
(1999) 07 MAD CK 0014

In the Madras High Court

Case No : C.R.P. No. 1868 of 1999 and C.M.P. No. 10015 of 1999

R. Saroja

APPELLANT

Vs

N. Lokanatha Kanthan

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(2)(ii) (v), 11(4), 25

Citation : (1999) 07 MAD CK 0014

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Hema Sampath, for the Appellant; S. Subbaiah, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Tenant in R.C.O.P. No. 185 of 1988 on the file of Additional District Munisf's Court, Madurai Town is the revision

petitioner herein. Respondent herein as landlord filed eviction petition on the ground that tenant has committed wilful default in payment of rent from

the month of September 1987 to March 1988 for a period of seven months to the tune of Rs. 2,296/-. The agreed rent is Rs. 328/- payable

before 5th of succeeding English Calender month. Tenancy is oral. Tenant has taken lease of the premises for non-residential purposes.

2. Landlord also wanted eviction on the ground that tenant is causing nuisance to his neighbours and to his adjoining occupiers of the building.

Tenant is conducting onion business in the demised premises wherein he has stored decayed onions. The same is causing nuisance to other

occupants of the building and also to the neighbours. It is further averred that the building is absolutely necessary for his own occupation of his

office. At present he is utilising the office premises of his uncle and petitioner wants the building for his bona fide use.

3. Landlord issued a registered notice on 11.7.1986 asking petitioner to vacate the premises. It is also alleged that the tenant is having other

premises in Madurai where she is doing very same business. In spite of registered notice, tenant did not vacate and therefore another lawyer's

notice was issued on 5.3.1980 demanding arrears of rent and asking tenant to vacate the building by March, 1988. Tenant did not even send reply

nor complied with the demand, which necessitated filing of the eviction petition.

4. In the counter statement filed by the tenant it is alleged that the scheduled holding was taken on rent for doing onion business under the name

and style "R.Balamurugan & Co." and the agreed rent is Rs. 328/-. The allegation that tenant has defaulted in payment of rent is denied. He was

never indifferent in paying rent. It is said that Landlord used to come and collect rent at his convenience either personally or through his father or his

agent since landlord is owning several buildings in Madurai Town"" The contention that the rent for the month of August 1987 was paid only on

4.1.1988 is denied. It is said that the rent for August 1987 was paid in September 1987 itself but the receipt was issued only on 4.1.1988. She

also denied having committed default in paying rent. She further said that she paid rent upto February 1988, but landlord has not issued receipt

from September 1987 to February, 1988.

5. The allegation that tenant has committed nuisance is also denied. She also denied the allegation that landlord requires the scheduled building for

his own occupation.

6. On the above pleadings. Rent Controller took oral and documentary evidence. Exs.A1 to A13 were marked on the side of landlord and

landlord was examined as P.W.I. As against the said evidence, tenant's husband got himself examined as DW1. No documentary evidence was

produced on behalf of the tenant.

7. Rent Control Court, after elaborately discussing the entire evidence came to the conclusion that the tenant has committed wilful default in paying

rent. The contention that the rent for August 1987 was paid in time and the receipt was issued only on 4.1.1988 was found to be false and it

further found that tenant paid rent for the month of August 1987, only on

4.1.1988. It also came to the conclusion that tenant has always violated the terms of tenancy and never punctual in paying rent. Rent Controller also took note of the conduct of tenant during the pendency of the proceedings, that rent was paid only when landlord filed application under Sec. 11(4) of the Act. Trial Court further found that once tenant's case was found to be false and he has been habitual defaulter, he is to be termed only as wilful defaulter and liable to be evicted. With regard to the claim of eviction on the ground of nuisance and bona fide own occupation of landlord. Rent Controller did not find favour with him and refused eviction on the ground.

8. Against the order of Rent Controller tenant had preferred R.C.A.96 of 1996 on the file of Appellate Authority/Principal Subordinate Court, Madurai. Landlord also canvassed the correctness of the finding that went against him. Appellate Authority did not think of discharging the finding of the Rent Controller and confirmed all the findings of Rent Controller. Consequently the appeal was dismissed.

9. The concurrent findings of authorities below are challenged in this revision by the tenant.

10. Since landlord also entered caveat, I heard the entire revision at the admission stage itself. Landlord canvassed the correctness of those findings against him in refusing eviction.

11. I will first consider the contention of landlord whether he is entitled to get eviction on the ground of nuisance and whether the building is required for his bona fide own occupation?

12. u/s 10(2) (ii) (v) of the Tamil Nadu Buildings (Lease and Rent Control) Act, landlord is entitled to get possession of the building if tenant has been guilty of such acts conduct which are a nuisance to the occupiers of other portions in the same building or of buildings in the neighbourhood.

A similar provision under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, came for consideration before the Honorable

Supreme Court, which is reported in 1988 AIR SCW 3802 Rafat Ali Vs. Sugni Bai and Others, Clause (iv) of Section 10(2) of Andhra Pradesh

Act enables landlord to get possession if the tenant has been guilty of such Acts and conduct which are a nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood. Interpreting that

section, their Lordships considered what is meant by nuisance and when cause of action arises for landlord to get possession. In para 13 to 16 of the Judgment, their Lordships held thus,

13. Though the word "nuisance" is not defined it can be inferred from the context that what is meant therein is the actionable nuisance which is recognised in common Law. Nuisance as understood in law is broadly divided into two clauses-public nuisance and private nuisance. The former consists of some acts or omissions which result in violation of rights which one enjoys in common with other members of the public. But the latter i.e., private nuisance, is one which interferes with a person's use and enjoyment of immovable property or some right in respect of it.

13. In Halsbury's Laws of England (Vol.34 of the fourth edition at page 102) essentials of common law of nuisance are mentioned as under:

309: Both unlawful act and damage necessary. In order to constitute a nuisance there must be both (1) an unlawful act, and (2) damage, actual or presumed. Damage alone gives no right of action; the mere fact that an act causes loss to another does not make that act a nuisance.

For the purposes of the law of nuisance, an unlawful act is the interference by act or omission with a person's use or enjoyment of land or some right over or in connection with land.

14. Suffering of damage must be proved in a case of nuisance unless it can be presumed by law to exist. But the damage to amount to actionable nuisance must be substantial or at least of some significance. In other words, if the damage is insignificant or evanescent or trivial it would not be actionable nuisance. The following passage in para 312 of the same volume in Halsbury's Laws of England is worth extracting in this context:

312. Damage essential. Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in which it is presumed by law to exist.

The damage need not consist of pecuniary loss but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or damage that is merely temporary, fleeting or evanescent.

15. It is clear from clause (iv) of Section 10(2) of the Act that what is envisaged therein is only private nuisance and not public nuisance. This can be discerned from the words "nuisance to the occupiers of other portions in the

same building or buildings in the neighbourhood.

Perhaps in a wide sense any industrial activity may create some sound while such activities are in operation. Such sound may be uncomfortable to

those who are over sensitive to such noise. But then care must be taken because every inconvenience cannot become actionable nuisance. To

make it actionable the nuisance must be of a reasonably perceptible degree as pointed out earlier.

(Emphasis supplied)

16. In this case it is admitted that the building was taken on rent for the purpose of conducting onion business. It is the case of landlord that tenant

has stored-decayed onion emitting foul smell in the demised premises. It is also said that the tenant is keeping onions in the adjoining portions

causing nuisance to the other portions in the very same building and also to the neighbours. It is also stated that landlord has been receiving

complaints from various quarters and municipal authorities also warned respondent on several occasions of his unlawful act of storing decayed

onion causing inconvenience and detriment to the rights of neighbours and other tenants.

17. It cannot be said that tenant has committed any unlawful act while doing business in onion. The very building was taken on rent only for that

purpose. Landlord has also not examined any other independent witness to show that due to the business conducted by tenant in the scheduled

premises, the occupants of other portions of the building or neighbours are put to inconvenience. To have cause of action to get eviction under that

head, the damage caused must be material or substantial. Mere inconvenience to neighbours is not cause of action to get eviction. It is also not

proved that landlord or the other occupants of the buildings are not in a position to enjoy the land or there had been inconvenience for their

enjoying their property due to the alleged obnoxious smell by way of onion business. Learned counsel submitted that local authorities have taken

action against the tenant. In this case we are concerned only about the private nuisance and how far it is actionable. The finding of the authorities

below are based on evidence and on going by the evidence in the case. I do not think that authorities below went wrong in rejecting the claim of

landlord to get eviction on the ground of nuisance.

18. Reliance was placed by learned counsel on the decision reported in A. Doss Arockianathan Vs. S. Rita, and it was contended that the

nuisance need not be within the premises and even if the nuisance is outside the premises, landlord is entitled to get possession. In view of the

interpretation given by Honourable Supreme Court, I do not think that the above decision has any relevance in this case. Apart from the same,

learned Judge held that the nuisance is "Public Nuisance". Honourable Supreme Court has said that the nuisance contemplated under Rent Control

Act is private nuisance.

19. The other claim for eviction by landlord was that he needs the building for his own occupation, i.e.. he wants to have his office in the scheduled

premises. The allegation is that landlord is having various buildings in the town and unless he has an office and staff, he will not be in a position to

collect rent from various tenants and maintain the buildings, etc.

20. Both the authorities below did not believe the case of landlord. It is admitted by landlord himself that the upstairs portion of the building is

vacant, having larger area and the same was let out to other persons. If landlord bona fide wants to have an office of his own, nothing prevented

him from occupying that portion. In this connection, in the eviction petition, landlord did not say anything about his possession of any other

buildings. In chief examination also he did not say anything about his possession of other buildings. Only when he was cross examined, he admitted

having let out the upstairs, portion to a third party. In reexamination landlord said that the building was inconvenient and therefore he did not occupy

it. Taking these facts and circumstances. Rent Controller was justified in holding that the claim of landlord is not bona fide. Appellate Authority also

confirmed the view of the Rent Controller. The concurrent findings of the authorities below are not liable to be disturbed and I find no irregularity,

impropriety or illegality in those Orders.

21. Now I come to the revision filed by the tenant whether he is liable to be evicted on the ground that he has committed default in payment of rent

and the default is wilful.

22. In S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, , their Lordships considered the question, "what is meant by wilful

default"? In para 25 of the Judgment, their Lordships said thus,

25. Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by "the Act or by other Acts referred to above.

(Emphasis supplied)

23. The allegation in the eviction petition is that the tenant has committed default in paying rent from September 1987 to March 1988 and the amount of Rs. 2,2967- is due. It is also averred in the eviction petition that the rent for the month of August 1987 was paid only on 4.1.1988. It is also said in the eviction petition that the tenancy is according to the English Calendar month and the monthly rent is to be paid on or before 5th of every succeeding month.

24. Regarding the rate of rent and the allegation that the rent will have to be paid on or before 5th of every succeeding month is not disputed by tenant in her counter-statement. In the counter statement she has said that landlord used to collect the rent according to his convenience either personally or through his father or agent since petitioner is having several buildings in Madurai town. She also contended that she has paid the rent till February, 1988 and landlord has not issued receipts.

25. The concurrent findings of courts below is that this case of tenant is false and she never paid rent in September, 1987. It is further found by Rent Controller and confirmed by the Appellate Authority that the rent of August 1987 was paid only on 4.1.1988 and landlord was also in the habit of issuing receipt as and when rent is paid.

26. Tenant in her evidence through DW1 stated that whenever rent is paid, the same is entered in the accounts. If in fact rent for September 1987 till February 1988 was paid, the relevant accounts would have been produced. For reasons better known to tenant, the same was not produced. It may also be stated that it is not the first instance that tenant has committed default. On earlier occasions also in the year 1986, tenant had to be

reminded of her obligation of paying rent. On 5.3.1988 also notice was issued for which no reply was sent. Ex.A2 notice was dated 5.3.1988 and

eviction petition was filed on 22.4.1988. Nearly 1-1/2 months time was available for tenant to send reply.

27. Even after eviction petition was filed, tenant did not think of paying rent. Landlord was compelled to file I.A.379 of 1988 u/s 11(4) of the Act.

On receipt of notice, tenant paid a sum of Rs. 1,312/- towards rent. On that date when application was filed, more than Rs. 4,592/- was due.

Landlord after receiving part payment, wanted to get the order from Court and Rent Controller directed the tenant to pay balance. Thereafter, a

sum of Rs. 2,952/- was paid. Even thereafter, tenant did not think of paying rent punctually. Landlord again filed I.A.610 of 1989 complaining that

tenant has committed wilful default in paying rent from October 1988 to October 1989 and a sum of Rs. 4,920/- was payable. That application

was filed on 8.11.1989. In the counter statement, tenant contended that she is not wilful defaulter and she is regularly depositing rent before the

Court. The contention that she has been depositing rent in the Court was a false statement. That could be seen from the affidavit of tenant filed on

25.6.1990. In para 3 of the affidavit she has stated thus,

3. I respectfully submit that during the pendency of I.A. No. 610 1989 I had paid a sum of Rs. 984/- to the respondent's Advocate and also

obtained receipt. Subsequently on 23.4.1990 this Honourable Court had passed a conditional order directing me to deposit the arrears of rent of

Rs. 4,920/- which is calculated upto March 1990. This Honourable Court directed me to pay the arrears of rent on or before 25.6.1990 failing

which the usual default clause operates and L.A. No. 610/1989 is posted to 26.6.1990.

Along with the affidavit, she filed an application seeking that she may be given extension of time for complying with the order in I.A.610 of 1989. It

is alleged therein that since tenant was engaged in her daughter's marriage, she could not comply with the orders of Rent Controller.

28. Landlord again moved an application u/s 11(4) of the Act in I.A.525 of 1990, again complaining about the rent arrears of April 1990 to June

1990 for a period of three months. Only after getting the order of Court, tenant thought of paying the rent. In the counter affidavit to I.A.525 of

1990, tenant again asserted that she has paid the rent regularly and she is not a defaulter. This is also a false statement to her knowledge. The

matter did not end there. Poor landlord again had to come to Court with another application in 1.A.224 of 1991 on 22.4.1991 alleging that the

rents from December 1990 to March 1991 for a period of four months are still in arrears and tenant is not paying rent in time. Even though such

application was filed on 22.4.1991, the amount was paid only on 22.7.1991 as could be seen from the counter statement of tenant. Thereafter,

I.A.216 of 1993 was filed by landlord again complaining to the court about the arrears of rent from August 1992 to May 1993 and the rent arrears

was Rs. 3,280/-.

29. I have narrated the history. Landlord was compelled to move Court every now and then to get the rent collected from the tenant. Unless an

application u/s 11(4) of the Act was filed tenant was not in the habit of paying rent. That is her habit during the pendency of the proceeding. Before

eviction petition was filed, a false contention was taken that she has already paid the rent and landlord has not issued the receipts. The finding of

the authorities below is that what she stated is false.

30. Taking into consideration the conduct of the tenant for years together. I think that the authorities below are justified in holding that the tenant is

a wilful defaulter. In this case, under Ex.A2. a notice was issued demanding rent for which no reply was sent. A false contention of discharge was

pleaded. On the basis of S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, , this Court is of the view that the finding of the

authorities below that petitioner is a wilful defaulter is only to be confirmed. When the contention of tenant is found to be false, the only other

finding that could be entered is that she is a "wilful defaulter". I have already said that in the eviction petition itself landlord admitted that the rent has

to be paid on or before 5th of succeeding month and when DW1 was examined, he also admitted, that is the term of tenancy. The conduct of

tenant shows that she was never in the habit of paying rent on the due dates.

31. Learned Counsel for petitioner relying on the decision reported in K.A. Ramesh and Others Vs. Smt. Susheela Bai and Others, submitted that

she cannot be termed as "wilful defaulter". Counsel also stressed on para 6 of the said Judgment, I do not find any merit in the submission and I do

not think that the said decision is in any way helpful to petitioner. In the case before Honourable Supreme Court, landlord issued a notice

demanding arrears of rent and before eviction petition was filed, tenant tendered entire rent by demand draft which was refused to be accepted.

Tenant was also not in the habit of paying rent regularly and when notice was issued, entire rent was tendered. In para 6 of the Judgment, the

argument of the learned counsel for respondent before Supreme Court was met. The argument before Honourable Supreme Court was that during

the pendency of the proceedings tenant committed wilful default and he was not in the habit of paying rent. Their Lordships said that the purpose of

Section 11(4) is entirely different and if any such application is filed u/s 11(4), tenant is also getting an opportunity to explain as to why he did not

pay rent and why he is not liable to pay rent or deposited rent as directed by the Rent Controller. Landlord has no cause of action even to file

application and there is no scope of taking advantage by filing application, was the decision of the Honourable Supreme Court.

32. I do not find anything in favour of petitioner in the above decision. The facts and circumstances herein are entirely different. Landlord had cause

of action on the date of petition and that cause of action continued even thereafter till eviction Order was passed by Rent Controller. I do not find

any merit in the submission of learned counsel for petitioner.

33. The question whether tenant is a defaulter and also wilful defaulter is based only on appreciation of evidence. It is clear from the facts of the

case that tenant wanted landlord to knock at his doors and come with begging bowl for getting the rent and only when repeated demands are

made tenant paid the rent. If that is the attitude of the tenant, can he simply relieve himself of the liability stating that he is only "defaulter" and not

"wilful defaulter" I do not think that there is any enquiry in favour of tenant. As was held by Honourable Supreme Court in the decision reported in

N.S.M. Ahmad Jamalia Beevi Vs. D.N. Shah, N.S.M. Ahmad Jamalia Beevi v. D.N. Shah), equitable considerations have no place in a case like

the present one and that too in the face of the express violation of the rental arrangement especially taking into consideration the conduct of the

tenant.

34. Learned counsel for petitioner has no case that Rent Controller or Appellate

Authority have misstated the facts nor am vital piece of evidence

was omitted to be considered, or any piece of evidence which is irrelevant was given importance in coming to the conclusion against tenant.

Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is only revisional jurisdiction and the power of this Court is also very much

limited. In para 7 of the Judgment in Rafat Ali's case (3998 AIR SCW 3802 cited supra). Honourable Supreme Court held thus,

7. The application given to the Section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of

supervision. It is well nigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for

and examine the records for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the Order of the lower

authority. Even such a widely worded frame of the Section may at best indicate that the revisional powers are not so restricted as in the enactments

wherein the words are not so widely famed. Nonetheless, they remain in the realm of supervisory jurisdiction. In a recent decision we had occasion

to consider the scope of revisional jurisdiction under certain Rent Control enactments vide Sarla Ahuja v. United India Insurance Company

Limited, 1998 (7) JT (SC) 297: (1998 AIR SCW 3451). Reference was then made to a decision wherein similar words used u/s 25 of the Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960 were considered (vide Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy

Chettiar, . A two Judge Bench has observed therein that ""despite wide language employed in the section, the High Court quite obviously should not

interfere with the findings of fact merely because it does not agree with to the finding of the subordinate authority."" After adverting to it, we have

stated in Sarala Ahuja:

The High Court in the present case has reassessed and re-appraised the evidence afresh to reach a different finding as though it was exercising

revisional jurisdiction, a re-appraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion

arrived at by the fact finding Court is wholly unreasonable.

In the result, I do not find any merit in this revision and consequently, the same is dismissed. No costs. C.M.P. No. 10015 of 1999 is also

dismissed.

After pronouncing the order, counsel for petitioner sought time to surrender vacant possession of the buildings. Learned counsel for respondent

was also heard. Taking into consideration the facts and circumstances of the case, i feel that three months time could be given to surrender vacant

possession, provided petitioner files an undertaking before this Court that he will vacate the premises unconditionally, and without letting the

building to any person, within three months from this date. Arrears of rent, if any, as on date will have to be paid within a period of 10 days. Future

rent as and when it becomes due to be paid within the due has to be paid within the due date as per the rental arrangement. Failing to file

undertaking within 10 days or non-payment of arrears of rent or violation of undertaking in not paying rent within due date, landlord is entitled to

get possession of the building.