

(2004) 03 MAD CK 0207

In the Madras High Court

Case No : C.R.P. (NPD) No. 2697 of 1998 and C.M.P. No. 13586 of 1998

S.G.S. Soundarapandian

APPELLANT

Vs

P.M.R. Muthukaruppan Servai (Deceased) and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

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

Citation : (2004) 4 LW 751

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; V. Balasubramanian, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The tenant is the petitioner in this Civil Revision Petition.

2. The first respondent filed the application for eviction in R.C.O.P.No.234 of 1985 on the file of Principal District Munsif, Madurai u/s 10(3)(a) of the Tamil Nadu Buildings Lease and Rent Control Act (hereinafter referred to as "the Act"). In the said application, the main basis of the claim was that he was suffering from urinary infection, which required constant treatment by staying at Madurai, that he did not own any other house at Madurai, that a portion of the petition premises which was allowed by the tenant to be occupied was not sufficient and therefore, he needed the petition premises for his own occupation. It was contended that since he was living in the nearby village, his frequent travel to Madurai for the purpose of treatment was causing inconvenience to him.

3. As the claim of the first respondent / landlord was found to be bonafide and justified, the learned Rent Controller ordered eviction in his order dated 19.03.1993 in R.C.O.P.No.234 of 1985. The appeal filed by the petitioner in R.C.A.No.52 of 1993 was also rejected by the appellate authority in the order

dated 20.04.1998. At the appellate stage, the first respondent filed I.A.No.351 of 1997 for the permission of the appellate authority to raise an additional ground to the effect that the premises was required inasmuch as his son, who was a law student at the time of filing of the eviction application had subsequently completed the law course and started his practice as an Advocate at Madurai and the building was required for his use also. The appellate authority while confirming the order of eviction on the ground on which it was ordered by the Rent Controller, refused to entertain the application in I.A.No.351 of 1997 preferred by the first respondent to raise additional ground.

4. When the petitioner preferred this Civil Revision Petition in the year 1998, it was brought out that subsequent to the entertainment of this revision, the first respondent passed away and the respondents 2 to 9 were brought on record as legal representatives of the first respondent vide order dated 26.02.2004 made in C.M.P.No. 9011 of 2001.

5. In the above stated background, at the outset, Mr.S.Subbiah, learned counsel appearing for the petitioner contended that since the first respondent is dead, his claim for owner's occupation would no longer survive for consideration and therefore eviction ordered cannot be maintained.

6. Mr.Balasubramanian, learned counsel for the respondents, however, strenuously contended that though initially the claim of the first respondent was for his personal use on the ground that he had to take treatment at Madurai, it was brought out in evidence that the second respondent herein by that time became a full fledged lawyer and practising at Madurai and therefore, the requirement of the building for his use also existed. Learned counsel therefore contended that this is not a case where solely on the ground of death of the first respondent, it should be held that the requirement cease to exist at this point of time. Learned counsel also sought reliance upon the judgment of this Court reported in Atma S. Berar Vs. Mukhtiar Singh, . However, on behalf of the petitioner reliance was placed upon SRINIVASAN AND ANOTHER ..VS.. SANTHANA SELVARAJ AND ANOTHER 2000 (3) M.L.J. 524 and C.R.I. Limited, No. 33, College Road, Chennai Vs. Murali Mani and three others,

7. Having considered the submissions made on behalf of the respondent, however much I bestowed earnest efforts to sustain the order, but I am unable to do the same.

8. In the first place, even going by the dictum of the Hon"ble Supreme Court relied upon by the respondents, I find that the Hon"ble Supreme Court set out the legal position as regards taking note of the subsequent event in Paragraph 15 in the following words :

"The learned counsel for the respondent tenant submitted that the findings arrived at by the Rent Controller and the Appellate Authority were vitiated and the High Court was justified in interfering therewith especially in the light of the events which had taken place during the pendency of the proceedings. The

power of the Court to take note of subsequent events is well settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly to the notice of the court; secondly, it should be brought to the notice of the court consistently with the rules of procedure enabling the court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of the so-called subsequent events brought to the notice of the High Court as also of this Court by the learned counsel for the respondent tenant. None of them causes a dent in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by a three judge Bench of this Court in *Prativa Devi Vs. T.V. Krishnan*,

"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 how, and in what manner, he should live or to prescribe for him a residential standard of their own".

The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do.

That was the lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.

The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion".

9. Going by the principles set out therein though the first two stipulations are satisfied while considering the subsequent event of the death of the first respondent herein, as far as, the third stipulation is concerned, I find the death of the first respondent herein has got every bearing on the relief sought for by the landlord in the original application. In the application for eviction, the main thrust of the claim was that the first respondent was suffering from urinary infection and therefore he needed constant treatment at Madurai and in order to reside at Madurai, he needed the sole premises owned by him viz., the petition premises. It is true that in paragraph 6 of the application, it was claimed that his family members were also staying along with him in the portion which was allowed to be occupied by the petitioner. But, that single statement cannot be taken that the requirement of the other family members also to stay at Madurai, was only for the purpose of assisting the first respondent to take treatment at Madurai. Similarly, the deposition of the first respondent before the learned Rent Controller that his son was practising at Madurai and that he was coming from

his village and therefore he needed the premises was a stray statement made in the course of his evidence and the said version had no co-relation to the real claim made in the application for eviction. Therefore, if the subsequent event of the death of first respondent is taken note of, it will have to be held that the real claim of the first respondent in the application for eviction unfortunately cease to exist by the death of the first respondent. When that be the legal consequence to the application for eviction it will have to be necessarily held that the eviction originally ordered, which was subsequently confirmed by the appellate authority cannot be sustained.

10. It may be that the second respondent who is stated to be the son of the first respondent and who is the lawyer at present practising at Madurai, is also in need of the petition premises as one of the legal representatives of the deceased / first respondent. If that claim is real and bona fide, it can only be said that that will have to be agitated afresh by the second respondent on his own merits in appropriate proceedings. Certainly that cannot be imported into the present revision petition in order to sustain the eviction ordered, which was solely based on the claim of the first respondent and on his personal needs, which was existing at the time when the application for eviction came to be filed.

11. This statement of law has been so held by me in another decision reported in SRINIVASAN AND ANOTHER ..VS.. SANTHANA SELVARAJ AND ANOTHER 2000 (3) M.L.J. 524 I have explained the position in paragraph 6 of the order to the following effect:- "I have examined the rival contentions of the parties. I find considerable force in the contention of the first respondent in stating that the subsequent purchasers are not entitled to continue the claim raised in the main petition inasmuch as the claim was "peculiarly personal" to the erstwhile landlord, when he made the application for eviction on the ground of owners occupation. I too feel that unlike the application filed for eviction on the ground of wilful default, or on act of waste or on other grounds available to the landlord u/s 10(2) of the Act or on the ground of demolition and reconstruction as provided u/s 14, (an application filed u/s 10(3) of the Act stands entirely on a different footing which the subsequent purchaser may not be able to insist upon on the ground on which the relief was originally claimed, even though it may be stated that the landlord might be permitted to continue with the proceedings to its logical conclusion. But, that is far different from saying that by merely permitting a subsequent purchaser to participate in the continuation of the proceedings it should be held that he is also legally entitled to maintain the claim for the relief based on the grounds on which relief was originally made particularly in an application filed for eviction on the ground of owners occupation. It is not a case of mere moulding of the relief. As pointed out by the learned counsel for the first respondent the application for owners occupation when once made, it would depend upon the circumstances that were prevailing at the time when the application was made by the original owner. In such circumstances, to permit the subsequent purchaser to claim the very same relief at the appellate stage would lead to other serious consequences, in the event of

the subsequent purchaser continuing the proceedings at the appellate stage though after getting necessary amendment to the pleadings and also after letting in additional evidence, still by virtue of any order being passed granting the relief at the appellate stage, by sustaining the original order of eviction very valuable right of the tenant to loose one stage of appeal is a very serious consequence, whereas in the case of an eviction on the ground of wilful default, where irrespective of the change of the landlord, there will not be much scope for any alteration in the main cause of action based on which the original application was preferred. In the case of eviction on the ground of owners occupation, it will not be possible to proceed with the appeal on the evidence already recorded by the rent controller that is available on record, inasmuch as the claim for owners occupation by the subsequent purchaser could be and will have to be made entirely under different circumstances than the one that was available to the original owner. Therefore, I am unable to countenance the contention of the learned counsel for the petitioners that the Appellate Authority was justified in permitting the petitioners to claim the very same relief made by the erstwhile landlord at the stage of appeal proceedings based on the amended pleadings and additional evidence. In such circumstances, since there is deprivation of one stage of appeal provided under the Act to the respondent, which I feel that the tenant is legally entitled to in a proceeding launched under the provisions of the Act the respondent is well founded in his contention on the very maintainability of the appeal. Further, as pointed out earlier, the claim for eviction either u/s 10(2) or Section 14 stand on a different footing than the one filed u/s 10(3). While in the former case, the claim is made on the basis of the default of the tenant or on the basis of the inherent nature of the building, the latter was depended upon the personal violation of the owner himself. Therefore, while in the former cases irrespective of the change of ownership, there will be no change in cause of action, the same will not be the case in the case of the latter".

12. Similarly, in the judgment reported in C.R.I. Limited, No. 33, College Road, Chennai Vs. Murali Mani and three others, in paragraph 13, it has been held as under:-

"A careful perusal of the petition filed by the landlady for eviction would not disclose that she had sought eviction of the revision petition from the demised premises not only for her own use and occupation but also for the occupation of her family members. The fact that the son of the landlady had written a letter, dated 25.06.1980, to the revision requesting vacate to satisfy the wish of her mother, in her old age, will not lead to infer that eviction was sought for by the landlady for her own use and occupation and also for the occupation of her family members. It is only at the time of enquiry an attempt has been made to show that her son and daughter at Delhi had decided to accompany and to reside with her. Such evidence cannot be taken note of to hold that the landlady had pleaded in the petition that she has required the demised premises for her own use and occupation and also for the occupation of her family. If that is considered, the submission made by the learned counsel for the respondents that

the landlady had sought for eviction of the revision petitioner from the demised premises, for her own use and occupation and also for the occupation of her family members, cannot be sustained. If that be so, the requirement of the demised premises for the own use and occupation of the landlady did not survive on her death during the pendency of the appeal."

13. In the light of the above legal position, the eviction ordered in this proceedings cannot be sustained. The revision petition therefore stands allowed and the orders of the lower authorities are hereby set aside. However, the orders of the lower authorities shall not stand in the way of either the second respondent or the other legal representatives of the first respondent in applying for eviction on any other ground which will have to be disposed of on its own merits, independent of the conclusions made in this revision petition. No costs. Consequently, the connected C.M.P.No.13586 of 1998 is closed.