But the commissioner's report also says. "The wall which I could see was in very bad condition. The tiles of the roof are in worn out condition. The western side is covered by thatched palm leaves material". To these observations also, as I have already mentioned, no objection was filed by the tenant. Therefore, no weight could be attached to the argument that the said report should not be believed on the footing (that the above said room was locked, Further, the of her argument of (earned counsel that another Commissioner's report says that only a change of roofing is required, has no merit.

4A. Further, there is clinching evidence to show that the buildings in question are attest 60 to 70 years old. No doubt, the age is not a vital factor, if really the condition of the buildings otherwise warrants demolition and reconstruction. It has also been held so in (1991) 1 M.L.J. 351 (supra). Further, the non-examination of the 2nd respondent, who is managing the building will not matter much since P.W. 1, the Accountant of the Respondents - landlords, who knows about the facts of the case has been examined. Further, no question also was put to him as to why 2nd respondent was not examined. Further this particular aspect has also not been taken up in the grounds of Civil Revision Petitions.

5. Further, it cannot be said that the Authorities below have not considered the contention that enhancement of rent was alone the motive for the filing of these eviction petitions. The contention of the tenants in this regard was that in June, 1981, the landlords increased the rent and at that time, the landlords agreed not to evict the tenants in view of the said increase in the rents. But, as the Authorities below observed, this contention is not borne out by any independent evidence and only some of the tenants have deposed so. There is also no document showing such an agreement by the landlords not to evict the tenants in view of the increase in rents, Further, even though the defence taken up in the counter filed by the tenants is that the tenants approached the 2nd respondent herein and protested against the fixation of higher rent, R.W. 1, the tenant Edward Danasingh did not at all depose that the said tenants including himself approached the 2nd respondent herein as stated in the counter.

6. No doubt, the landlords have not actually obtained sanction from the municipal authority to put up the construction. But, Ex. A. 1 is the plan they have submitted to the Municipal Authority for the construction to be put up and the said plan was returned by the Municipal Authority, as shown by Ex. A. 2. To that Ex. A. 2 the landlords have sent a reply Ex. A. 3, requesting the Municipality to consider their application for putting up the proposed construction. After pointing out these features, the Appellate Authority also points out that after Ex. A. 3, there was no response from the Municipal Authority. So, it concludes that since

the Municipal Authority has not expressly given permission for the proposed plan of construction, it should be taken that the Municipal Authority has impliedly permitted the landlords for putting up the proposed construction. That a part in *Balasubramaniam v. Gulab* (94 L.W. 102=I.L.R. (1981) 3 Mad 442) this Court has held that want of sanctioned plan or lack of preparation for the work of demolition and reconstruction by itself cannot negative the bona fides of the landlord.

7. The allegation in the eviction petitions is that the landlords have sufficient resources to carry out the demolition and reconstruction. To these allegations there is no denial in the relevant counters of the tenants. Further, I also find that P.W. 1 has deposed in chief examination that the 1st petitioner owns 500 acres of cardamom estate. On this aspect, there is no cross-examination. Further, the Authorities below also have relied on Exs. P. 4 and P. 5 for coming to the conclusion that the respondents have enough means.

8. Therefore, it cannot be said that the Authorities below have not considered all the relevant factors to arrive at a finding regarding the bona fides of the landlords in seeking eviction u/s 14(1)(b) of the Act. The Supreme Court also in *P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited*[OVERRULED], only observed as follows:

While the condition of the building by itself may not necessarily establish the bona fide requirement under Cl. (b), that condition is not only one of the various circumstances which may be taken into account by the Controller, but it is the essential condition in the absence of which it would not be possible for the landlord to prove that he has a bona fide requirement which is timely, directly and solely for the purpose of demolition of the building.

9. Therefore, there is no merit at all in these civil revision petitions. At any rate I must also point out that the scope of Section 25 of the Act, under which these Civil Revision Petitions have been filed, is Limited and only a revisional power has been granted to the High Court and not appellate power. The Supreme Court has pointed out in *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*,) that even though Section 25 of the Act is wider than Section 115, C.P.C. the wordings in section 25 of the Act only indicate the supervisory powers of the High Court in revision. The Supreme Court has also observed in the above decision that because the High Court can come to conclusion on the same set of facts different from the conclusion that was arrived at by the appellate forum, it will not be correct for the High Court to exercise the power akin to Appellate Authority by reversing the finding based on facts by the Appellate Authority. this Court also has observed in *Ganesan v. Amaravathiammal* (1983) II M.L.J. 505) relying on the said decision of the Supreme Court that wherever two views are possible on the same set of facts, it will not be correct for the High Court, sitting in revision, to reverse the view of the Appellate Authority, based on the same set of facts, u/s 25 of the Act. Therefore, these civil revision petitions are dismissed with costs.

After the order has been pronounced today in the above Civil Revision Petitions, Learned Counsel for the petitioners" requests time for vacating the respective buildings of the tenants. Learned Counsel for the respondents has no objection for granting a short time, provided an undertaking is given in writing that the tenants would vacate the respective buildings positively within the time allowed. Accordingly two months" time is granted for the petitioners to vacate their respective buildings, provided each, one of them files an affidavit in this Court within two weeks" time from today, undertaking to vacate his respective buildings positively within two months" period.