
(2002) 01 MAD CK 0069
In the Madras High Court
Case No : C.R.P. No. 3405 of 2000

Smt. Rabayakkal	Vs	APPELLANT
Singarayar		RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Constitution of India, 1950 — Article 227
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 1, 1(4), 10(2)(1), 11(3), 11(4)

Citation : (2003) 1 LW 256 : (2002) 1 MLJ 803

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : T.S. Sivagnanam, for the Appellant; R.S. Ramanathan, for the Respondent

Judgement

M. Chockalingam, J.—This civil revision petition is preferred from the order of the Principal District Munsif (Rent Controller) made in an interlocutory application filed under S.11(4) of the Tamilnadu Buildings (Lease and Rent Control) Act in a pending RCOP proceedings.

2. The respondent landlord filed an eviction petition under S.10(2)(1) of the said Act alleging that the petitioner tenant committed willful default in payment of rents. On service of notice, the tenant entered appearance and filed his counter. During the pendency of the said eviction proceedings, the landlord filed an application under S.11(4) of the Act praying to stop all further proceedings, and make an order directing the tenant to put the landlord in possession of the building, in view of the non payments of the accrued arrears of rent. The tenant has also filed a detailed objection seriously contesting the said application. The Rent Controller after enquiry, has passed the impugned order directing the petitioner tenant to put the landlord in possession of the building.

3. From the available materials, it would be clear that there was a dispute as to the quantum of monthly rent and also as to the arrears of rent payable by the

tenant. From the very reading of the order under challenge, it would be abundantly clear that the Rent Controller has not determined even summarily either the monthly rent or the arrears of rent that accrued till the time and payable by the tenant to the landlord. S.11(4) of the said Act reads:

"If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building."

The expression "rent as aforesaid" found in this Section should necessarily mean the rental arrears determined under S.11(3) of the Act, since the said provision reads:

"Whether there is any dispute as to the amount of rent to be paid or deposited after making such enquiry as he deems necessary, determine summarily the rent to be so paid or deposited."

Thus, a duty is cast upon the Rent Controller to hold an enquiry and determine summarily with reference to the rate of rent and quantum of arrears. But in the instant case, the Rent Controller has thoroughly failed to do so. In a case reported in 1995 II M.L.J. 648 (AZARIAH VS. A.K.A.MOHAMMED ISMAIL SAHIB) this court has held that the Rent Controller has to first determine summarily the rent to be so paid or deposited, and without deciding the amount, the court cannot straight away pass an order directing the tenant to put the landlord in possession. In the instant case, the Rent Controller has not determined the arrears of rent to be paid or deposited by the tenant, nor has he passed any conditional order of eviction, which should have been made under the said situation, and thus the order of eviction passed by the Rent Controller under S.11(4) of the Act is violative of the mandatory provisions and procedures contemplated under the said Act.

4. The learned counsel appearing for the respondent would urge that even if the order of the Rent Controller is not in accordance with the provisions of law, and even assuming that the order is erroneous, the tenant should have preferred an appeal challenging the same, and not a revision like this. The court is of the view that the power under Article 227 of the Constitution of India can be invoked, since the court is able to see grave dereliction of duty by the Rent Controller by not following the mandatory provisions and procedures contemplated in the said Act, thereby passing an order of eviction, which if allowed to exist and be executed, would not only cause great hardship and prejudice to the tenant, but also would lead to miscarriage of justice. Hence under the stated circumstances, the infirmity and illegality in the order of the court below can be set aside only by upsetting the same.

5. In the result, this civil revision petition is allowed, setting aside the order of the court below. However, the matter is remitted back to the lower court for disposal in the light of what is observed above and in accordance with law. No

order as to the costs.