

(2007) 03 MAD CK 0128

In the Madras High Court

Case No : C.R.P. (NPD) No. 4108 of 2001

Rasi Silks and K. Arunachalam

APPELLANT

Vs

T.A. Venkatachalam and Others

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 25

Citation : (2007) 3 CTC 152 : (2007) 3 LW 61 : (2007) 3 MLJ 998

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : A.K. Kumarasamy, for the Appellant; P. Valliappan, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenge in this Revision Petition is to the Order of eviction u/s 10(3)(c) of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960, [for short, "the Act"], on the ground of additional accommodation.

2. The demised premises relates to Old D.No. 163 and present D.No. 1497, Mettur Road, Erode. Revision Petitioners/ Tenants are running a textile showroom in the ground floor of the said building. Landlords are running a hotel in the building. According to the Respondents/landlords, they are running business partnership and the said firm is running Brindavan Hotel in a portion of Old D.No. 163 and they bonafide require the tenanted premises by way of additional accommodation for the hotel business. Stating that hotel business is expanding and it will be highly advantageous for the landlords, landlords filed Eviction Petition u/s 10(3)(c) of the Act.

3. Revision Petitioners/Tenants resisted the Petition contending that portion in occupation of the Tenants is an independent portion. The Tenants have further pleaded that there is huge vacant space of two acres behind the building and the landlords could very well utilize the same and requirement for additional

accommodation is not bonafide and Eviction Petition is filed with ulterior motive to increase the rent.

4. Finding that no acceptable evidence has been adduced showing that landlord is desirous of expanding the hotel business and observing that available vacant space is sufficient for running the hotel, Rent Controller dismissed the Eviction Petition.

5. Observing that landlords have established their bonafide requirement for additional accommodation and that no greater hardship would be caused to the Tenant and pointing out that the premises is opposite to the bus stand, which is developing, Appellate Authority reversed the finding of Rent Controller and ordered eviction.

6. Assailing the impugned Order of eviction, the Learned Counsel for the Revision Petitioners/Tenants has contended that absolutely there was no pleading or evidence showing relative hardship. It was further contended that relative hardship could be decided only on the basis of facts, which is absent in the pleadings and in the evidence. It was further submitted that relative hardship was not decided by the Appellate Authority, which vitiates the Order of eviction u/s 10(3)(C) of the Act. The Learned Counsel further urged that Appellate Authority erred in placing burden of proof upon the Tenant to prove his relative hardship.

7. Drawing attention of the Court to the pleadings and evidence, Learned Counsel for the landlords contended that the landlords' requirement for additional accommodation is bonafide and that Appellate Authority, after following the procedures has rightly allowed the appeal filed by the landlords and ordered eviction on the ground of additional accommodation. The Learned Counsel further argued that the Tenants have neither pleaded nor proved their relative hardship that will be faced by them and prayed to confirm the Order of eviction.

8. I have carefully examined the records and contentions of both parties.

9. Landlords require the tenanted premises for additional accommodation on the ground that it will be highly advantageous for the landlords to have that portion for expanding their hotel business. The Petition for eviction on the ground of additional accommodation must be filed in accordance with the provisions contained u/s 10(3)(c) of the Act. In a Petition for eviction filed u/s 10(3)(c) of the Act, the landlord should clearly state that he requires the Petition premises by way of additional accommodation.

10. While dealing with the question of eviction of Tenant on the ground of requirement of additional accommodation u/s 10(3)(c) of the Act, considering the proviso under Cl."c" to Section 10(3), Controller shall reject the application if he is satisfied that the hardship which may be caused to the Tenant by granting it, will outweigh the advantage to the landlord. B. Kandasamy Reddiar Vs. O. Gomathi Ammal, ; R. Krishnaswamy Vs. N. Arumugam, .

11. In order to decide the question of hardship, there must be proper pleadings in the Petition. The Learned Counsel for the Tenants contended that the Petition u/s 10(3)(c) of the Act contains no averment with regard to the hardship, as contemplated under the proviso to Section 10(3)(c) of the Act and hence, the Order of eviction is unsustainable. In support of his contention, the Learned Counsel placed reliance upon T.S. Sethuraman Vs. J. Nagalakshmi and Another, . Holding that for maintaining Petition u/s 10(3)(c), relative hardship should be pleaded and established, in the said decision, Justice K. Govindarajan, has held as follows:

10. The relative hardship can be decided only on the basis of the facts which should be available in the pleadings and in the evidence. So, only on the basis of the said pleadings and evidence, the Rent Controller can satisfy that the hardship to be caused to the Tenant by granting eviction would outweigh the advantage to the landlord and on that basis the Eviction Petition has to be selected. So, this crucial aspect could be characterized as a special instance in the matters arising out of Section 10(3)(c) of the Act. There should be a categorical finding by the statutory authorities that the hardship which may be caused to the Tenant by granting the Decree for eviction would outweigh the advantage to the landlord. Such a special prescription has been specifically provided for as to avoid the unnecessary hardship to the Tenant. Therefore it has become imperative for the authorities under the case arising to of Section 10(3)(c) of the Act to give a specific finding whether the hardship which the Tenant is likely to suffer would outweigh the advantage to the landlord or vice-versa. Unless it is decided by the authorities, the enquiry in regard to the Petition arising u/s 10(3)(c) of the Act is vitiated.

12. In cases arising u/s 10(3)(c) of the Act, certain stated considerations arise, besides normal features which usually come up for decision in Courts, in the matter of acceptance or rejection of application for eviction filed by landlords. Holding that the crucial aspect is a special instance in matters arising u/s 10(3)(c) of the Act and that there should be a categorical finding by the statutory authorities on hardship that may be caused to the Tenant by granting it, will outweigh the advantage to the landlords in K.A. Loganatha Naicker Vs. S.R. Balasundaram Mudaliar, , it was held thus:

It is imperative for the authorities in cases arising u/s 10(3)(c) of the Tamil Nadu Act [XVIII of 1960], to give specific finding whether the hardship the Tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the statutory authorities, there is no complete enquiry as contemplated in respect of the Petitions arising u/s 10(3)(c) of the Act.

13. The Learned Counsel for the Revision Petitioners/ Tenants has contended that the case of the landlord should fail because they have not at all pleaded in the Eviction Petition about the relative hardship that would be caused to the parties nor proved the fact that relative hardship would be more on their part than on

the part of the Tenant. In Paragraph No. 7 of the Petition, landlords have stated that their hotel business is expanding and it will be advantageous for the Petitioners to have the Petition mentioned building and that Respondents will not be put to any hardship. I find there is no death pleading on the aspect of relative hardship.

14. In his evidence, fourth Petitioner, who examined himself as PW-1 has stated that the premises is situated opposite to bus stand and the people who come to bus stand and landlord's lodge throng the hotel and the available space is not sufficient and therefore, the landlords require the demised premises as additional accommodation. PW-1 has denied the suggestion that open space available could be used for expansion of the hotel business. The conclusion of the Rent Controller that the landlord has admitted the availability of open space is perse erroneous.

15. It cannot be said that there is lack of pleading and evidence about relative hardship. In any event, merely because lack of pleadings and vague pleadings about relative hardship, it cannot be said that Eviction Petition is not maintainable. By a reading of evidence of parties, it is seen that the parties have understood the case and adduced evidence and the contention of lack of pleadings cannot be countenanced.

16. Referring to the decision Ram Narain Arora Vs. Asha Rani and Others, , it was held that the application for eviction cannot be rejected merely on the ground of lack of pleadings. Though the Tenant adduced evidence regarding relative hardship, the Rent Controller did not enter into any finding. However the Appellate Authority has clearly found that the Tenant will not be put to any hardship and that the landlord's requirement is bonafide and that the landlord would be put to greater hardship if eviction was not ordered. Even though the landlady did not plead relative hardships, the parties understood the case and adduced evidence. Landlady also claiming that she was ill and could not claim stairs. In such circumstances, the application cannot be rejected on the ground of lack of pleadings or vagueness of pleadings.

17. In 2001 (3) CTC 206 [Karur Ghee Stores rep. By Perisamy v. N. Palaniappa and Anr.], the Court has held that lack of pleadings regarding relative hardships is not material if the parties are aware of the issue involved. Mere technicalities should not come in the way of giving effect to logical conclusion.

18. Evidence of PW-1 sufficiently establishes the advantage which the landlords may get by seeking an Order of eviction. With the evidence of PW-1 burden cast upon the landlord is discharged and the burden shifts to the Tenants to establish their hardship. In the counter, Tenant has not raised any plea about the relative hardship and apart from bare denial, Tenants have averred that demand for additional accommodation is made only with some ulterior motive to collect enhanced rent and the demand is not bonafide. Likewise, absolutely there is no evidence regarding relative hardship that might be caused to the Tenants if they

are evicted.

19. The main contention of the Tenants is that the Appellate Authority has not at all considered the hardship to the Tenants and erroneously placed the burden of proof upon the Tenants and on that score, eviction Order is vitiated. The Learned Counsel for the Revision Petitioners further argued that the Appellate Authority committed serious error in placing burden upon the Tenants to prove relative hardship. When there is neither pleading regarding hardship nor evidence by the Tenants, after being satisfied that hardship that would be caused to the landlord would outweigh the hardship to the Tenants, Appellate Authority has rightly ordered eviction.

20. Initial burden lies only on the landlords to establish their advantage. With the evidence of PW-1, initial burden was discharged. Then the Tenant ought to have adduced evidence to establish their hardships. In the absence of pleadings or evidence by the Tenants, Appellate Authority has rightly observed that the Tenants have not adduced evidence on the aspect of relative hardship.

21. Contention of Tenant is that the landlords can expand the hotel business on the open space available, which is abutting the premises. In his evidence, PW-1 has stated the open space cannot be utilized for running the hotel. It is well settled that the landlord can choose the portion required and it is not for the Tenants to dictate terms. In 1999 (I) MLJ 233 [Mookkan v. Abdul Rasheeth [deceased] and Ors.], this Court has held that the landlord can choose the portion required and it is not for the Tenant to dictate terms. It is not the object of the provision to weigh the hardship of the Tenant as against the test of the landlord on a delicate scale, giving the benefit of the slight tilt in favour of the Tenant.

22. In consideration of the pleadings and evidence, Appellate Authority rightly found that relative hardship of the landlords would outweigh that of Tenants and upon satisfied of the bonafide requirement, has reversed the finding of Rent Controller and ordered eviction. Eviction cannot be disallowed mainly because Tenants may have to vacate the premises. The Order of Appellate Authority does not suffer from any perversity or illegality, calling for interference, exercising revisional jurisdiction u/s 25 of the Act.

23. In the result, the Revision Petition is dismissed, confirming the Order of the Principal Subordinate Judge [Rent Control Officer], Erode made in R.C.A. No. 3/2001. No costs. Three months time is granted for vacating.