
(2015) 10 MAD CK 0233

In the Madras High Court

Case No : C.R.P. NPD. No. 1272 of 2003 and C.M.P. No. 14070 of 2003

National Textile Corporation Ltd.

APPELLANT

Vs

Ettappan & Sons and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

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

Citation : (2015) 5 LW 536 : (2016) 1 RCR(Rent) 58

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; S. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

Dr. P. Devadass, J.—The tenant is the revision petitioner.

2. This revision arises out of a judgment made in R.C.A. No. 18 of 2001 by the learned Rent Control Appellate Authority (II Additional Subordinate Judge), Tirunelveli reversing the order of the learned Rent Controller (I Additional District Munsif), Tirunelveli, dismissing R.C.O.P. No. 2 of 2000 filed by the landlords/respondents.

3. The petition mentioned premises is a shop bearing door Nos. 7 and 8 in the building bearing Municipal Door Nos. 58-C situate in the ground floor of Raja Complex in Tirunelveli Junction measuring about 600 sq. feet. It belongs to the respondents. The revision petitioner has been inducted as a tenant. It is carrying on textile business in the said shop premises. In the said building, the respondents/landlords are running a gold covering shop in the name and style of "M/s. Mahalakshmi Jewellers bearing door Nos. 52-C and 57 measuring about 300 sq. feet.

4. The landlords alleged that the shop premises in which it is carrying on

business is situate in an interior portion in the building. There is no frontage to attract the customers. There was no parking facility. Thus, there was less business. The business is being carried on at a loss. However, the shop premises in the possession of the revision petitioner measuring 600 sq. feet. It is also situate in a conspicuous place of the building. It has parking facility for the customers. Road facility. Nearby there are number of shops. Thus, the landlords sought for the possession of the tenanted shop for running their own business. In the rent control petition, it was alleged that though the landlords are having certain shops within the Municipal limits of Tirunelveli, the petition mentioned shop is best suited for their business. Further, the respondents' other shops are in the occupation of others. The landlords alleged that their requirement is bonafide.

5. In such circumstances, the landlords have sought for the eviction of the revision petitioner in R.C.O.P. No. 2 of 2000 before the learned Rent Controller (I Additional District Munsif), Tirunelveli under Section 10(3)(a)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

6. The revision petitioner/tenant filed counter resisting the eviction petition contending that the landlords aspired for huge rent. It was denied by the tenant. In the circumstances, in order to vacate the tenant and let it out to others at an huge rent this eviction petition has been filed. There is no bonafide in the alleged requirement of the respondents. Further, the tenant denied that the petition mentioned shop is best suited for landlords' business. The landlords' shop is situate in an important place. It has various advantages to run their business.

7. Before the Rent Controller the Manager of the respondent Subbiah has been examined as P.W.1 and Exs.P.1 to P.9 were marked and the tenant had examined its Manager Meenakshi Sundaram as R.W.1 and no document has been marked.

8. Appreciating the said evidence and submissions of both sides the Rent Controller held that actually the eviction petition should have been filed under Section 10(3)(a)(iii) of the Rent Control Act, but Section 10(3)(a)(ii) of the Act has been wrongly mentioned in the eviction petition, but quoting of wrong Section of law is not fatal. The Rent Controller noted that in the lawyer notice landlords have not mentioned that they need the shop for running their business, it cannot be stated that there will be more business if the shop is situate at a conspicuous place and volume of business is based on the selling of standard goods and customer relationship and there is no specific mentioning in the R.C.O.P. petition why the other shop premises are not suitable to run the business of the respondents. Ultimately, the Rent Controller found that there is no bonafide in the requirement of the respondent and thus dismissed the eviction petition.

9. Aggrieved, the landlords preferred appeal in R.C.A. No. 18 of 2001 to the Rent Control Appellate Authority (II Additional Subordinate Judge), Tirunelveli. In the said appeal the respondent/tenant filed memo stating that the landlords have

demolished the shop in which they have their Mahalakshi Jewellers and thus they are not carrying on the business.

10. The Appellate Authority reappreciated the evidence and considered the arguments of both sides. It disagreed with the view of the Rent Controller. The appellate authority concluded that the situation of the shop at a conspicuous place will increase the volume of business. And there is no law that in the eviction notice that the landlords should mention that they are asking the building for their occupation. The appellate authority also took note of the subsequent event, namely, demolition of the shop and in such circumstances it has become necessary for the landlords to run their business in the tenanted shop premises and their requirement is bonafide and thus set aside the order of dismissal of the Rent Controller and ordered eviction of the revision petitioner.

11. The learned counsel for the revision petitioner contended that the requirement of the landlords is not bonafide. The landlords are in possession of other non-residential premises in Tirunelveli Municipal limit. They did not seek their other shops to carry on their business. The basic requirements for seeking eviction under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 should have been necessarily pleaded in the eviction. But, they were not pleaded.

12. The learned counsel for the revision petitioner further contended that eviction should be based on the averments made in the main R.C.O.P. on the date when the petition was filed. Eviction cannot be ordered based on subsequent events. The subsequent event shows that the landlords are not carrying on business. So, they have no need of the petition mentioned shop. Further, in the lawyer's notice, it is not stated that the landlords are requiring the building for their own business. As the landlords are owning other shops, they cannot maintain the eviction petition under Section 10(3)(a)(iii) of the Act. The landlords are really not in need of the petition mentioned shop. Eviction has been sought for an ulterior motive to evict the revision petitioner let out the shop to others at an huge rent. Throughout, the landlords demanded huge rent. Even during the pendency of this civil revision petition by way of compromise the landlords have demanded huge rent. Thus, the requirement of the landlord is not bonafide.

13. In support of his submissions, the learned counsel for the revision petitioner cited the following decisions:

- i. RAMALINGAM PILLAI V. MURUGESAN [1993 (1) LW 356],
- ii. Sudhandiran Vs. S. Krishnan, ,
- iii. Bata India Limited and Bata Shoe Mart Vs. M.R. Manickam, ,
- iv. K. Sankar Vs. G.L. Vijayan, ,
- v. N. Mohambaram Vs. C.K.C.M. Kader Shah and Brothers, ,

vi. VAIRAMANI AMMAL V. KALYANASUNDARAM [2004 (1) MLJ 681].

14. On the other hand, the learned counsel for the landlords/respondents contended that on the date when the R.C.O.P. was filed, the landlords/respondents were running Mahalakshmi Jewellers in the very same building. Because of its location, it did not attract the customers and there was huge loss. There were several hardships to the landlords in running their gold covering jewelry business in the said shop. On the other hand, the tenanted shop in the possession of the revision petitioner is in a conspicuous place and it has several advantages to the business of the landlords. That is why the landlords asked the said shop premises. The tenant also replied that they are ready to vacate and are in search of another shop premises. However, the revision petitioner had prolonged the matter. Under these circumstances, the eviction petition has been filed.

15. The learned counsel for the respondent further contended that although the landlords are owning certain other shops in the Municipal limits of Tirunelveli they were in the occupation of others and no shop is fell vacant. This has been mentioned in the eviction petition also. Further, the shop premises rented out to the revision petitioner is best suited for the landlords' business and thus the landlords asked it for their own business. It is not for the tenant to direct the landlords to run their business at a particular place. It is the choice of the landlords and not the choice of the tenant.

16. The learned counsel for the respondents further contended that during the pendency of the appeal in R.C.A. the shop premises in the occupation of the landlords has been demolished to provide pathway to the eastern portion. This subsequent event has been brought to the notice of the appellate authority by the tenant itself. On the date when the R.C.O.P. was filed the respondents were carrying on the business. Every necessary averments have been made in the eviction petition. The Rent Control Appeal is in continuation of Rent Control Original Petition. The appellate authority is entitled to take note of the subsequent event and grant relief and also mould the relief. The requirement of the respondents is bonafide. The eviction order passed by the Rent Control Appellate Authority is in accordance with law.

17. In support of his said submissions, the learned counsel for the respondents/landlords cited the following decisions:

i. S.T. Nehru Vs. Krishnamurthy,

ii. Chandraleka Vs. P.K. Suseela Rani,

iii. Visalakshi Nadar and Another Vs. S.K. Subramanian,

iv. M.M. Quasim Vs. Manohar Lal Sharma and others, ,

v. Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others,

vi. MOHAMMED ALI TAAB Vs. DR. MOHAMMAD ALI (Mad) [2012 (1) T.N.C.J. 929 (Mad)].

18. I have anxiously considered the rival submissions, perused the materials on record, the impugned order of the Rent Controller and the Rent Control Appellate Authority and the decisions cited by both sides.

19. The shop premises measuring 600 sq. feet in the possession of the tenant/revision petitioner situate in the ground floor of Raja Complex in Tirunelveli Junction. This shop belongs to the respondents. It has been let out to the revision petitioner for non-residential purposes. In this shop, the revision petitioner is running his textile business. In the very same building in a different shop measuring 300 sq. feet, the respondents runs their gold covering business under the name and style of "Mahalakshmi Jewellers". This shop premises situate well inside the building and it has less advantages to run the business. However, the shop premises in the possession of the tenant is surrounded by shops and situate near road and it is in a conspicuous position and it has several business advantages to run the business of the respondents. The respondents asked it to carry on their business. In the main R.C.O.P. petition, the respondents/landlords have mentioned that they owns other shops in the Municipal limits of Tirunelveli and they are in possession of others.

20. The landlords have filed the main R.C.O.P. No. 2 of 2000 under Section 10(3)(a)(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for occupation of the petition mentioned shop for running their own business. Actually it should have been Section 10(3)(a)(iii) of the Act. The Rent Controller held that the quoting a wrong provision of law is not fatal to the case. The Rent Control Appellate Authority also agreed with this view (also see MOHAMMED ALI TAAB Vs. DR. MOHAMMAD ALI (Mad) [2012 (1) T.N.C.J. 929 (Mad)]). Both the Rent Controller and the Rent Control Appellate Authority are correct in their view.

21. In S.T. Nehru Vs. Krishnamurthy, it is observed as under:

6. In the instant case, admittedly, out of four non-residential premises, the petitioner-landlord is in occupation of only one non-residential premises, where he is running an electrical shop while the other three including the petition premises are rented out to third parties and therefore, they are not occupied by the petitioner-landlord.

7. If that be so, I am of the considered opinion that both the authorities below have erred in dismissing the application filed by the petitioner-landlord to evict the respondent-tenant merely on the ground that the petitioner-landlord is owning three other non-residential premises, while the fact remains that he is not in occupation of all the premises except the one where he is running an electrical shop, and without appreciating the relative hardship to which the petitioner-landlord is subjected to by the refusal of eviction of the respondent-tenant, in spite of the fact that the petitioner-landlord had already obtained licence from the Tahsildar for running a finance company for which he requires

the petition premises.

22. In the case before us, although the respondents owns other non-residential shops in Tirunelveli Municipal limits they are not vacant. The respondents are not in occupation of the same. The above decision squarely applies to the present case.

23. The landlords are in possession of the shop premises measuring only 300 sq. feet. However, the premises in the occupation of the revision petitioner measures 600 sq. feet. In the main R.C.O.P. petition, the respondents/landlords have stated that how the tenanted premises is advantageous to run their business and the hardships to which they were put to, if they were not put in possession of the tenanted premises. Further, it is clearly stated in the R.C.O.P. petition that the said tenanted premises is best suited for their business.

24. Now, the revision petitioner/tenant says that why the landlords bent upon choosing the shop premises under its occupation, when they are owning other shop premises in the city they can choose any one of them to run their business.

25. In *Chandraleka Vs. P.K. Suseela Rani*, it was held as under:

"It is not for the tenant to dictate as to which of the portions in a premises is required for the personal use and need of the landlords. So long as the purpose is not designed or motivated or prompted by an oblique purpose, it is unwise to fetter the choice of the landlord."

26. In *Visalakshi Nadar and Another Vs. S.K. Subramanian*, , when similar contention was raised, this Court held as under:

"But it remains to be seen that the sufficiency of the portion and the condition under which it is situate are not the concern of the tenants. It is for the landlord to decide and not for the tenants to suggest which portion of the building the landlord should ask for in a petition filed under Section 10(3)(a)(iii) of the Act."

27. Thus, the suitability of the place of business is the choice of the landlords depending upon several aspects. The tenant cannot direct the landlords to choose a particular place to run their business.

28. As held in *Bata India Limited and Bata Shoe Mart Vs. M.R. Manickam*, the requirements for eviction under Section 10(3)(a)(iii) of the Act are as follows:

1. the building should be non-residential in character;
2. the landlord should be carrying on the business on the date of application for eviction;
3. he should not be occupying any building belonging to him; and
4. the claim should be bonafide and not found to be an indirect or false attempt to evict the tenant to obtain more rent or to harass the tenant.

29. In the case before us, the tenanted premises is non-residential in character. At the time when the petition was filed, the respondents were carrying on the business of Mahalakshmi Jewellers. The landlords though owns other non-residential premises, they have not occupied any of them. During the pendency of the Rent Control Appeal in R.C.A. No. 18 of 2001, the tenant itself has brought to the notice of the appellate authority that the shop in which "Mahalakshmi Jewellers" was carried on has been demolished. That place has been altered as a passage to reach the eastern portion. There is no allegation that any other shop premises of the landlords is vacant or in the occupation of the landlords. The landlords have been in the business of gold covering jewellers. They have stated that they continue to carry on the business and for that purpose they need the shop premises in the possession of the revision petitioner. Further, the subsequent events shows that in view of the demolition of the shop premises in the possession of the landlords, it has become necessary for the landlords to ask for the possession of the tenanted shop premises from the revision petitioner.

30. The Appellate Court can take note of subsequent events. In VAIRAMANI AMMAL V. KALYANA SUNDARAM [2004 (1) MLJ 681], this Court did not rule out the Rent Control Authority taking note of subsequent events. However, the Court held that based on the subsequent events alone eviction cannot be ordered.

31. In M.M. Quasim Vs. Manohar Lal Sharma and others, , in a landlord-tenant matter the Hon"ble Apex Court held that appeal being continuation of the suit, the Appellate Judge can take note of the subsequent events and mould the relief accordingly.

32. In Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, , under Kerala Buildings (Lease and Rent Control) Act 1965, when the rent control authority took note of a subsequent event, the Hon"ble Apex Court has held as under:

"While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were in situated, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events can not be shutout from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted. That proposition of law is, in our view, fairly settled by the decisions of this Court in Pasupuleti Venkateswarlu case (supra). Krishna Iyer J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:

".....If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to

events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed....."

33. When the landlords issued notice to the tenant demanding possession, the tenant sought time to vacate as they are in search of another premises and subsequently also the tenant gave similar reply. The landlords were carrying on business of "Mahalakshmi Jewellers". Respondents have set out the various hardships they are undergoing and they have also stated the various advantages if the business is run in the shop in the possession of the tenant and although the landlords own other shop premises in the same city, they have not occupied any one of these shops to carry on their business. Subsequently, during the appeal, the shop premises in the possession of the landlords was demolished and the need has become more severe for the landlords to ask the possession of the shop premises in the possession of the revision petitioner. Thus, the requirement of the respondents is bona fide.

34. The ingredients prescribed for eviction on the ground mentioned in Section 10(3)(a)(iii) of the Act have been satisfied in this case. In the circumstances, the Appellate Authority has rightly varied the order of dismissal passed by the Rent Controller and ordered eviction of the revision petitioner.

35. In view of the foregoings, this revision fails and it is dismissed. The order of eviction passed by the Rent Control Appellate Authority in R.C.A. No. 18 of 2001 reversing the order of the Rent Controller in R.C.O.P. No. 2 of 2000 is upheld. The revision petitioner is given four months time from today to hand over vacant possession to the respondents. No costs. Consequently, connected miscellaneous petition is closed.