

(1991) 03 MAD CK 0010
In the Madras High Court

Mrs. Manoranjitham

APPELLANT

Vs

Mrs. T.S. Gangabai, Kalaivani Industrial Traders

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 375

Citation : (1991) 2 LW 203 : (1992) 1 MLJ 482

Hon'ble Judges : Venkataswami, J;MANUTN07341991.htm, J

Bench : Division Bench

Judgement

Venkataswami, J.—This civil revision petition is filed by the unsuccessful landlady in rent control proceedings.

2. Brief facts are the following:

The petitioner herein purchased the suit premises from one Ramasami Chettiar on 14.11.1979. Thereafter, since no rents were paid, a notice

demanding rents for the period from November, 1979 to January, 1981 was sent by the petitioner to the respondent. In reply to this notice, the

respondent has stated inter alia that what was let out was only a site. The respondent has paid a sum of Rs. 5,000 by way of advance to the

vendor of the petitioner, that a sum of Rs. 1,400 has been paid towards property tax, and the vendor has agreed to adjust the said amount from

the rents payable by her. According to the respondent, there was no default in payment of rents. It may be mentioned that when the notice was

issued by the petitioner, by mistake, rents were demanded from the respondent from 1.11.1978. While issuing a rejoinder to the reply sent by the

respondent, the petitioner has corrected the period of demand as from November, 1979 to the date of issue of rejoinder. The petitioner

acknowledged the payment of Rs. 5,000 towards advance to the vendor. However, the petitioner denied the claim of payment and adjustment of

property tax as claimed by the respondent. The petitioner also denied that what was let out was only the site. After issuing a rejoinder, the

petitioner filed H.R.C.No.555 of 1981, on the file of the court of Small Causes, Madras, on 24.1.1981. The petition for eviction was filed on three

grounds, namely, (1) wilful default in payment of rents; (2) acts of waste; and (3) sub-letting.

3. The petition was resisted by the respondent mainly on the ground that the learned Rent Controller has no jurisdiction to try the case as the lease

was only of a site without superstructure, and the superstructure was put up by her. The respondent denied the allegations regarding wilful default,

acts of waste and sub-letting.

4. The learned Rent Controller, on a consideration of pleadings, evidence and arguments, held against the petitioner on all the three points.

Consequently, he dismissed the petition for eviction. On appeal, it appears, the petitioner has confirmed the relief only with reference to wilful

default in payment of rents. On the question of sub-letting and acts of waste, no arguments were addressed before the Appellate Authority. On the

question of wilful default, the Appellate Authority concurred with the findings of the learned Rent Controller and, therefore, dismissed the appeal.

Hence the present civil revision petition.

5. The learned Counsel for the petitioner Mr. V. Raghavachari, elaborately argued the matter and contended that both the Authorities below have

made much about the mistake committed by the petitioner and his counsel in mentioning the period of default in paying the rents and in claiming the

rents from November, 1978 in the notice (Ex.P-1) without giving due regard to the rejoinder (Ex.P-3). He also submitted that there is no claim for

adjustment of the advance amount of Rs. 5,000 and the adjustment of the amount paid by way of property tax cannot be entertained as there was

no prior permission by the petitioner or his vendor, to pay the property tax. He also submitted that the Authorities below went wrong in assuming

that all the property tax paid by the respondent was with reference to the premises in question. In support of his contention that the tenant has no

right to pay the property tax voluntarily, he placed reliance on a judgment of this

Court in R. Jagannatha Chettiar Vs. Swarnambal, .

6. Learned Counsel appearing for the respondent Mr. Jayabalan also argued elaborately contending that in the light of the inconsistent stand taken

by the petitioner in Ex.P-1 notice and in the evidence, the Authorities below were right in holding that there was no wilful default in the payment of

rent. He placed reliance on Ex.P-1 notice demanding rent from November, 1978 which relates to a period prior to the purchase of the premises

by the petitioner. Neither the petitioner nor his vendor gave notice about the sale in favour of the petitioner calling upon the respondent to attorn the

tenancy. Therefore, till the date of issue of notice under Ex.P-1, it cannot be said that there was any default in payment of rents. After the R.C.O.P.

was filed, rents were paid on 17.6.1981 and under Ex.R-6 notice. That shows the bona fides of the respondent.

7. I have considered the rival submissions. The learned Rent Controller, on facts, has found that the respondent knew about the purchase of the

building by the petitioner. Therefore, failure to pay rent after 1.11.1979 would amount to default. But, according to the learned Rent Controller, the

default was not wilful for the reason that the petitioner while issuing the notice under Ex.P-1, has not mentioned about either the advance paid by

the respondent or the payment of property tax. The reason given by the learned Rent Controller for holding that the default was not wilful in his

own words is as follows:

...In the absence of the requirements on the part of the petitioner to direct the 1st respondent to attorn her tenancy which is covered by a written

agreement to her and adjustment of Rs. 5,000 as advance after the 1st respondent became a tenant under her and failure on the part of the

petitioner to communicate the same to the 1st respondent and the faulty claim made by the petitioner in Ex.P-1 would have resulted in the 1st

respondent not paying the rents to the petitioner to safeguard his rights even though he knew about the sale. The 1st respondent also contends that

she did not take steps to deposit the same in court as she entertained an idea that this Court has no jurisdiction. No notice was given till Ex.P-1

claiming arrears. The same was paid to the petitioner when the latter filed M.P.No.411/81 u/s 11(4) of the Act. Therefore, the circumstances of

this case will clearly show that there is default on the part of the 1st respondent

in payment of rents from November, 1979 till she paid the amount

in court. But the circumstances discussed above will show that the same is not wilful. Accordingly, I decide this point in favour of the 1st respondent.

The Appellate Authority has also taken the same view by stating as follows:

...In view of the prevaricative answers of P.W.1 with regard to the agreement and the terms of the same, I am of opinion that unless the petitioner

proves that the respondent has purposely withheld payment or rent, her version cannot be given much credence,

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since the respondent has substantiated his version that he has paid the tax to the Corporation by producing Exs.R-1, R-2 and R-14, his version that he

has paid a sum of Rs. 1,400 towards Corporation arrears cannot be brushed aside as untrustworthy of acceptance,

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...Therefore, I am of opinion that the observation of the learned Rent Controller that the respondent has only safeguarded his position by

withholding the payment cannot be said to be an erroneous one. In order to hold a default as a wilful default, it must be shown that the tenant is

supinely indifferent and recalcitrant in his obligation to pay rent to the landlord. In the present case, there is no room to hold so. Further, soon after

the receipt of notice u/s 11(4), the respondent has paid the entire arrears to the petitioner. This conduct of the respondent would also disclose that

there is no supine indifference on the part of the tenant to make payment of rent to the landlord. Therefore, I am of opinion that the respondent

even though has committed default, the said default would not amount to wilful default, is well-founded, and, therefore, the request of the appellant

to hold that the respondent has committed wilful default in payment cannot be complied with.

The authorities having found on fact that the respondent knew about the purchase of the building by the petitioner and, therefore, ought to have

paid rents to the petitioner for the period from November, 1979 onwards, wrongly took the view that there was no wilful default merely on the

ground that in Ex.P-1 notice, the petitioner has committed certain mistakes. The hard fact remains that the respondent did not care to pay the rents

for the period in question and subsequent thereto as well. The arrears of rent were paid only on 17.6.1981. The respondent vehemently contended before the authorities below that the provisions of the Rent Control Act will not apply as what was let out was only site. But that contention was not accepted by both the authorities below. The authorities below failed to note that there was nothing on record to show that Rs. 1,406 was paid only towards property tax concerning their premises in question. The exhibits marked, namely, Exs.R-1, R-2 and R-14 series relate to the payments of tax to the Corporation not only to the premises in question but also to the industry run by the respondent. Furthermore, as held by this Court in R. Jagannatha Chettiar Vs. Swarnambal, , the payment of tax voluntarily will not enable the tenant to plead adjustment in the rents.

Ratnam, J., in that case, has held as follows:

...In the ordinary course of events, even if a demand notice for property tax or water tax had been received by the tenant it was the duty of the tenant to have brought it to the notice of the landlord and only thereafter the tenant should have acted in accordance with the directions given by the landlord or as a prudent occupier of the property, if she was driven to adopt that course, in this case, the evidence does not disclose that the tenant informed the landlord about the receipt of the demand notice and that there was a direction by the landlord that the tenant should pay the property and water taxes and adjust the same out of the rents, In the absence of any such direction or understanding, any payments made by the tenant would only be in the nature of a voluntary payment and would not in any manner bind the landlord nor would it give rise to any right in the tenant for an adjustment of those amounts against the rents payable. Considered in that light, the property and the water taxes claimed to have been paid by the tenant in this case would partake the character of only voluntary payments. It may be that the tenant can recover those amounts in accordance with Section 375 of the Madras City Municipal Corporation Act or by other modes, but, that would not shield her from the consequences of non-payment of rents for nearly a period of 11 months without any justification at all. Inasmuch as on the facts and in the circumstances of this case, the payments stated to have been made by the tenant have been held to be voluntary, those payments cannot be taken

advantage of by the tenant and cannot be pleaded as an answer to the prayer for an order of eviction on the ground of wilful default.

In the light of the above ratio laid down by this Court, the adjustment as pleaded by the respondent cannot be countenanced. It is not the case of

the respondent in the counter statement that she ever called upon the petitioner to adjust the rents from out of the advance amount. In the

circumstances, the non-payment of rents cannot be considered as mere default, but amounts to wilful default In this connection, Explanation to

Section 10(2) of the Act can also be noted. As noticed earlier, the notice was issued on 29.10.1989. The rents were paid only on 17.6.1981.

Explanation to Section 10(2) of the Act states that if rents were not paid within two months, the default can be considered as wilful. For all these

reasons, I am inclined to hold that the findings of the Authorities below are perverse and not based on correct facts, and consequently they are

liable to be set aside. Accordingly, the civil revision petition is allowed on the ground that the respondent has committed wilful default in payment

of rents. The petition for eviction is ordered on that ground. No costs.

Venkataswami, J.

8. Learned Counsel for the respondent/tenant seeks six months" time for the respondent to vacate the premises in question having regard to the

fact that she is running a factory. Learned Counsel for the petitioner has no objection. Accordingly, six months" time from today is given to the

respondent for vacating the premises.