

(1982) 01 MAD CK 0032
In the Madras High Court

Sha Nirbhayala Bahadurmal

APPELLANT

Vs

Krishna Rao M. Nikan
Krishna Rao M Nikan Vs Sha
Nirbhayala Bahadurmal and Others

RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Citation : (1983) 96 LW 16 : (1982) 1 MLJ 376

Hon'ble Judges : T.N. Singaravelu, J

Bench : Single Bench

Judgement

T.N. Singaravelu, J.—These are two revision petitions, one by the landlord and another by one of the tenants (first respondent before the

Rent Controller) against the common judgment passed by the Appellate Authority. For the sake of convenience, the term "petitioner" hereinafter

refers to the landlord and the term "respondent", wherever it occurs will mean the tenant Shah Nirbhayalal Bahadurmal (first respondent before the

Rent Controller).

2. The petitioner-landlord filed the petition for eviction of three tenants on the ground of commission of acts of waste by the respondent,

conversion of the building for different user by the respondent and requirement for owner's occupation. The tenants denied all the grounds and the

Rent Controller found that the tenant has committed acts of waste, but rejected the other two grounds, namely, conversion by the tenant and

requirement for own occupation. Consequently, eviction was ordered. The respondent and the landlord preferred appeals before the Appellate

Authority against the respective adverse findings and the Appellate Authority dismissed both the appeals confirming the order of eviction of the

respondent-tenant (Shah Nirbhayalal Bahadurmal) alone. Hence these two revision petitions, C.R.P. No. 2821 of 1980 by the landlord and

C.R.P. No. 2170 of 1980 by the respondent-tenant.

3. The building in question is situated at N.S.C. Bose Road, Madras and, according to the landlord, the tenant has demolished portions of the

premises and removed the doors and fixed some shutters without the consent or approval of the landlord. Thus, it is stated that the tenant has

committed acts of waste. The other two grounds put forward by the landlord are that the tenant has put the building to a different use in that it was

originally let out for carrying on business in stainless steel, but that the tenant is doing textile business and for requirement for own occupation. So

far as the alleged conversion is concerned, there is absolutely no merit in the case of the landlord, since, the purpose for which the building was

leased out was only for carrying on business, that is to say, for non-residential purpose. It is immaterial whether the tenant sells stainless steel

articles or textile goods. Both the Courts below found that there is no evidence that there was a contract to do business only in stainless steel

goods. Therefore, there is no difficulty in rejecting this ground of eviction.

4. The other ground of eviction is requirement for own occupation. Here again, both the Courts below found that the landlord has not made out a

case. Even in the petition for eviction, the landlord vaguely stated that he desires to start a business in textile goods in the city of Madras and

therefore, requires the premises for that purpose. It is important to note that it is not even disclosed in his petition what business he proposed to

start in Madras City. Admittedly, the landlord is a businessman permanently residing at Kancheepuram and he is not carrying on any business at

Madras. Even in his notice under Exhibit P-1, the landlord has not mentioned about his alleged requirement of the demised premises for carrying

on his business. The Rent Controller has pointed out that the case of the landlord itself was very half-hearted in this respect. Though the eviction

petition was prepared and signed by the landlord even as early as on 1st September, 1976, it was actually presented before the Court only on

15th February, 1977 after a lapse of 5 1/2 months. Even then, he had not made any preparation for the commencement of the business at Madras.

Of course, he has produced some documents, Exhibits P-4 to P-6 and P-15 to

show that he is taking steps to start a business, but those documents -were rightly rejected since they came into existence long after the filing of the petition in this case. The Rent Controller also found that the landlord was doing only commission business in handloom goods at Kancheepuram and that there was no purchase or sale as such. Consequently, it was found that the requirement for starting a shop at Madras was not borax fide. I do not see any reason to interfere with the concurrent findings of the lower Courts which appear to be just and proper.

5. There remains the third ground, namely, commission of acts of waste by the respondent, Shah Nirbhayalal Bahadurmali (first respondent before the Rent Controller). Both the Courts below have found that the tenant has committed acts of waste and therefore, liable to be evicted on this ground. Learned Counsel for the respondent-tenant argued that what all the tenant had done are only in the nature of improvements to the building and certainly they do not constitute waste. It was argued that the tenant merely changed the shutters and the doors as well as the flooring and that they were not likely to impair the value or utility of the building. According to the averments in paragraph 4 of the petition for eviction, the tenant had demolished certain portions of the building, removed some doors and doorframes and pillars, and for the purpose of running the textile business, he has remodelled the building without the consent or the approval of the landlord. This, according to the landlord, amounts to commission of acts of waste since portions of the building have been removed and reconstructed. The tenant gave evidence as R.W. 1 and admitted that they were carrying on stainless steel business till 1975 and in that year, they wanted to start a textile business and therefore, remodelled the building for the purpose of a show-room. R.W. 1 has categorically admitted that the two pillars which were in the centre of the building measuring 6 1/2" x 3" x 3" were removed by him. He further admitted that the two teakwood doors in front were removed and he had put up rolling shutters. Formerly, there was cement flooring and that has been removed and mosaic flooring has been put up. R.W. 1 conceded that he had not obtained the consent of the petitioner for these alterations. It was elicited that the shutters are 9" x 6". Placing reliance on these admissions, both the Courts below found that these alterations done unilaterally by the

tenant for the purpose of a show-room without the consent of the landlord amount to commission of acts of waste.

6. Learned Counsel for the tenant argued that these alterations or constructions have not impaired the value or the utility of the building and

therefore, cannot constitute waste. I am unable to differ from the conclusions of the lower Courts on this aspect. It is not open to a tenant to

reconstruct or remodel the building leased out to him without the written consent of the landlord and it is not as if that these admitted acts done by

the tenant are mere minor alterations or repair works. They are in the nature of re-modelling and reconstruction to suit the personal requirement of

the tenant, who had converted a stainless steel shop into a textile show-room. He should not have ventured on reconstructions and alterations

without the approval of the landlord. Changing the nature of the demised premises tantamounts to technical waste and the demolition or removal of

the doors and shutters, pillars, etc., are undoubtedly wilful and reckless on the part of the tenant. It is not as if the removal of these portions was

caused in the course of reasonable user and it is certainly prejudicial to the interests of the landlord, in that the tenant has made indiscriminate

alterations and additions. In my opinion, this also amounts to doing of an act which affects the utility of the building, though the tenant might have

added to the value of the building by putting up a better appearance. In this view of the matter, the findings of the Courts below that the tenant

should be held to have committed "acts of waste" coming under the definition have to be upheld. The tenant has obviously made these

unauthorised constructions at his own risk and therefore, exposed himself for eviction under this ground. Hence, the findings of the Courts below

on this ground are confirmed.

7. In the result, both the civil revision petitions are dismissed. No costs. Time to vacate by the tenant Shah Nirbayalal Baha-durmāl, three months

from to-day.