
(1999) 06 MAD CK 0088
In the Madras High Court
Case No : C.R.P. No. 1228 of 1999

S. Suresh and Others

APPELLANT

Vs

Isabal Thomas and Another

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

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

Citation : AIR 2000 Mad 275

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : P.B. Ramanujam, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Landlord, who was defeated in both the Courts below have come to this Court challenging the correctness of orders u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

2. According to the landlord, the concurrent findings of the authorities below are illegal, improper and irregular and therefore the same are liable to be interfered with under the revisional powers of this Court.

3. The only ground for eviction was that the respondent is a nuisance both to his neighbours and also the other occupants of the building and liable to be evicted u/s 10(2)(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

4. It is alleged in the rent control petition that by conducting workshop in the scheduled premises the noise is disturbing the locality and the smell of the paint is also affecting the atmosphere. It is also alleged that some of the employees of the respondent are taking bath openly in the premises naked and it is causing annoyance to the persons residing in the neighbourhood and in the vicinity. The premises is also not kept clean and that is also an added reason for the nuisance.

5. The said allegations are disputed by the respondent.

6. The Rent Controller took oral and documentary evidence. Three witnesses were examined on the side of the landlord apart from documentary evidence Exs. A1 to A9. Respondent also examined DW1 and produced Exs. D1 to D3. Commissioner's report and plans are marked as Exs. Clause to C3.

7. Trial Court after assessing the entire evidence, came to the conclusion that the case put forward by the landlord is not true and witnesses examined on her side cannot be believed. The strained relationship between the landlord and the tenant even before filing the petition was also taken note of by the Rent Controller. Rent Controller held that the nuisance to be a cause of action for eviction, must be an actionable nuisance and that the same is not proved. Consequently, the petition was dismissed.

8. The matter was taken in appeal in R.C.A. 1035 of 1994, but without success.

9. The only question that requires consideration in this revision is whether the concurrent findings of the authorities below are illegal, improper and irregular, so as to warrant interference u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

10. Section 10(2)(v) of the Tamil Nadu Buildings (Lease and Rent Control) Act reads thus,

" 10(2) - A landlord who seeks to evict his tenant shall apply to the controller for a direction in that behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -

(i) to (iv) Omitted.

(v) that the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same building or of buildings in the neighbourhood."

11. Honourable Supreme Court had occasion to consider a similar provision of the Bombay Rents, Hotel and Lodging House Rates Control Act. 1947 and the same is reported in Narpatchand A. Bhandari Vs. Shantilal Moolshankar Jani and another, Their Lordships held that the landlord will not get possession of the building on the ground of nuisance or annoyance, unless the normal livings of such occupiers are affected. In paragraph 15 of the Judgment, their Lordships held thus, ,

"There are no statutory definitions of "nuisance" or "annoyance" which u/s 13(1) (c) of the Act constitute a ground for recovery of possession by landlord of a premises in the occupation of a tenant. In the case with which we are concerned, the acts of nuisance or annoyance complained of are committed by the tenant and persons residing with him in the premises which is a tenement (flat) lying amidst other tenements (flats) of the one and same storeyed building. The acts of the defendant or persons residing with him in the tenanted premises which are found as acts causing nuisance or annoyance to adjoining or neighbouring

occupiers, cannot fall short of being acts of nuisance or annoyance if regard is had to their nature, Intensity and duration and the consequential ill-effects which might have been produced by them on the normal living of such occupiers. Further, when the particular acts of the defendant or persons residing with him in the premises (flat) of a storeyed building, said to have cause nuisance or annoyance to the occupiers of adjoining or neighbouring occupiers of tenements (flats) in the very same storeyed building are seen, they cannot make us think that they were not clear acts of nuisance or annoyance envisaged u/s 13(1)(c) of the Act because of the Intolerable Inconveniences, sufferings, humiliations which must have been caused to the adjoining or neighbouring occupiers, due regard being given to the locality of the storeyed building, the class of people living in the tenements of the storeyed building and the nature of living to which they were accustomed. Even otherwise, the acts said to have been committed by the defendant and persons residing with him in the premises when are, as stated, found by the fact-finding Courts to have amounted to acts of nuisance or annoyance entitling the plaintiff u/s 13(1)(c) of the Act to recover possession of the premises from the defendant and when the High Court has refused to interfere with such finding in exercise of its writ jurisdiction there could be no jurisdiction whatever for us to interfere with the same in this appeal under Article 136 of the Constitution."

12. Similar provision under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act came for consideration before the Honourable Supreme Court and the same is reported in Rafat Ali Vs. Sugni Bai and Others, . In paragraphs 12 to 16 of the Judgment, their Lordship's considered this question, which read thus,

"12. It is clause (iv) of Section 10(2) of the Act that makes nuisance as a ground for eviction. It is worded like this :

That the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood.

13. Though the word "nuisance" is not defined it can be inferred from the context that what is meant therein is the actionable nuisance which is recognised in Common Law. Nuisance as understood in law is broadly divided into two classes former consists of some acts or omissions which result in violation of rights which one enjoys in common with other members of the public. But the latter i.e. private nuisance, is one which interfere with a person's use and enjoyment of immovable property or some right in respect of it.

14. In Halsbury's Laws of England (Vol. 34 of the fourth edition at page 102) essentials of common law of nuisance are mentioned as under :

"309. Both unlawful act and damage necessary. In order to constitute a nuisance there must be both (1) an unlawful act, and (2) damage, actual or presumed. Damage alone gives no right of action; the mere fact that an act causes loss to

another does not make that act a nuisance.

For the purposes of the law of nuisance, an unlawful act is the interference by act or omission with a person's use or enjoyment of land or some right over or in connection with land."

15. Suffering of damage must be proved in a case of nuisance unless it can be presumed by law to exist. But the damage to amount to actionable nuisance must be substantial or at least of some significance. In other words, if the damage is insignificant or evanescent or trivial it would not be actionable nuisance. The following passage in para 312 of the same volume in Halsbury's Laws of England is worth extracting in this context :

"312". Damage essential. Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in which it is presumed by law to exist.

The damage need not consist of pecuniary loss but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or damage that is merely temporary, fleeting or evanescent."

16. It is clear from Clause (iv) of Section 10(2) of the Act that what is envisaged therein is only private nuisance and not public nuisance. This can be discerned from the words "nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood." Perhaps in a wide sense any industrial activity may create some sound while such activities are in operation. Such sound may be uncomfortable to those who are over sensitive to such noise. But then care must be taken because every inconvenience cannot become actionable, nuisance. To make it actionable the nuisance must be of a reasonably perceptible degree appointed out earlier."

13. If we analyse the evidence in this case. I do not think that landlord has adduced any evidence as contemplated in the above decisions.

14. Long before the neighbours occupy the premises and even before the colony came into existence, respondent has established his Workshop in the scheduled premises. In fact, landlord let out the premises only for running an automobile workshop and it is admitted by him that the tenant has executed a rent deed. Though landlord initially denied that the building was not let out for running Workshop, Courts below have rightly come to the conclusion, on appreciation of evidence, that the case of landlord cannot be accepted. The best evidence was the production of rent deed itself and for reasons better known to landlord, the same was not produced. An adverse inference was rightly drawn by the Rent Controller.

15. If the building was not let out for running automobile workshop, naturally, landlord would have filed eviction petition for change of user. Till date landlord has no such case. That also supports the case of the tenant that the building was let out only to run an automobile workshop and the business activities are being

done from the Inception of tenancy.

16. If the building was let out for running an automobile workshop, the consequences of letting out is well known to the landlord. Neighbours also came only long thereafter. What is the nature and habits of the people; how far the sound from the automobile workshop has affected the day-to-day life of the occupants and how far their life is interfered with, are the evidence to be let in. Oral evidence submitted by the two witnesses i.e., PWs. 2 and 3 were disbelieved by the authorities below. Rent Control Court which had the opportunity of seeing the witnesses and to appreciate their demeanour, having disbelieved the witnesses, it will not be fair on the part of the revisional Court to upset the approach of the Rent Controller, especially when the same having been confirmed by the appellate authority.

17. One of the allegations in the eviction petition was that the employees of the respondent are taking bath openly without maintaining decency. Respondent herself is a lady and the disputed premises admittedly has bathroom and latrine. When the tenant herself is a lady, it is too much to believe that she allowed her employees to take bath openly that too without maintaining decency. Rent Controller as well as appellate authority have discussed the entire evidence on this point and completely disbelieved the case of the landlord.

18. Absolutely no evidence is let in about the sound pollution and also smell due to the painting work that is being conducted in the Workshop. Any industrial activity may create some sound or other annoyance, which may not be liked by the persons in the locality residing in the neighbourhood. It may be uncomfortable to them but that inconvenience cannot be an actionable nuisance unless the nuisance is substantial or at least has some significance.

19. Even though tenancy has began years back, only when the misunderstanding between landlord and tenant started, landlord approached the Rent Control Court for eviction. It has come out in evidence that before initiation from evicting her forcibly. Reliance was placed on certain documentary evidence to prove the nuisance. But all these documents are of the month of April. 1992, after the misunderstanding arose. Rent Controller rightly disbelieved the evidence of landlord.

20. In the case of *Rafat Ali v. Sugni Bai* 1998 AIR SCW 3802) (cited supra) the scope of revisional powers is also considered. Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act is similar to the provisions of our Act. In para 7 of the Judgment, the scope of revisional powers is considered, which read thus,

The application given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well neigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or

propriety" of the order of the lower authority. Even such a widely worded frame of the section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction. In a recent decision we had occasion to consider the scope of revisional jurisdiction under certain Rent Control enactments vide *Sarla Ahuja Vs. United India Insurance Company Limited*, . Reference was then made to a decision wherein similar words used u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 were considered (vide *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, . A two Judge Bench has observed therein that "despite wide language employed in the section, the High Court quite obviously should not interfere with the finding of fact merely because it does not agree with the finding of the subordinate authority." After advertng to it we have stated in *Sarla Ahuja* :

"The High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact finding Court is wholly unreasonable."

21. Taking into consideration the limited jurisdiction of this Court and also taking into consideration the entire evidence adduced by either parties, I do not think any ground has been made out for interference in the concurrent order of the authorities below.

22. In the result, this revision petition is dismissed. There will be no order as to costs.