

(2010) 11 MAD CK 0082
In the Madras High Court
Case No : C.R.P. (NPD) No. 1246 of 1996

S. Sethukarai Nadar

APPELLANT

Vs

Roshan Bags Registered Partner Firm, C.K. Mohideen Batcha
and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1), 19

Citation : (2010) 11 MAD CK 0082

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Natarajan, for the Appellant; A.R.M. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The revision Petitioner is the landlord. The revision Petitioner is the owner of shops situate in West Tower Street, Madurai Town, bearing Door

Nos. 25-A, B and C and the non-residential building bearing Door No. 69-A. It is admitted that all the buildings are forming part of one composite

building. Though, the shops are in different streets, it is admitted that all of them form part of the same building.

3. The landlords filed RCOP Nos. 772, 774, 776, 780 and 782 of 1982 for eviction of 5 tenants u/s 14(1)(b) of the Tamil Nadu Buildings (Lease

and Rent Control) Act, 1960, hereinafter referred as Act and the learned Rent Controller, dismissed four applications except RCOP No. 772 of

1982 on the ground that there is no bona fide on the part of the landlords and the petitions are barred u/s 19 of the Tamil Nadu Buildings (Lease

and Rent Control) Act and the buildings are not old and they are very strong. The

landlords filed appeals in RCA Nos. 126,127, 128 and 129 of 1991, on the file of the learned Rent Control Appellate Authority, Madurai and the learned Rent Control Appellate Authority also confirmed the finding of the learned Rent Controller that there is no bona fide on the part of the landlords and dismissed the appeals. Aggrieved by the same, the landlords filed CRP (NPD)Nos.1245, 1246, 1247 and 1248 of 1996, on the file of this Court and out of the four Civil Revision Petitions, CRP (NPD)Nos.1245, 1247 and 1248 of 1996 were allowed by this Court, by a common order, dated 22.02.2007 and eviction was ordered. This Civil Revision Petition was not heard along with the other three Civil Revision Petitions as the papers relating to this Civil Revision Petition were found missing and later, the papers were reconstructed, after getting orders from this Court and that is the reason for listing this Civil Revision Petition separately.

4. Mr. P. Natarajan, the learned Counsel appearing for the revision Petitioner, submitted that the building is situate in a very prime locality in Madurai city and it is situate one furlong west of the Meenakshiamman Temple on the western side and admittedly, the building is 55 years old and the landlord wanted to demolish the building and put up a new construction and there were five tenants and to evict all the tenants, RCOP Nos. 772,774,776,778 and 780 of 1982 were filed and RCOP No. 772 was alone ordered ex-parte and the tenant has agreed to vacate along with others and therefore, he was allowed to remain in that building and against other four tenants, Rent Control Proceedings were prosecuted and those applications were dismissed and the appeals were also dismissed and against the four Civil Revision Petitions, three Civil Revision Petitions were heard together and a common order was passed holding that the requirement of the landlord is bona fide and the landlord has got means to put up a new construction and that order has become final and hence, this Civil Revision Petition is also liable to be allowed.

5. It is further submitted that evidence was let in in all the cases in the trial Court and a common order was passed and therefore, having regard to the order passed in CRP(NPD)Nos.1245, 1247 and 1248 of 1996 wherein eviction was ordered and therefore, this Civil Revision Petition is also liable to be allowed and without getting possession of the shops, which are in the

occupation of the Respondents, the revision Petitioner cannot proceed with the demolition and reconstruction and therefore, this Civil Revision Petition is liable to be allowed.

6. Mr. A.R.M. Ramesh, the learned Counsel appearing for the Respondents submitted that though CRP(NPD)Nos. 1245,1247 and 1248 of

1996 were allowed by this Court, unfortunately, when those Civil Revision Petitions were heard, there was no representation for the Respondents

and therefore, without hearing the Respondents, an order was passed and therefore, that cannot be taken as a precedent to dispose of this Civil

Revision Petition.

7. He further submitted that though the learned Rent Controller and the learned Rent Control Appellate Authority have concurrently held that the

requirement is not bona fide on the ground that the landlord was not sure where he is going to put up a new construction or whether he wanted to

demolish only a portion of the building or the entire building and the landlord was taking prevaricating stance and those were elaborately discussed

by the lower Court and the finding was rendered that the landlord requirement was not bona fide and hence, this Civil Revision Petition is liable to

be dismissed.

8. He would further develop the argument by submitting that the landlord filed a plan for putting up multi storied building and subsequently, he

produced another plan to put up a new construction with one floor and to retain a major portion for car parking for his personal use and the

landlord also admitted in evidence for multi storied building and therefore, he wanted to restrict the construction only upto the first floor, as he had

no money to put up the construction as per plan and his prevaricating stances were taken note of by the Courts below to arrive at a conclusion that

there is no bona fide on the part of the landlord and the well considered judgment of the Courts below does not call for any interference.

9. He further submitted that the landlord filed applications in the year 1978 for eviction of the tenants, on the same ground in RCOP Nos. 163,

164, 165 and 167 of 1978 and those Civil Revision Petitions were dismissed and those judgments will also operate as res-judicata and these

aspects were not brought to the knowledge of this Court, while other Civil Revision Petitions were heard and therefore, the present Civil Revision

Petition is liable to be dismissed.

10. He further submitted that even though, the landlord obtained eviction order against one tenant in RCOP No. 772 of 1982, till date the same

tenant is in possession of the property and the landlord has not taken any steps for eviction and on the other hand, he filed application to fix the fair

rent for the premises and there is one another person, occupying a portion of the building and his name is M.S.M. Nizam and no petition has been

filed against the said person and therefore, these facts would also prove that the landlord is not having any bona fide intention and with the intention

of evicting the revision Petitioner and other tenants and to sell the property for good price, this Civil Revision Petition is filed. In support of his

contention, the Respondents also filed M.P. No. 1 of 2009 to the effect that the Petitioner has not taken any steps for eviction, the tenant

occupying the Door No. 25/3, one Arumugam and therefore, that fact also is to be taken into consideration, while deciding the issue.

11. The learned Counsel appearing for the Respondents relied upon the following judgment reported in the case of Kolla Ravindra (alias) K. Ravi

Vs. Susheela Bai, , in the case of Iqbal Abdul Kareem, by his Power of Attorney, Salaiman, Abdul Kareem v. Chandrasekran 2005(5) CTC 596,

in the case of Gurunathan v. T. Krishnappa 2007(2)CTC 159, in the case of National Elementary School Vs. R.M. Sundaram, , in support of his

contention.

12.I have given my anxious consideration to the submission made by both the counsels.

13. To appreciate the contention of both parties, we will have to see the pleadings in the petition.

14. The Respondent is the tenant of Door No. 68-A, West Avani Moola Street, Madurai Town and all other portions are let out for non

residential purpose. In the Rent Control petition, it has been stated in para 5 as follows:

The Petitioner purchased the schedule mentioned property along with adjoining portions on 27.01.1972. The entire building including the schedule

mentioned property is very old more than 55 years of age. The entire building including the schedule mentioned property has been weakened in

their structure by age and by other factors, which requires immediate demolition

and reconstruction. The walls, the floorings and terraced portion of the entire building are not in good condition. Hence, the entire building including the schedule mentioned property has to be demolished and reconstructed. Further, the schedule mentioned property is situated in the important business locality of the Madurai Town. Almost all the buildings in that locality have been demolished and reconstructed in the modern style with all amenities. So the Petitioners requires bona-fidely the schedule mentioned property for the immediate purpose of demolishing it and for erecting a new building thereon.

Therefore, it is seen from the passage that the petition was filed on the ground that the building is old and the building has to be demolished and reconstructed and the building is also situate in the important business locality of the Madurai town and the buildings in the locality are demolished and reconstructed in a modern style and therefore, the revision Petitioner requires bona-fidely the schedule mentioned premises for erecting a new building thereon. Therefore, it is seen from the above averments, not only on the basis of the condition of the building, but also for the reason that the landlord requires the building for demolition by putting up a new building to get more revenue.

15. The Lower Appellate Court has rightly held that there is no need for the landlord to have the Bank deposit for the purpose of demolition and reconstruction and the landlord has also let in evidence to show that he has got sufficient means and also know the means to get the loan from the Banks to put up a new construction and therefore, the finding of the learned Rent Controller that the landlord does not have means to put up construction cannot be sustained. In my opinion, the Lower Appellate Court has rightly come to the conclusion that the landlord has got means to put up a new construction.

16. As rightly pointed out by the learned Rent Control Appellate Authority, even assuming that the landlord does have means, he can raise loan from the financial institutions or he can enter into an agreement of joint venture with any developed Company to put up a new construction and therefore, it cannot be held that the requirement of the landlord is not bona fide on the ground that he does not have any means. But, the Lower Appellate Court, confirmed the finding of the learned Rent Controller holding that

the building is not in a dilapidated condition and therefore, the requirement of the landlord is not bona fide. Even though, the condition of the building is one of the criteria to decide the eviction petition filed u/s 14(1)(b) of the Act, but the condition of the building is not the sole criteria to decide the same issue. This has been held by the Hon'ble Supreme Court that even a new building can be demolished for the purpose of raising multi storied complex, if the landlord is able to show the bona fide and therefore, the condition of the building cannot be the criteria for the purpose of deciding the bona fide of the landlord.

17. As a matter of fact, the learned Judge, while deciding CRP (NPD) Nos. 1245, 1247 and 1248 of 1996 relied upon the judgment reported in the case of *Habibullah v. Mohamed Sultan* 2004(2) CTC 271, in the case of *Narayanan v. Chandrasekaran* : 2005(3) CTC 693 held that the proposition of law is very clear that the building need not be old one or in a dangerous condition or in a dilapidated condition causing insecurity to the occupants so that the landlords are entitled to seek eviction u/s 14(1)(b) of the said Act and further held that the finding of the Appellate Authority that the building is not an old one and it does not require demolition and reconstruction is not the correct proposition of law and the finding is totally erroneous. I agree with the views expressed by the learned Judge and also hold that the finding of the lower Court is totally erroneous. The learned Judge also discussed the contention of the Respondents that the landlord has filed earlier application for eviction on the ground of demolition and reconstruction and those petitions were dismissed and therefore, those judgments will operate as res-judicata u/s 19 of the Act and held that those judgments will not operate as re-judicata and merely because of the application filed by the revision Petitioner herein, earlier u/s 14(1)(b) of the Act were dismissed and the petition filed by the revision Petitioner on the same ground cannot be rejected on the ground of res-judicata.

18. The learned Judge further held that the petition mentioned property is situate in the important business locality of Madurai Town and almost all the buildings in that locality have been demolished and if the landlord intends to demolish the old building and put up a new building for augmenting the revenue, the tenants cannot prevent the landlord from using his premises for

putting up a massive construction for the purpose of getting more revenue. For all these reasons, the judgment relied upon by the learned Counsel appearing for the Respondents cannot be applicable to the facts of this case and in my opinion, the condition of the building is not a criteria for dismissing an application u/s 14(1)(b) of the Act and hence, I hold that the landlord requirement is bona fide and he bona fide required the building for the purpose of demolition and reconstruction.

19. It is contented by the learned Counsel appearing for the Respondents, Mr. A.R.M. Ramesh, that admittedly the landlord has obtained eviction proceedings against the tenants in RCOP No. 772 of 1982 and he has not taken any steps to get possession of the premises and on the other hand, he has filed application to fix the fair rent for the building and therefore, that would show that there is no bona fide on the part of the landlord.

20. He further submitted that M.S.M. Nizam is occupying the building bearing Door No. 25 and no petition has been filed to evict that person and that would also prove the mala fide on the part of the landlord. The landlord filed counter affidavit in M.P(MD) No. 1 of 2009 wherein he has

stated that the said M.S.M. Nizam is occupying the Door No. 23C, West Tower Street, Madurai and he has filed RCOP No. 164 of 1978

against him and after dismissal of the said RCOP, the said M.S.M. Nizam approached him and promised to vacate the premises and the other

tenants have not taken any legal action against him and therefore, he has filed three RCO Ps against the said M.S.M. Nizam. Therefore, it is

admitted that so far as one tenant, M.S.M. Nizam is concerned, eviction proceedings has been taken and order has not been passed. In this case,

admittedly there were six tenants and out of the six tenants, eviction proceedings were taken against five tenants in RCOP Nos. 772,774,776,778

and 780 of 1982 and ex-parte order was passed in RCOP No. 772 of 1982.

21. In so far as other four tenants are concerned, against three of them, eviction order was passed in the Civil Revision Petitions Nos. 1245, 1247

and 1248 of 1996 and against one M.S.M. Nizam, steps have been taken to evict him. In these circumstances, having regard to the finding that the

requirement of the landlord is bona fide and the landlord has got means to put up a new construction, this Civil Revision Petition is also liable to be

allowed. But, at the same time, having regard to the presence of other two

persons, who were not vacated viz., the tenant in RCOP No. 772 of 1982 and one M.S.M. Nizam, I am inclined to pass the following order: ""The order of the Courts below that the eviction petition filed by the landlord u/s 14(1)(b) of the Act is not bona fide and the landlord is not having the means to put up a new construction and the petition is also barred by res-judicata u/s 19 of the Act are set aside and this Civil Revision Petition is allowed, but at the same time, the landlord cannot execute the order of eviction, till he gets possession of the premises, which is the subject matter of RCOP No. 772 of 1982 and also the premises in the occupation of M.S.M. Nizam, who is the tenant in Door No. 25-C. Subject to the above, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.