
(2012) 11 MAD CK 0083

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 538 of 2009 and M.P. (MD) No. 1 of 2009

Raja D. Sundar Singh

APPELLANT

Vs

Sundaraselvi and Alamelu

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

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

Citation : (2012) 11 MAD CK 0083

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : D. Rajkumar, for the Appellant; D. Nallathambi for R1 and No appearance for R2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G. Rajasuria

1. The epitome and the long and short of the relevant facts absolutely necessary and germane for the disposal of this Civil Revision Petition would

run thus:

The parties, for the sake of convenience, are referred to hereunder as landlords and tenant. The landlords filed R.C.O.P. seeking eviction of the

tenant invoking Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground of personal occupation, so to

say for Sundaravalli, the first petitioner, being the daughter of the second petitioner and one of the landlords, for carrying on her business in

pharmacy in that demised premises which is being used by the tenant as a T.V. mechanic shop. The tenant resisted the application.

Up went the trial, on the side of the landlords, the first petitioner-Sundaraselvi

examined herself as P.W. 1 and Exs. P1 to P5 were marked and on

the side of the tenant, he was examined himself as R.W. 1 and one Jeevanandam was examined as R.W. 2, but no documents were marked.

Ultimately, the Rent Controller ordered eviction. Whereupon, the appeal was preferred for nothing but to be dismissed confirming the order of

eviction passed by the Rent Controller, over which the present Civil Revision Petition has been filed on various grounds.

2. The learned counsel for the Revision Petitioner, placing reliance on the grounds of revision, would put forth and set forth his arguments, which

could succinctly and precisely be set out thus:

It is a common garden principle that for running a pharmacy shop, there should be at least 120 sq. ft. of space. However, admittedly the available

place in the demised premises is almost 30 sq. ft. only. Over and above that, the landlords are having adjacent vacant area and they could very

well carry on business in that place. In such a case, invocation of Section 10(3) (a)(iii) of the Act is a well-nigh impossibility. If at all their case is

genuine, they have to invoke Section 10(3)(c) of the Act, but they have not done so. The oral evidence adduced on the side of the landlords would

portray that the landlords' requirement for running pharmacy business is nothing but a stooge to evict the tenant by hook or by crook. No evidence

has been produced in connection with the business of the landlady, viz. the first petitioner in RCOP. Wherefore, the learned counsel would pray for

setting aside the orders of both the Courts below.

3. Per contra, in a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the tenant, the learned Counsel for the

landlords would pyramid his arguments; warp and the woof of the same would run thus:

Ex. P4 is the copy of the Diploma obtained by the first petitioner-landlady that she is a qualified person to run a pharmacy. Regarding the

sufficiency of space is concerned, there is nothing found pointed out that in the demised premises, the pharmacy could not be run. Even for

argument's sake, it is taken that some more space would be required for running that business, yet the landlady is having her adjacent area, and

she will utilise it for supplementing the space for her business and it is none of the business of the tenant to dictate terms. There is nothing on record

to indicate that the petitioner could use the first floor above the demised premises which is on the ground floor, for business purpose. In such a case, the tenant cannot dictate terms to the landlady that she could have the pharmacy in the first floor which is above the demised premises.

Accordingly, the counsel would pray for the dismissal of the Revision.

4. The points for consideration are:

1) Whether in the facts and circumstances of the case, Section 10(3)(a)(iii) or Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960, has to be invoked?

2) Whether the finding of both the Courts below that the requirement of the demised premises by the landlady for running the pharmacy business is

a bona fide one, warrants interference on the ground of perversity or illegality?

5. Both the points are taken up together for discussion. The learned counsel for the tenant would cite the decision of this Court in M. Navamani

Vs. A.S.A. Arumugham, would like to highlight and spotlight that the dictum as found embedded in the above decision is no more good law, as per

the decision of the Hon'ble Apex Court in Kanniammal Vs. Chellaram,

6. A mere running of the eye over the decision of the Hon'ble Court in Kanniammal's case, cited supra, would exemplify and demonstrate the

point that though the landlady might be in occupation of a portion of the building for residential purpose, yet if the eviction of the tenant is sought

from another portion of the same building for non-residential purpose, then in that case, Section 10(3)(a)(iii) could rightly be invoked and not

Section 10(3)(c) of the Act. Here is a case where the landlady approached the Court with a specific plea that the demised premises is a non-

residential shop and it is required for running her pharmacy business. During cross-examination of P.W. 1(landlady), as well as the cross-

examination of R.W. 1 (tenant), the fact stood transpired to the effect that the first floor above the demised premises is not in use as non-residential

premises or shop premises. In fact, during cross-examination, R.W. 1 specifically took up a plea that it is used by the landlady for residential

purpose. If that is the position, Section 10(3)(a)(iii) is squarely applicable and the tenant cannot contend that the first petitioner-landlady could have

the pharmacy shop in the first floor above the demised premises.

7. As regards the space crunch as pleaded by the tenant for the landlady to run the pharmacy business is concerned, I would like to point out that the landlady properly replied to it during the enquiry that the adjacent building to the demised premises also belongs to the very same landlady and in such a case, she could take such additional space also for running the pharmacy business. Hence I am of the considered view that it is the look out of the authorities concerned to deal with such matters and it is not for the tenant to non-suit the landlady by pleading space crunch for running pharmacy business by her. As such, both the Courts below, based on facts, properly came to the conclusion by rejecting the plea of the tenant, warranting no interference in revision. Therefore, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs. On hearing the pronouncement of the order, the learned counsel for the petitioner/tenant would submit that six months' time might be granted to vacate the premises. I am of the view that granting of six months time for vacating the premises would be just and proper, but subject to the condition that the tenant shall pay the rent regularly without any default and after expiry of the period of six months, he shall vacate the premises and peacefully hand over it to the landlords. An affidavit shall also be filed by the tenant to that effect within fifteen days from today. I also make it clear that the tenant shall vacate the premises on or before 20th May 2013.