
(2012) 04 MAD CK 0111

In the Madras High Court

Case No : C.R.P. NPD. No. 3116 of 2010 and M.P. No. 1 of 2010

M/s. Salem Stainless Steel Suppliers

APPELLANT

Vs

T.S. Sundaresa Davey

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(a)(iii), 29, 30

Citation : (2012) 5 LW 159

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : T. Viswanatha Rao, for the Appellant; R. Krishnamurthy for Mr. R. Bharanidharan, for the Respondent

Final Decision : Dismissed

Judgement

V. Periya Karupiah, J.—This revision is directed against the order of Rent Control Appellate Authority in R.C.A. No. 172/2007 dated 04.08.2010 in confirming the order passed by the learned Rent Controller in R.C.O.P. No. 1543 of 2005 dated 12.01.2007 in ordering eviction of the tenant on the ground of own occupation. The revision petitioner herein was the tenant and the respondent herein was the land lord before the Rent Controller.

2. The revision petitioner was the respondent/tenant and the respondent herein was the petitioner/landlord before the Rent Controller.

3. The case of the petitioner/landlord before the Rent Controller would be as follows:-

The respondent is a firm and it is a tenant under the petitioner in respect of the front portion of the ground floor to an extent of 1350 sq.ft. or there abouts. The tenancy commenced in the year 1987 and the tenancy is one for non-residential purposes. The tenancy is reckoned according to English Calendar month and the present rent payable for the demised shop portion is Rs. 5,000/- per month

excluding Electricity charges. The respondent is carrying on stainless steel business in the demised shop portion under the name and style of "SALEM STAINLESS STEEL SUPPLIERS". The entire affairs of the respondent is dealt and taken care by its partner namely Mr. Santhilal P. Jain.

3(2) The petitioner is carrying on his retail business in B.P. Sheets, Hardware Items, LTC in a rented premises at No. 19/41, Sembudoss Street, Chennai-1. The landlords of the petitioner for the past two years are requesting the petitioner to vacate and deliver vacant possession to them. In view of the said fact, the petitioner in turn has requested the respondent to vacate the demised shop portion to him for the purpose of carrying on his business. Though, the respondent initially agreed to vacate for obvious reasons failed to comply with the lawful demand of the petitioner. The landlords have requested the petitioner to vacate the shop run by him, the petitioner is aged 65 years and residing in the first floor of the premises. If the respondent vacates the demised shop portion, the petitioner can conveniently carry on his business in the demised shop. Thus the petitioner for his convenient enjoyment of the demised shop deserves the said shop portion for his own occupation and his requirement is bonafide one and the respondent cannot deny the requirement of the petitioner.

3(3) The present petition for eviction is sought by him, in respect of non-residential building and the petitioner is not carrying on his business in his own building in the city. Thus the petitioner has satisfied all the important and necessary ingredients of Section 10(3)(a)(iii). Hence there is no tenable defence to the bonafide requirements of the petitioner. It is relevant to point out that even after clearly pointing out the aforesaid facts in writing, the respondent has failed to oblige, with the lawful demand of the petitioner. Hence the present petition is filed.

3(4) The very fact that the petitioner did not seek eviction of the respondent from the demised shop and allowed it to carry on business peacefully for more than a decade will prove that he has no malafide and his requirement is nothing but bonafide one. The petitioner thus bonafidely requires the demised shop for carrying on his business in the demised shop by way of owner's occupation.

3(5) Since even after legal notice, the tenant had failed to vacate the petition premises, the petitioner having no other alternative, has approached this Court by filing this petition for eviction.

3(6) The petitioner has already agreed and promised to vacate the rented premises where he is carrying on business by seeking time to his landlord. Moreover, in view of the age it will be more suitable and convenient for him to carry on business in the demised shop since he is residing in the first floor of the said premises. So, if the tenant is not directed to vacate as prayed for this petitioner will be put to great hardship and it will be more than the hardship which is likely to cause to the respondent. In fact, the respondent can easily get a rented premises anywhere in the said area. But the petitioner will be benefited

only if the demised portion is delivered to him for carrying on his business. So, the respondent will not be put to any hardship by an order of eviction. Thus the petitioner requires the demised portion for non-residential purpose to carry on his retail business in B.P. Sheet, Hardware items, LTC in a rented premises. The petition premises is not exempted under Sections 29 and 30 of the Rent Control Act. Hence there is no any hindrance to maintain the petition.

3(7) The petitioner therefore prayed this Court to

a. Order eviction of the respondent/tenant by directing it to deliver vacant possession of the front shop portion in the ground floor of the premises bearing No. 8 (old No. 7) Ekambareswarar Agraharam, also known as Ekambareshwarar Koil Street, Park Town, Chennai-3 morefully and clearly described in the schedule to the petition; and

b. to direct the tenant to pay the cost of the petition.

4. The objections raised by the respondent/tenant in the counter statement would be as follows:-

The present petition for eviction is not maintainable without impleading all partners as party to the petition. The tenancy is admitted and rent also admitted but denies all the allegations contained in the petition is false.

4(2) The present petitioner is also the owner of Door Nos. 7 and 8 and consists of several tenants purposely filed eviction proceedings against this respondent alone is motivated and no bonafide requirement as alleged in the petition. The application has to be dismissed. It is the duty of the petitioner even otherwise to get the names of the partners on Public record of Registrar of firm. The allegation of non furnishing is made by the petitioner to attract the sympathy of the Court. The entire allegations in para 6 of the plaint are not true. This respondent denies the allegation as false and this respondent never agreed to vacate as such the allegation by petitioner is nothing but myth.

4(3) The notice cause by the petitioner is not according to law and as per agreement. At the time of inception of tenancy a pagady of Rs. 12 lakhs paid to the petitioner and rent was fixed at Rs. 1,500/- and thereafter increased to Rs. 5,000/- as such the petition for eviction is liable for dismissal. The petitioner has also taken a sum of Rs. 36,000/- by way of advance apart from pagady,

4(4) The petition is not maintainable u/s 10(3)(a)(iii) since the petitioner is already in occupation of the building. Hence the present petition to Section 10(3)(a)(iii) is deserves dismissal.

4(5) The respondent is put to great loss if they asked to be evicted on the other hand, the petitioner who is running the business is popular in the address given and their place is noted for steel market as such great inconvenience would be caused to this respondent. Therefore, the petition is liable to be dismissed.

5. On the above pleadings the learned Rent Controller enquired the petition filed

by the petitioner/landlord u/s 10(3)(a)(iii) for own occupation and after the appraisal of the evidence adduced on either side, he had come to the conclusion of ordering eviction against the respondent/tenant on the ground of own occupation u/s 10(3)(a)(iii) of Tamil Nadu Buildings Lease and Rent Control Act.

6. Aggrieved by the eviction order passed by the learned Rent Controller, the respondent/tenant preferred an appeal before the Rent Control Appellate Authority in R.C.A. No. 172 of 2007 challenging the said eviction order. The learned Rent Control Appellate Authority heard the arguments of both sides and had come to the conclusion of confirming the order of eviction passed against the tenant and thus, dismissed the appeal and granted time till 04.09.2010 in its order dated 04.08.2010.

7. The aggrieved appellant/tenant in RCA No. 172 of 2007 has preferred the present revision petition against the said order of confirmation of eviction made in RCA No. 172 of 2007 dated 04.08.2010, challenging the order of eviction.

8. Heard Mr. T. Viswanatha Rao, learned counsel for the revision petitioners/tenants and Mr. R. Krishnamurthy, learned Sr. Counsel appearing on behalf of Mr. R. Bharanidharan, learned counsel for the respondent/landlord.

9. The learned counsel for the revision petitioner/tenant would submit in his argument that the courts below failed to appreciate the scope of provision under 10(3) a (iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, properly. He would further submit that the respondent, the landlord, was not bonafide in his requirement to ask the premises for his own occupation u/s 10(3)(a)(iii) of the act. He would also submit that the respondent/landlord is admittedly in the 1st floor premises and the demised premises is located at the ground floor and therefore the eviction sought for under the provisions of Section 10(3)(a)(iii) of the act, is not sustainable but it could be only u/s 10(3)(a)(iii) of the act for an additional accommodation. He would further submit that the Rent Control Appellate Authority had confirmed the eviction order passed by the learned Rent Controller despite the respondent/landlord did not prove the ingredients of the provisions to pass an eviction order on the ground of owner's occupation. He would also submit that the iron and steel business are directed to have shifted from George Town Area and to be located in Sathankadu for the said iron and steel market should be outside the city limit and therefore, the respondent/landlord cannot continue the business at the demised premises and he cannot ask for owner's occupation to do the steel business. He had also produced the Government Order passed by the Government and also the SLP order passed by the Hon''ble Apex Court. He would further submit that the oral and documentary evidence would go to show that the demised premises were not required by the respondent/landlord for his own occupation. He would also submit that the desire to ask the premises for housing his business would not be sufficient for the eviction of the tenant from his own occupation. He would further submit that the respondent/landlord did not prove that he asked the tenant to vacate the premises to which the tenant also agreed to vacate the same. He would also

submit that the finding of the Rent Control Appellate Authority that the tenant did not deny the existence of the business of the landlord is incorrect. He would submit that the finding of the Rent Control Appellate Authority that the landlord bonafide requires the premises for his own occupation solely through Exs. P2 to P7 which was not supported by any other evidence produced by the landlord. He would also draw the attention of the Court to a judgment of this Court reported in *The Management of Antiseptic (Journal) 326, Thambu Chetty Street, Madras-1 Vs. A. Gangadharan and The Government of India, Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, for the principle, the subsequent events to be taken note of and therefore the orders passed by the Hon''ble Apex Court to vacate every steel business from Sembudoss Street area to Tiruvotiyur commercial place shall be taken note of by the appellate authority. He would also bring it to the notice of this Court regarding a judgment of Hon''ble Apex Court reported in *T. Sivasubramaniam and Others Vs. Kasinath Pujari and Others*, for the principle that the mere desire of the landlord to have the premises for his own occupation is not sufficient and he is expected to establish that the requirement should be bonafide, genuine honest and faith. He had also brought to the notice of this Court a judgment of Hon''ble Apex Court reported in 2004 (1) MLJ 358 (*Dr. Anthony Shiek Shib Pong v. S.E. Mahoob Basha*) when the requirement of the landlord for his own occupation in respect of his non-residential building such requirement is not genuine. He would further bring it to the notice of this Court to a judgment of the Hon''ble Apex Court reported in 2010 (2) LW 804 (*Mohd. Ismail v. Dinkar Vinayakrao Dorlikar*) for the principle that merely concurrent findings were given by the Rent Control Appellate Authority, it need not be confirmed when the said finding of the Appellate Authority was not in accordance with law. He would further submit that in view of the lacunae found in the evidence of the landlord regarding requirement of the premises for his bonafide own use and occupation and the subsequent event of direction from Government to vacate the premises from the city limit for the requirement of the landlord cannot be considered as bonafide and thus, the orders passed by the Rent Controller which was confirmed by the Rent Control Appellate Authority has to be set aside and the revision be ordered accordingly.

10. The learned Sr. Counsel would submit in his argument that the G.O., issued by the Government for the shifting of steel and iron business is not in relevance to retail market but it is in respect of the whole sale iron and steel business. He would therefore submit that the order passed by the Hon''ble Apex Court and the Government Order passed, are not applicable to the retail steel business, to which the landlord wanted to house at the suit premises and will not suffer the requirement of the premises for bonafide requirement of the demised premises. Therefore, the order passed by the Hon''ble Apex Court in SLP, as subsequent event cannot be helpful to the tenant. He would also submit that the landlord is admittedly living in the 1st floor portion and it would be more convenient for him to have his retail shop on the ground floor where the petitioner/tenant is in possession. He would also submit that the landlord can validly ask for his own

occupation even though he is living in the 1st floor portion since the premises leased out to the tenant was admittedly for commercial purpose, and not for residential purpose. He would further submit that the law is well settled that if the tenancy is for non-residential purpose, and the landlord who is living in a part the building, the landlord can ask for the demised premises only under the caption of own occupation and not under the ground of additional accommodation. He would also submit that the argument advanced by the learned counsel for the petitioner the claim under the own occupation would not be sustained is not a correct view. He would further submit in his argument that the landlord is carrying on business in a tenanted premises and he has produced evidence to show that he is continuing business there. He would also refer to the order of the learned Rent Control Appellate Authority that Exs. P2 to P4 were considered to prove his possession, in the said premises, in Door No. 19/41, Sembudoss street, Chennai-1 and he is facing eviction from his landlord. He would further submit in his argument that since he is doing a retail business in steel he is entitled to require the demised premises where the tenant has occupied. He would also submit that the subsequent events may be taken note of and those orders are not applicable to the present case. The landlord is an old man and it will be more convenient for him since he is being in 1st floor portion, to look after his business in ground floor portion especially the landlord is a senior citizen.

11. The learned senior counsel would insist in his argument that it is the wish of the landlord to seek for own occupation from a specified tenants when more than one tenant are in occupation of the premises. He would also submit that the demised premises, in the occupation of the tenant is exactly in the ground floor in which the landlord is residing in the 1st floor and therefore, it would be more convenient for the landlord to seek for his own occupation.

12. He would also cite a judgment of this Court reported in 2009 (5) CTC 607 = 2009-5-L.W. 363 (J. Josephine Christobell v. P. Subramanian) in support of his arguments. He would also submit that the landlord who is having his retail business in steel in some other rented premises requires the tenanted premise from the tenant for doing his business which was not prohibited by the G.O., passed by the Government of Tamil Nadu. He would further submit that even as per the G.O., the trading in steel has been prohibited in Chembudar Street area only whereas the demised premises is located in Park Town, Ekambareshwarar Koil Street, Chennai and there is no mandate to do the retail business also at the specialised area at Tiruvotiyur. He would also draw the attention of the Court regarding PIL, filed in Writ Petition in W.P. No. 41822 of 2006 and submit that the trading referred was in respect of the wholesale trade in iron and steel for being shifted to Sathankadu. The reference as to the nature of trade was mentioned in para 1 of the said judgment for that he has produced the copy of unreported judgment of this Court made in W.P. No. 41822 of 2006 dated 30.04.2009. He would also submit that the Rent Control Appellate Authority also came to a similar conclusion that the landlord has proved his requirement of the premises

for doing his retail iron and steel business and it was not prohibited by any law and the bonafide of the landlord was also promptly proved. Therefore, he would request the Court to confirm the concurrent order passed by the learned Rent Control Appellate Authority and thus, the revision may be dismissed.

13. I have given anxious thoughts to the arguments advanced on either side.

14. The admitted facts are that the revision petitioner was the tenant under the respondent/landlord for a monthly rent of Rs. 5,000/- exclusive of electricity use in the demised premises. The demised premises was located in the ground floor wherein the landlord is residing in the first floor portion. It has been averred by the landlord that he was having a retail shop in the premises in Door No. 19/41, Sembudoss Street, Chennai-1, on retail basis for that he has produced a rent receipt in Ex. P2 and the certificate of registration for Tamil Nadu General Sales Tax authority in Ex. P3 and telephone bill charges to the above towards Ex. P4. The Rent Controller was also satisfied that the landlord was doing business in Sembudoss Street, as pleaded by him and was proved through documentary evidence. According to the landlord, he requires the demised premises for doing his business in the name and style of "Stainless steel suppliers". The landlord himself was examined as PW1 and had spoken about his intention of having his retail business in steel at the demised premises. However, it has been argued by the learned counsel for the revision petitioner that there was a G.O., passed by the Government that trading in Sembudoss Street area have to be shifted to Sathankadu in Tiruvottiyur and challenging the said G.O. a writ was filed but it was dismissed and the SLP preferred was filed before the Hon"ble Apex Court and it was ordered to vacate the premises on or before 30.09.2009. The said order of Hon"ble Apex Court has also been produced. The said order would go to show that any building in Sembudoss Street area in respect of steel companies cannot be continued either presently or in future. Therefore, it could be presumed that the business of the landlord has to be shifted from the place to some other place. It is not compulsory that each small vendor has to shift the trading only to Sathankadu. In the judgment produced by the learned Senior counsel in W.P. No. 41822 of 2006, it has been laid down as follows:-

21. This Court was pained to note that the order dated 18.07.2008 of this Court was observed more in breach as the process of shifting the wholesale trade in iron and steel to Sathangadu was to be completed at least before 31.03.2009 as per the said order and the same was not complied with. However, the matter was adjourned giving last chance to the official respondents to furnish a status report relating to further action.

15. Therefore, we could see that in iron and steel business, the steel business alone has to be shifted from Sembudoss Street area. Even other wise, if the retail business is also shifted from the said place naturally, the requirement of landlord would be more aggressive than that of the requirement made at the time of filing the petition. No doubt, the landlord is doing the steel business as a retailer. When there is an existing business for the landlord with the liability to

vacate from the premises where he is doing his business, naturally, the requirement of his own building in the occupation of the tenant has to be provided to him. No doubt, the principle laid down by the Hon''ble Apex Court reported in 2010 (2) LW 804 (Mohd. Ismail v. Dinkar Vinayakrao Dorlikar) that subsequent events have to be taken note of. There is no second view that subsequent events are to be taken note of as laid down by the Hon''ble Apex Court but the events discussed in the said judgment are in such a way that those subsequent events should have been taken into account to mould the relief.

16. In a judgment of this Court reported in *The Management of Antiseptic (Journal) 326, Thambu Chetty Street, Madras-1 Vs. A. Gangadharan and The Government of India*, the said principle has been followed.

17. However, the subsequent event which is required to be relied upon was that other tenants have vacated, subsequently to satisfy the requirements of the landlord and therefore, the demised premises need not be vacated. It is the settled law that the tenant cannot dictate terms as to which of the tenement shall be vacated from the demised premises. It is the proprietary right of the landlord to ask for the premises for his own occupation on his choice. Admittedly, the landlord is residing in the first floor whereas the demised premises located in the ground floor. The evidence would also go to show that the demised premise is the convenient premises for accommodating the business of landlord after shifting it from Sembudoss Street.

18. The judgment of this Court reported in 2004 (1) MLJ 358 (Dr. Anthony Shiek Shib Pong v. S.E. Mahoob Basha) as cited by the learned counsel for the revision petitioner is in respect of the bonafide requirement of a non-residential building. The facts discussed in the said judgment were to the effect that the landlord has asked for his own occupation on the same reason which was put forth by the landlord against another tenant and obtained eviction. But the facts in this case are different and therefore, the said judgment is not applicable.

19. Furthermore, the requirement of the landlord for his own occupation should not be a wish and it cannot also be applied to this case. Since the evidence of PW1 would go to show that he requires the building for housing his existing business from Sembudoss Street, to the demised property in consideration of his convenience. Therefore, the judgment of the Hon''ble Apex Court reported in 2000 (1) LW 778 (T. Sivasubramaniam and others v. Kasinath Pujari and others) that the mere wish of the landlord to come over to the building for his own occupation is also not applicable to the present case.

20. The learned Rent Controller as well as the Rent Control Appellate Authority have dealt with the evidence produced before the learned Rent Controller and had come to the conclusion of accepting the bonafide requirement of the building by the landlord, as proved. Both the Courts below have discussed the evidence and had reached the findings in order to pass an order of eviction of the tenant from the petition mentioned buildings. The learned senior counsel relied upon a

judgment of this Court reported in S. Gopal and S. Baskar Vs. T.V. Paramasivam, for the principle that the concurrent findings need not be disturbed when there is no perversity in the mind of Rent Control Appellate Authority. The relevant passage in the aforesaid judgment would be as follows:-

10. As far as C.R.P. (NPD). 675 of 2007 is concerned both the Courts below have concurrently held that the landlord is entitled for an order of eviction u/s 10(3)(a) (iii) of the Act. There is no material on record to show that the finding of the learned Rent Control Appellate Authority is perverse or against evidence. Under such circumstances, while exercising the powers of Revision this Court cannot interfere with the concurrent findings of the Courts below.

21. In such circumstances, I am concurring with the view laid down in the judgment to the points raised in this revision were not sufficient to interfere with the concurrent judgment of Rent Control Appellate Authority who confirmed the eviction order passed by the Rent Controller. Therefore, I find that no interference is necessary in the order of the Rent Control Appellate Authority and accordingly, the revision petition deserves dismissal, after confirming the concurrent eviction order passed by the Rent Control Appellate Authority. In fine, I am of the considered view that the revision petition filed by the revision petitioner/tenant is not allowable and the order passed by the Rent Control Appellate Authority is accordingly, confirmed. Thus, the eviction order passed by the learned Rent Controller, as rightly confirmed by the Rent Control Appellate Authority, are not liable to be set aside. Accordingly, the revision petition is dismissed with costs. Consequently, connected miscellaneous petition is also closed. Time for vacating the premises is six months.