

(2006) 11 MAD CK 0129

In the Madras High Court

Case No : C.R.P. (NPD) No's. 877, 878 and 880 of 2006

S. Parasamal, S. Venugopal, Shoba Kankariya and Selvi
Darishita

APPELLANT

Vs

G. Ramamurthy

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 10(3)(1),
23(3)
Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 — Rule 16, 16(2)

Citation : (2007) 3 LW 332 : (2007) 1 MLJ 364

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : P. Sukumar, for A. Thayaparan, for the Appellant; AR. L. Sundaresan
for M.P. Dhananjayan, for the Respondent

Judgement

R. Banumathi, J.—These revisions are directed against the common Order in R.C.A. Nos. 847, 848, 850/2005 [dated 05.04.2006] on the file of the VII Small Causes Court, Chennai, ordering eviction u/s 10(3)(a)(i) for owner's use and occupation.

2. All the CRPs arise out of the common Order, involving common points. Hence all the three CRPs were heard together and disposed of by this common Order. For convenience, parties are referred in their original rank in RCOP.

3. Case of the Petitioner/landlord is as follows:

The demised premises relates to the property at Door No. 45/2, [New Door No. 60], Mint Subbarayalu Naidu Street, Old Washermenpet, Chennai-71. Tenants are in occupation of various portions. The landlord purchased the entire property in public auction held on 07.01.2004, by the Debts Recovery Tribunal-I Chennai and auction has been confirmed on 13.03.2004. The building consists of Ground Floor and two floors with open terrace in the third floor. The landlord has three

sons and one daughter. Two sons are already married and employed in America and Canada respectively. Daughter of the landlord is married and she is residing with her husband. Third son of the landlord is employed in Bangalore. The landlord purchased the Petition premises with a view to live along with his family members, in the new building. The landlord and his wife are chronic patients taking periodical treatment. The landlord requested the Respondents/Tenants to vacate the premises on the ground of own occupation with family members and hand over vacant possession. Since the Respondents have not acceded to the demand of the landlord, the landlord filed Rent Control Petitions seeking eviction of the Tenants on the ground of owner's occupation.

4. The Respondents/Tenants resisted the Petitions contending that the Petitioners immediately after purchasing the property were trying to forcibly evict the Tenants with the aid of police personnel and henchmen. Defendants filed Civil Suit on the file of XII Assistant City Civil Court, and obtained Interim Injunction restraining the Petitioners from evicting the Tenants except under due process of law. According to the Tenants, two sons of the Petitioner are settled abroad and the third son is married and settled at Bangalore and they have no intention to come to Chennai and reside in the Petition building. Two residential portions in the same building remain vacant and the Petitioner could very well occupy the same, if his requirement is immediate. There is no bonafide requirement and the RCOPs have been filed with oblique motive of evicting the Respondents and letting out to other Tenants on higher rent.

5. During trial, on the side of the Petitioner, landlord himself was examined as PW-1. But no documents were marked. On the side of the Respondents, one Tenant was examined and Exs.R-1 to R-5 were marked. Finding that no documentary evidence was filed to show the expiry of contract of employment of Petitioner's son working in abroad and that no evidence has been adduced showing that after returning to India, the sons have inclined to live jointly with the parents, and holding that there is no bonafide requirement, the learned Rent Controller has dismissed all the Petitions.

6. Challenging that Order of dismissal, the Petitioner/landlord has preferred appeals. Pending RCAs, the landlord has filed M.P. No. 1151/2005 to receive additional documents on his side. The Appellate Authority has allowed the application and received additional evidence stating that there was no serious objection by the Respondents for marking those documents. Ex.P-1 ? Doctor Certificate dated 19.11.2005 [Ex.P-1] and the letter sent by Petitioner's son - Premkumar Gullapa dated 09.09.1995 [Ex.P-2] and the Sale Deed in Document No. 2694/02 in favour of Kamala Bai, wife of Parasamal [Ex.P-3] were marked. In consideration of the materials and the additional evidence received, the Appellate Authority found that two ingredients u/s 10(3)(1)(i) are established by the Appellant and that the Petitioner has proved his bonafide requirement of the entire building for his own occupation with family members and reversed the Order of the Rent Controller and ordered eviction.

7. Challenging the Order of eviction, Tenants have preferred this revision. The impugned Order is mainly attacked contending that the Appellate Authority committed gross error in receiving additional documents. It is the contention of the Petitioners that the Rent Controller has recorded specific findings that even basic facts were not supported by documents and held that there was no bonafide requirement. It is the contention of the Tenants that when such specific finding was recorded by the Rent Controller, the Appellate Authority ought not to have allowed the landlord to bring forth further documents ante dated and ought not to have based its findings on such additional evidence adduced by the Petitioner/landlord. It was further contended that the finding recorded by the Rent Controller has been neutralized by Appellate Authority by recording additional evidence. The learned Counsel has also urged that the principles laid down under Order 41 Rule 27 CPC was not followed and fresh evidence ought not to have been allowed at the appellate stage.

8. The learned Counsel for the Respondents/Tenants interalia submitted that the two sons of the landlord are settled abroad and one at Bangalore and the married daughter is residing with her husband and mere desire would not be sufficient to constitute bonafide requirement. In support of his contention, the learned Counsel for the Tenants placed reliance upon the following Judgments:

2000 (1) LW 778; 1998 (3) LW 186; 1998 (3) LW 209 AIR 1966 AP 1; AIR 1990 Bom 98; 1989 All LJ 98; AIR 1959 MP 118 AIR 2006 SCW 2169; 2004(1) CTC 668 2001 (2) LW 623; 2000 (1) LW 885; 99 LW 272.

9. On behalf of the Petitioner/landlord, the learned Senior Counsel has submitted that the two essential ingredients of Section 10(3)(a)(i) have been satisfied and that the Petitioner/landlord, for whose own occupation the premises is required, is in occupation of residential building of his own and the Appellate Authority has rightly ordered eviction. The learned Senior Counsel has further submitted that the occupation of the building by other members of the family will not prevent the landlord from asking for the property or his own occupation. Submitting that the Rent Control proceeding is a summary proceeding, the learned Senior Counsel further urged that the absence of express pleadings would not vitiate the Order and the Appellate Authority has rightly admitted additional evidence. In support of his contention, the learned Counsel has placed reliance upon the following decisions:

1992 MLJ 422; 1977 (3) LW 141; 1999 MLJ 28; 2000 (2) LJ 748; 2005 (3) MLJ 441; 2004(2) MLJ 14; 2004(1) MLJ 737.

10. Before adverting to the other aspects, we may firstly consider the main point urged by the Respondents/Tenants raising objection regarding the reception of additional evidence by Appellate Court. Section 23(3) of Tamil Nadu Building Lease and Rent Control Act [for short, the Act] enables the Appellate Authority "to make such further enquiry as he thinks fit". This enquiry could be made by the Appellate Authority either personally or through the Controller. Under Rule

16(2), if the Appellate Authority decided to make further enquiry, he may take additional evidence or require such evidence to be taken by the Controller. Section 23(3) of the Act read with Rule 16 of the Rules, therefore, clearly enables the Appellate Authority to take additional evidence for making further enquiry or he can direct evidence to be taken by the Controller.

11. It is common ground that appeal is a continuation of the proceeding of the Court of the first instance. While so, the Appellate Authority has all powers of the Rent Controller and is entitled to take additional evidence. In *B.A. Rajan @ B. Antony Raj Vs. Rajapalayam Bhoopalapatti Vishwabramha Kulathavarkalin Uravinmurai Pothunala Fund*, , it was held that the Appellate Authority is entitled to take evidence and it has got all powers of a Rent Controller. Hence it cannot be contended that the Appellate Court has exceeded his jurisdiction in receiving additional evidence.

12. As noted earlier, the Appellate Court has received Ex.P-1 - Medical Certificate dated 19.11.2005 and the letter sent by the Petitioner's son - Premkumar Gullapa dated 09.09.2005 and Ex.P-3 - Sale Deed, in the name of wife of the landlord [Revision Petitioner in CRP No. 826/2006].

13. Exercising its power to admit additional evidence, the Appellate Court was well within its limits in receiving additional evidence. But when additional evidence is adduced by one party, the other party must be given opportunity to adduce rebuttal evidence ? such additional evidence as may be necessary to rebut additional evidence. Holding that power u/s 23(3) and Rule 16(2) is to be exercised judiciously and when additional evidence is received, opportunity to the other side should be given, in the decision reported in 99 LW 272 (*A.G. Punyakoti v. M. Meera Bai*), the then Chief Justice M.N. Chandrukar has held as under:

Section 23(3) of the Act read with Rule 16 of the Rules, therefore, clearly enables the Appellate Authority to take additional evidence, or he can direct evidence to be taken by the Controller. It must be pointed out that Rule 16(2) refers to the power of the Appellate Authority to take additional evidence. It does not create any right in a party to have additional evidence admitted as a matter of course. The power of permitting additional evidence to be produced at the stage of appeal must be exercised by the Appellate Authority judiciously and before additional evidence is given, the Appellate Authority must be satisfied that such additional evidence is necessary for a proper disposal of the appeal. The provision for additional evidence as part of the further enquiry permitted to be made by the Appellate Authority does not imply that a party has a right to have additional evidence produced before the Appellate Authority without any valid justification. If any documents are to be produced, they could be permitted to be produced by way of additional evidence only if the Appellate Authority is satisfied that it is necessary to make a further enquiry and that there was good justification for not producing those documents before the Rent Controller. In the instant case, the only ground which the landlady gave for the non-production of those documents was that she thought that she would be able to prove her case

without these documents. This can hardly be a ground for production of additional evidence. The fact that some documents were not filed before the Rent Controller is not by itself sufficient for the Appellate Authority to make a further enquiry if the parties have enough opportunity to produce all the evidence in support of their respective cases before the Rent Controller. 10. The Appellate Authority must realise that parties who got to trial before the Rent Controller are normally required to produce all the available evidence on which they rely before the Rent Controller himself. However, in view of the specific provision in Section 23(3) of the Act, when the Appellate Authority has been given a discretion to admit additional evidence, before accepting those documents which are produced as additional evidence, the Appellate Authority must scrutinize those documents and decide how far they are relevant for the determination of the issue before him. If any additional evidence by way of documents is produced at the appellate stage, unless those documents are duly proved, they cannot automatically be accepted as evidence. If additional evidence is allowed to be produced by one party, the other party is also entitled to an opportunity to rebut the additional evidence. Whenever additional evidence is given by one of the parties before the Appellate Authority, the Appellate Authority is duly bound to give an opportunity to the other party to produce such additional evidence as may be necessary to rebut the additional evidence. This could be done either before the Appellate Authority himself or before the Rent Controller who could be directed by the Appellate Authority to admit or record the necessary evidence". [underlying is added]. It is made clear that when evidence is received, Court is duty bound to give opportunity to opposite party to adduce evidence. As held in the above decision, no opportunity seems to have been given to the Revision Petitioners/Tenants to adduce rebuttal evidence.

14. In paragraph No. 8 of its Order, the Appellate Authority has observed that there was no serious objection by the Respondents for marking the documents. Assailing the same, the learned Counsel for the Respondents/Tenants has submitted that the Tenants have seriously opposed that application by filing counter affidavit. The learned Counsel for the Tenants has further submitted that the Appellate Court has observed that the objection to receive additional documents would be disposed of along with main RCA and submissions were made objecting the receipt of private documents as fresh evidence at the appellate stage but the Appellate Court has wrongly recorded that the counsel for the Tenants did not seriously object it. It is to be noted that the Rent Control Appellate Authority has repeatedly placed reliance upon the additional evidence filed in the Appellate Court. While so, opportunity ought to have been given to the opposite party to adduce rebuttal evidence.

15. In the Appellate Court, to receive additional documents, M.P. No. 1131/2005 was filed and the same was pending. Arguments in M.P. No. 1131/2005 was heard along with main RCAs. By perusal of the lower Court records, it is seen that the Appellate Authority heard the arguments and posted the matter for Judgment on 09.03.2006. On 09.03.2006, the RCAs were suomotu reopened for

clarification on the documents filed in M.P. No. 1131/2005. Thereafter, RCAs were adjourned to 14.03.2006. On 14.03.2006, arguments of landlord were heard and RCAs were adjourned to 24.3.2006, on which date Tenants arguments were heard. Orders were passed on 05.04.2006. Exs.R-1 to R-3 are said to have been marked on 05.04.2006. By perusal of the Order sheet, it is quite obvious that no reasonable opportunity was given to the Tenants to rebut the additional documents received by the Appellate Court.

16. Without going into the merits of the other contentious points raised, the impugned Order of eviction passed in RCAs is liable to be set aside on the simple ground ? non affording opportunity to the Tenants on the additional documents. The matter is to be remitted back to the Appellate Authority with a view to afford opportunity to the Revision Petitioners/Tenants to adduce additional evidence as may be necessary to rebut additional evidence adduced by the landlord.

17. The Order passed in R.C.A. Nos. 847, 848, 850/2005 on the file of the Rent Control Appellate Authority, Chennai, (VII Judge, Small Causes Court at Chennai), are set aside and the matter is remitted back to the Appellate Authority. The Appellate Authority is directed to afford an opportunity to the Revision Petitioners/Tenants to produce such additional evidence as may be necessary to rebut the additional evidence adduced by the landlord and dispose of the appeals in accordance with law. The Rent Control Appellate Authority is directed to expedite the proceeding in the appeals and dispose of the appeals within a period of three months from the date of receipt of copy of this Order and the records.

18. The Revision Petitions are disposed of with the above directions. No costs. Consequently, CMP Nos. 7111 to 7114 of 2006 are closed.