

(1981) 09 MAD CK 0086
In the Madras High Court

P. Kandaswamy

APPELLANT

Vs

Hajee K.S. Mohamed Mohideen Rowther

RESPONDENT

Date of Decision : 08-09-1981

Acts Referred:

Citation : (1982) 1 MLJ 179

Hon'ble Judges : R. Sengottuvelan, J

Bench : Division Bench

Judgement

R. Sengottuvelan, J.—This civil revision petition is filed by the tenant in respect of the premises situate in T.S. No. 3969|5, T.S. No. 3969|3 in Pudukkottai Town against the orders of the appellate authority and the Subordinate Judge, Pudukkottai in C.M.A. No. 2 of 1979. The landlord originally filed an application in R.C.O.P. No. 5 of 1978 on the file of the Court of the Rent Controller and the District Munsif, Pudukkottai for eviction of the tenant from the above mentioned premises on the ground that the tenant had caused damages to the above mentioned premises and also used the premises for a purpose other than that for which it was leased out. The premises in T.S. No. 396915 is described in A schedule in R.C.O.P. No. S of 1978 and the same was let cut for non-residential purpose according to the landlord. The premises comprised In T.S. No. 3969J3 is described in B schedule to the above said R.C.O.P. and the same is leased out for residential purpose according to the landlord. The consolidated rent for both the premises is Rs. 160 per month. The tenancy in respect of B schedule premises started in 1943 as per Exhibit A-1I. There is no evidence as to the commencement of the tenancy in respect of A schedule premises and also here is no evidence as to when the consolidated tenancy came into being on a monthly rent of Rs. 160. The case of the landlord before the Rent Controller is that during the Pongal holidays in the year 1978 when the Court was closed the tenant without getting the consent of the landlord and even without informing the landlord had made alterations in the A schedule premises and thereby caused acts of waste and damage to the building which are likely to impair materially the value and utility of the building. The tenant had removed the tiles and raised

brick walls with a view to put up asbestos or some other roofing. Raising walls and putting some other roofing in the place of existing tiled roofing is an additional weight to the old building which is more than 60 years old and would certainly constitute an act of waste which is likely to impair materially the value of the building. It is also the case of the landlord that the tenant had done these alterations in the midnights which shows his mala fide intention. The alteration is also done without the permission of the Municipality and thereby committed disobedience of the Town Planning Rules for which the landlord may be held liable. Immediately on knowing the unlawful act of the tenant the landlord complained to the police and the police came to the spot and prevented further construction. The case of the landlord with reference to the B schedule premises is that the same is let out for residential purpose and without the written consent of the landlord the tenant had converted the same for non-residential purpose and the tenant is not residing in the B schedule premises. The tenant is residing in the newly constructed house situate at Alangudi Road in Pudukkottai and using the B schedule premises for storing his saleable materials and thereby caused damages to the floor and the walls of the building. Hence the landlord is entitled to evict the tenant in respect of A and B schedules premises. The case of the tenant before the Rent Controller is that the allegation of the landlord that the premises in T. Section No. 3969|5 was let out for business purposes and the premises in T.S. No. 3969|3 was let out for residential purpose is not correct. The tenant's father was in occupation of T. Section No. 3969|5, T.S. No. 3969|3, T.S. No. 3969|4 and T.S. No. 3969|2, which originally belonged to another landlord from the year 1937. The landlord's father purchased T.S. No. 3969|5 from Ponnammal and others on 5th May, 1944 and T.S. No. 3969|3 from Thambuswamy Pillai and others on 12th January, 1943. Even after the purchase by the landlord's father the tenant's father continued as tenant. It is false to say that the premises in T.S. No. 3969|3 was used only for residential purposes. Except for the kitchen in T.S. No. 3969|3, the building had always been used only for purposes of storing the goods. In fact there was a fire accident in 1959, where the goods were stored in f. Section No. 3969 3. The admission on the part of the landlord that the monthly rental is Rs. 160 clearly shows that the premises were not let out separately but there was only one composite lease. The family of the tenant was using the portions of T.S. No. 3969|4 belonging to another landlord where lavatory, well, bathroom and bed room are situate. It is also the case of the tenant that he had not committed any act of waste or damage which is likely to impair materially the value or utility of the premises. The roofing in the front portion of T.S. No. 3969|5 was damaged by the cyclone and continuous rain in November, 1977 and the walls got soaked with rain water and the electric installation was affected and the electric current was leaking in the wall. The tenant took the permission of the landlord to effect the necessary repairs and since the tenant did not want his business to be suspended during day time he carried out minor repairs to the affected roofing during night. The landlord had made a false complaint and the tenant appeared before the police and gave the true version. The tenant did not do anything which will affect the value of the

building. The rent for the premises from 1943 to 1950 was Rs. 27.50 and from 1950 to 1957 it was raised to Rs. 40 and from 1957 to 1962 it was again raised to Rs. 50. From 1962 to 1968 the rent was paid at Rs. 60 and from 1969 to August, 1976 the rent was Rs. 100 and from August, 1976 the rent was fixed at Rs. 160 per month. The landlord has come forward with this application just for higher rent. No damage has been caused to the floor or wall as alleged. By no stretch of imagination it can be said that the tenant had lost his statutory right to remain in the premises.

2. On these pleadings and after a full-fledged trial the learned Rent Controller came to the conclusion that the, landlord is entitled to an order of eviction on both the above said grounds and allowed the application for eviction. As against the orders of the Rent Controller the tenant filed an appeal in C.M.A. No. 2 of 1979 on the file of the Court of the appellate authority and the Subordinate Judge, Pudukkottai and the appellate authority agreed with the findings of the Rent Controller on both the above said grounds and dismissed the appeal. It is as against the orders of the appellate authority this civil revision petition has been filed by the tenant.

3. The first contention urged on behalf of the civil revision petitioner is that the rent control application itself is not maintainable since the reliefs in respect of the two buildings mentioned in A and B schedules to the petition have been clubbed together and hence the Rent Control Petition itself ought to have been dismissed on the ground of misjoinder of causes of action. In considering this plea it has to be noted that in the counter statement to the R.C.O.P. the tenant had not taken this plea. The tenant had also not taken this plea before the appellate Court. It is urged on behalf of the landlord that the provisions of the CPC are not made applicable to the proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act. Hence the provisions of the CPC with reference to the misjoinder of causes of action cannot be applied to the above said proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act. The facts of this case reveal that the premises mentioned in Schedules A and B are separate portions of the building with another portion in between. We have to consider whether the filing of a single application in respect of both the premises is possible under the provisions of the Act.

4. In considering whether an application in respect of both the portion can be filed by a single application the nature of tenancy will have to be borne in mind. It is in evidence before the Rent Controller that the consolidated rent for both the premises is fixed at Rs. 160 per month and there is no separate tenancy agreement in respect of each of the premises. According to the evidence in this case though the tenancy in respect of B schedule property started in 1943 as per Exhibit 11, there is no evidence as to when in respect of A schedule property the tenancy had started. But subsequently the tenancy in respect of both the portions were consolidated and a consolidated rent of Rs. 160 per month has been fixed. Both the landlord and the tenant seems to have proceeded all along

on the basis of a single tenancy. At no time the landlord and the tenant construed the tenancy as two separate tenancies. When there is a single; tenancy agreement even if the premises consists of more than one portion a Rent Control application in respect of the entire premises can be maintained.

5. On behalf of the tenant reliance, is placed upon the case reported in *T. N. Unnamalai Achi v. Saminatha Pathar* (1980) 93 L.W. 404 where Nainar Sundaram, J., expressed the view that clubbing together in an eviction petition of residential and non-residential premises u/s 10(3)(a)(i) of the Act will cause prejudice to the tenant. In that case there were three different premises of which two served residential purposes and the third building served non-residential purpose. The provision under which the landlord claiming eviction is u/s 10(3)(a) (i) viz., the requirement of the residential building by the landlord for his own use for residential purposes. The application was not one jinder Section 10(3)(a) (iii) which provides for a claim by the landlord for his own occupation in respect of non-residential premises. Since the standards to be observed in respect of a claim for eviction by the landlord u/s 10(3)(a)(i) for residential purpose and u/s 10(3)(ii) for non-residential purpose are different the learned Judge came to the conclusion that a single application is not maintainable. But in this case the landlord seeks eviction u/s 10(2)(ii)(b) vis., that the tenant used the premises for the purpose other than that for which it was leased and u/s 10(2)(iii) vis., that the tenant has committed acts of waste as are likely to impair materially the value or utility of the building. Different standards are not laid down in respect of those two provisions in an application with reference to a residential or non-residential building. Hence the, above said decision of Mainar Sundaram, J., which was rendered in a different context cannot be said to be,applicable to the facts of this case.

6. In the, case reported in *Longford Property Co. Limited v. Goldrich* (1949) 1 All. E.R. 402 two flats on the same floor but separated by other flats were let out to one tenant on a quarterly tenancy. The rateable value of one flat was ₹98 and of the other ₹92. At no time these two flats were assessed together as one dwelling-house. The Court came to the conclusion that in view of the rent agreement the flats together constituted a dwelling house within the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. On behalf of the landlord reliance is also placed upon the case reported in *Umsalma Bibi v. R. Lakkia Gowder* (1967) 1 M.L.J. 227, wherein Ananthanarayanan, C.J., expressed the view that where a landlord seeks to apply for eviction of tenants from a building, which, though structurally one, has separate door numbers and consists of distinct tenements, for demolition and reconstruction u/s 14(1)(b) of the Act he must file separate applications for each building or tenement as defined in the Act. After making this observation the learned Chief Justice did not interfere with the orders of the lower Courts since he felt that no prejudice was caused to the tenant by such combination of reliefs in respect of different portions. The criterion seems to be whether by clubbing the reliefs in respect of more than one premises prejudice is caused to the tenant. In this case it is not made out that any prejudice is caused

to the tenant by filing a single application in respect of the premises comprised in Schedules A and B of the Rent Control Application. In the case reported in Section M. Gopaia krhnan Chetty v. Ganeshan and Ors. (1976) 1 M.L.J. 27, the Supreme Court observed in categorical terms that a single petition with regard to two different tenancies in the same premises viz., one for residential purpose and the other for non-residential purpose, is maintainable when the tenancy is one. Inasmuch as the tenancy in this case is a single tenancy, applying the above principle laid down by the Supreme Court there is no difficulty in coming to the conclusion that merely because the reliefs with reference to both the premises are asked for in a single application it cannot be said that the application is not maintainable. Hence the first contention of the civil revision petitioner with reference to the maintainability of the Rent Control proceedings will have to be negatived.

7. The second contention urged on behalf of the civil revision petitioner is that there are no acts of waste with reference to the premises in T.S. 396915 and that the tiled roofing of the premises was blown away during the cyclone and that the tenant only repaired the premises to make it habitable, It is also the case of the tenant that the repairs carried out by him will not in any way hamper the value of the building. In this connection the learned Advocate for the civil revision petitioner relied upon the case reported in G. Natarajan Vs. P. Thandavarayan, , where it has been observed that while considering the content of Section 10(2) (iii) of Act XVIII of 1960, it is necessary that certain objective standards have to be set up, before a tribunal or Court engaged, in the adjudication of rights of parties decisively concluded that the act complained of is or has to be characterised as one, impairing materially the value or utility of the building. Mere rendering of subjective opinion may not be of any avail unless such opinion is backed by expert evidence. In that case the Court considered whether the drilling of a hole in the roofing to instal a smoke pipe from the kitchen and cutting the parapet wall to the height of two feet in the terrace would amount to acts of waste. Considering the fact that this act will not in any way affect the material value or the utility of the premises this Court negatived the case of the landlord that the tenant is guilty of acts of waste. But in this case the documentary and the oral evidence let in before the Rent Controller clearly show that what the tenant did was not the mere replacement of the original roofing. A look into the photographs filed before the. Rent Controller and a reading of the Commissioner's report will clearly show that the tenant had made additional constructions so as to increase the, height of the wall and attempted to put up a new roofing viz., an asbestos roofing in the place of tiled one. Both the Courts below have come to the conclusion that increasing the height of wall will result in additional load on the existing walls which may crumble under the weight and the same will amount to an act of waste which will impair the value of the building. Further the construction is without obtaining a building licence from the municipality which is an offence under the Town Planning Rules and for which the landlord may be held liable. It is also in evidence that the constructions were

done during night time clandestinely and the landlord had resorted to police complaint to stop such construction. Considering all the aspects of the case the concurrent finding of both the Courts below that the additional constructions amount to an act of waste which will impair the value of the building is correct and no interference is called on this aspect.

8. The third point urged by the civil revision petitioner is that the finding that the premises in T. Section No. 396913 was put to different use other than the one, for which it was leased out is not correct., The case of the tenant is that from the inception he had been using the kitchen in the premises comprised in Schedule B and the rest of the portion for storing his business articles and as such there is no conversion by the tenant. From the evidence before the Rent Controller that the premises is a residential house with a kitchen and that the tenant had been residing in that house both the Courts below came to the conclusion that the purpose for which the premises was let out was a residential one. The case of the civil revision petitioner before the Rent Controller is that the premises had always been used for non-residential purposes, The civil revision petitioner relies upon the case reported in V. Balakrishnu Menon v. M.A.K. Govindan (1978) T.L.N.J. 364, where it has been laid down that in case of a building let out for residential and non-residential purposes, the dominant purpose for which the building was let out will be the criterion in granting reliefs contemplated under the Act. In the case reported in Busching Schmitz Private Limited Vs. P.T. Menghani and Another, , a case arising under Delhi Rent Control Ordinance XXIV of 1975, the Supreme Court observed that in construing the nature of the building the suitability of two premises for a particular purpose also will have to be taken into consideration. Relying on these cases it is contended on behalf of the landlord that the building was originally used for residential purpose and it was let out for residential purpose and in fact the tenant was actually residing in the premises and hence the present use of the premises by the tenant for non-residential purpose clearly amounts to an act of conversion of the user of the building from residential into non-residential purpose.

9. The evidence before the Rent Controller clearly shows that the building is a residential one and the same had been let out for residential purpose and there is also proof that the premises is now being used by the tenant for non-residential purpose. Considering the entire evidence it cannot be said that finding of both the Courts below that the tenant had put the building to a different use other than for which it was let out cannot be said to be incorrect.

10. In any event the concurrent finding on facts with reference to the question of act of waste and putting the premises to a different use other than for which it was let out, rendered by both the Courts below on evidence cannot be interfered with in revision. The civil revision petitioner has not succeeded in showing that the findings of both the Courts below on the above three points are in any way incorrect or perverse. Hence all the three contentions of the civil revision petitioner are negated and consequently the civil revision petition is dismissed.

There will be no order as to costs. The tenant is given six months time to vacate.