

**(2008) 08 MAD CK 0067**

**In the Madras High Court**

**Case No :** Civil Revision Petition (NPD) No. 1755 of 2008 and M.P. No. 1 of 2008

S. Ekanathan

APPELLANT

Vs

D. Balwant Singh (Deceased) rep. by its Legal  
Representatives Indira Devi and Others

RESPONDENT

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**Date of Decision :** 19-08-2008

**Acts Referred:**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(2), 10(3)

**Citation :** (2009) 1 CTC 65 : (2008) 4 LW 1063 : (2009) 1 MLJ 400

**Hon'ble Judges :** S. Tamilvanan, J

**Bench :** Single Bench

**Advocate :** C. Ramesh, for the Appellant; S. Thiruvengadam, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

S. Tamilvanan, J.—This Civil Revision Petition has been preferred against the Order, dated 18.02.2008 made in R.C.A. No. 677 of 2003 on the file of the Rent Control Appellate Authority/VIII Judge, Court of Small Causes, Chennai, confirming the Order and Decretal Order, dated 30.06.2003 made in R.C.O.P. No. 1230 of 2000 on the file of the Rent Controller/XIII Judge, Court of Small Causes, Chennai.

2. It is not in dispute that the petitioner in the R.C.O.P, Balwant Singh was the original owner of the property and he filed the R.C.O.P for eviction of the tenant, the revision petitioner herein, u/s 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The learned Rent Controller, ordered eviction, based on the evidence and the arguments advanced by both the learned Counsel. Aggrieved by which, the revision petitioner/tenant preferred appeal in R.C.A. No. 677 of 2003. During the pendency of the R.C.A, Balwant Singh (landlord) died. His Legal Representatives, respondents 1 to 9 were brought on record, as per procedure. The learned Rent Control Appellate Authority, by Judgment, dated 18.02.2008 has confirmed the order of eviction recorded by the learned Rent Controller and dismissed the appeal. Aggrieved by which, this Civil

Revision Petition has been preferred by the revision petitioner/tenant.

3. Mr. C. Ramesh, learned Counsel appearing for the revision petitioner contended that the Court below, without appreciating the evidence properly has ordered eviction against the revision petitioner u/s 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The learned Counsel further contended that the original landlord, late Balwant Singh had sought for eviction, on the ground of owners occupation for the purpose of carrying on hotel business along with his son Inderjit Singh. The aforesaid Inderjit Singh was examined as P.W.1. As per the evidence deposed by P.W.1, there was no other building owned by late Balwant Singh or his son P.W.1 to carry on their hotel business and that they were running their hotel business in a rented premises.

4. As per M.P. No. 700 of 2007 filed by the ninth respondent herein in R.C.A. No. 700 of 2007 to receive additional documents, it was brought to the notice of the Court below that late Balwant Singh had settled the petition premises in favour of his son, the ninth respondent herein, by way of settlement deed, dated 26.06.2002 and the other respondents do not have any interest in the petition mentioned premises and that the settlement deed was marked as an Exhibit. The learned Counsel appearing for the revision petitioner contended that as per the evidence of P.W.1, only Inderjit Singh was running the hotel business along with his father, late Balwant Singh.

5. It is not in dispute that the Rent Control Original Petition was filed u/s 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. As contended by the learned Counsel appearing for the revision petitioner, in the Original Petition, the petitioner has averred that he was about 83 years old running hotel business in a rented premises at NSC Bose Road, Chennai-1, which is in-sufficient, as the same is measuring about 50 sq.ft and the petitioner finds it very difficult to carry on his business in the small rented premises. He has further averred that he requires the petition mentioned premises under the occupation of the respondent for the bonafide purpose of carrying on hotel business along with his son Inderjit Singh.

6. According to the learned Counsel appearing for the revision petitioner, as per the aforesaid averments and the evidence of P.W.1, the ninth respondent, Lalith Singh, another son of the deceased Balwant Singh is entitled to the property, based on the settlement deed, referred to above, hence, he cannot maintain the Rent Control Appeal for evicting the revision petitioner/tenant. In support of his contention, the learned Counsel cited the following decisions:

1. T. Sivasankaran Vs. H.K.N. Kacharlal Sowcar,
2. Sivasubramaniam, T and Ors. v. Kasinath Pujari and Ors. 2000-1-LW 778
3. Srinivasan v. Santhana Selvaraj 2000 (III) CTC 537
4. S.G.S. Soundarapandian v. P.M.R. Muthukaruppan Servai and Ors. 2004 4 LW 751

7. The Hon''ble Apex Court in the decision, Sivasubramaniam, T and Ors. v. Kasinath Pujari and Ors. reported in 2000 1 LW 778, has held as follows:

The aforesaid averments show that the landlord sought the possession of the premises by evicting the tenant merely on the ground that he desires to live independently away from his father. The question that arises for consideration is, whether mere desire to live separately from the father would constitute need or requirement for the premises.

It has been clearly ruled by the Hon''ble Apex Court that mere desire of the landlord to start or expand his business would not be sufficient for evicting the tenant, but he should establish his bonafide requirement, u/s 10(3)(a)(i) and (c) of the Act. Here in the instant case, there is a concurrent finding by the courts below that the respondents/landlords have established their claim of the building for their own use and occupation.

8. In the decision, Prativa Devi Vs. T.V. Krishnan, , it has been held that the landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord as to how, and in what manner, he should live or to prescribe for him a residential standard of their own. It has been further held that there is no law, which deprives the landlord of the beneficial enjoyment of the property.

9. From the evidence, it is clear that the original landlord, late Balwant Singh was running the hotel business in a rented premises at Chennai and that the fact has not been disputed by the revision petitioner/tenant, as the same has been established by the landlord before the Courts below. The Legal Representatives of late Balwant Singh have been impleaded as respondents in the Rent Control Appeal. Though the property was settled in favour of Lalith Singh, the ninth respondent, admittedly, there is no independent claim against the interest of the said Lalith Singh.

10. As per the decision referred to above, it is the prerogative of the landlord to use his building in a better way, so as to fulfil his needs. The Court has to see only the bonafide requirement of the landlord. From the evidence, it is clear that the bonafide requirement has been established by the landlord before the Rent Controller and after his demise, the same has been confirmed by the Rent Control Appellate Authority in favour of the Legal Representatives of the erstwhile landlord, late Balwant Singh.

11. Learned counsel appearing for the revision petitioner submitted that the ninth respondent is a transferee, in view of the settlement deed, executed by his father, late Balwant Singh. However, the transferee is not third party, but one of the legal heirs of the previous land lord, hence, the aforesaid argument advanced by the revision petitioner/tenant is not acceptable. In the instant case, settlement deed has been executed by late Balwant Singh only in favour of his son, one of the Legal Heirs and therefore, he is not legally prevented from seeking the relief that was available to his father.

12. In the aforesaid circumstances, the Court cannot draw an inference that the evidence adduced in favour of late Balwant Singh is not applicable in favour of his son, the ninth respondent, as there is no conflict of interest among the respondents, Legal Representatives of late Balwant Singh.

13. In the decision, *Srinivasan v. Santhana Selvaraj* reported in 2000 (III) CTC 537, this Court has held that subsequent purchaser cannot maintain an appeal in the place of erstwhile landlord for seeking eviction, on the ground of owners occupation. As discussed earlier, the aforesaid decision is not applicable for the facts and circumstances of the case on hand.

14. Learned counsel appearing for the respondent further contended that the revision petitioner/tenant had already handed over the possession voluntarily and therefore, he is not entitled to get re-possession of the same in the revision. In support of his contention, he drew the attention of this Court to the affidavit filed by the revision petitioner/ tenant in M.P. No. 316 of 2008 in R.C.O.P. No. 1230 of 2000 on the file of the XIII Small Causes Court on 23.06.2008, wherein the revision petitioner has stated that the respondents counsel while receiving notice in M.P. No. 226 of 2008 made an endorsement stating that the possession was already taken over on 23.04.2008. He has admitted that the possession was taken over by the respondents/landlords and filed the miscellaneous petition before the Rent Controller, seeking to order re-delivery of the petition premises in R.C.O.P. No. 1230 of 2000. Therefore, it is clear that the possession of the petition mentioned premises was already handed over to the respondents on 23.04.2008 itself, that is why the revision petitioner herein has filed a petition for re-delivery of the premises to him.

15. The Division Bench of this Court in *T. Sivasankaran Vs. H.K.N. Kacharlal Sowcar*, has held as follows:

It is clear from the language of Section 18 that while conferring power on the Rent Controller the right to execute an order, it has equally conferred on the Rent controller all the powers of a civil Court for the purpose of execution. Section 10 of the Act provides for an order being passed for eviction of tenants. When an order for eviction is passed u/s 10, the Rent Controller is empowered u/s 18 to entertain an execution petition for eviction of the tenant by the landlord. For the purpose of execution, he has got all the powers of a civil Court. Once in exercise of his powers u/s 18, the Rent Controller finds that delivery of possession has been ordered on the basis of an order of eviction which has subsequently been set aside, certainly he will have the power to order re-delivery.

It is clear that the Rent Controller is empowered to order eviction u/s 10 of the Act under the Tamil Nadu Buildings (Lease and Rent Control) Act. If it is brought to the notice of the Rent Controller that eviction was ordered under an exparte decree obtained by the landlord, which was subsequently set aside or appeal preferred by the tenant is allowed by the appellate Court, as per Section 18 of the Rent Control Act, the Rent Controller can order re-delivery of the property to

the tenant.

16. In the instant case, admittedly the revision petitioner/tenant was not evicted, based on any *ex parte* order. The eviction ordered by the Rent Controller on merits has been confirmed by the Rent Control Appellate Authority. As per the affidavit filed by the revision petitioner on 23.06.2008, it has been admitted by him that the possession was handed over by him and taken over by the respondents/landlords on 23.04.2008. In the said circumstances, it cannot be construed that the respondents have taken the possession against law illegally, by using any force or violence. Similarly, there is no evidence available to draw an inference that the possession of the petition mentioned premises was taken over by the respondents under threat or coercion. Had the possession of the premises was taken over by the respondents/landlords under threat or coercion, the revision petitioner/tenant could have reported the matter on the same day or on the subsequent day before the learned Rent Controller and could have lodged complaint before the police for the illegal act of dispossessing him from the property, under threat and coercion. It is seen that the petitioner filed the affidavit only on 23.06.2008, which shows that the revision petitioner/tenant had already handed over the possession of the property, without any threat or coercion to the respondents and admittedly, there was no stay against the order of eviction passed by the Court below.

17. In such circumstances, I am of the view that the Civil Revision Petition filed by the revision petitioner/tenant fails and accordingly, the same is liable to be dismissed. In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there is no order as to costs.