

(2010) 10 MAD CK 0177
Madras High Court (Madurai Bench)
Case No: C.R.P. (NPD) No. 10 of 2004

Sornabai and Azad Chandrasekar

APPELLANT

Vs

Ramesh and Ganesan

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

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

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Advocate: M.P. Senthil, for the Appellant; R. Subramanian, for 1st Respondent, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The Civil Revision Petition arises out of a reversing order of eviction passed by the Appellate Authority.

2. Heard Mr. M.P. Senthil, learned Counsel appearing for the Petitioners and Mr. R. Subramanian, learned Counsel for the 1st Respondent.

3. The 1st Respondent filed a petition for eviction in RCOP No. 7 of 2001, on the file of the Rent Controller, Tiruchendur, seeking eviction of the Petitioners from a non-residential building, on the ground of sub-letting, act of waste, own use and occupation and demolition and reconstruction. The Rent Controller dismissed the eviction petition, by order, dated 03.12.2002. However, the Appellate Authority allowed the appeal in RCA No. 4 of 2003, by order, dated 15.12.2003, holding that the Petitioners should be ordered to be evicted on the ground of own use and occupation and demolition and reconstruction. Aggrieved by the reversing order, the Petitioners/tenants before this Court.

4. The learned Counsel appearing for the Petitioners contended that the ground of own use and occupation was already given up by the Petitioners in the course of hearing of the petition for eviction by the Rent Controller and that therefore, the Appellate Authority was in error in recording a finding on a ground given up by the Petitioners. The learned Counsel also contended that in the light of the evidence of the Commissioner and Engineer that the petition building was only 38 years old, the eviction ordered on the ground of demolition and reconstruction, was also bad in law.

5. In so far as the ground of own use and occupation is concerned, it is true that the Rent Controller recorded in para 13 of his order that the ground of own use and occupation was not pressed at that time of argument. But the reason has to why the Rent Controller reached such a conclusion, is very strange. In the very same para 13 of his order, the Rent Controller has stated that the Respondent failed to let in any evidence to show that the Petitioners committed act of waste. The Rent Controller also recorded that the Respondent filed Exs.P1 and P2 to establish that he wanted the premises for own use and occupation. Nevertheless, despite the pleading in the petition for eviction and despite the evidence let in, in the form of Exs.P1 and P2 to sustain the ground of own use and occupation, the Rent Controller recorded a finding that this ground was given up, merely on account of an admission made by PW1 to the effect that Exs.P1 and P2 can be obtained by depositing money even without actually carrying on any business.

6. Thus it is seen that the conclusion reached by the Rent Controller that the Petitioners gave up the ground of own use and occupation, appears to be solely based upon the one admission made in the cross examination by PW1 in relation to Exs.P1 and P2. In such circumstances, the appeal filed by the Respondent, challenging such a conclusion was accepted by the Appellate Authority and the Appellate Authority independently considered the question of own use and occupation and the question whether there was bona fide requirement or not. Hence, I am unable to accept the first contention of the learned Counsel for the Petitioners.

7. In so far as the ground of demolition and reconstruction is concerned, the Respondent let in evidence in the form of registration certificate issued by the Commercial Tax Department as Ex.P1 and the bill book in the form of Ex.P2. The Respondent also produced fixed deposit receipts from Tiruchendur and Madavankurichi Primary Agricultural Cooperative Bank as Exs.P4 to P6. Thus the financial capability of the Respondent stood established.

8. Apart from the above, the estimate given by the Engineer for putting up a construction was filed as Ex.P21. The building plan approval was filed as Ex.P22 and the approval sketch was filed as Ex.P23.

9. Though Exs.P22 and 23 had actually been obtained after the filing of the petition for eviction, I do not think that there is any bar for a genuine landlord to complete the formalities in the course of pendency of the proceedings, provided he had established before Court, a genuine intention, even at the time of filing of the RCOP, to demolish and reconstruct.

10. The Commissioner's report and sketch were filed as Exs.C1 and C2 and C3. Though the Commissioner held that the building was only 38 years old, there is no impediment for the demolition of a building merely because it is about 38 years old. The Respondent had given an explanation that there is an adjoining vacant land, which the Respondent wanted to put too optimum use. In the light of such a stand, the Commissioner's report was appreciated by the Appellate Authority and an order of eviction was passed on the grounds of own use and occupation and demolition and reconstruction.

11. The learned Counsel appearing for the Petitioners relied upon a decision of the Constitution Bench of the Supreme Court in [Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal](#), . In that case, the Supreme Court held that the Rent Controller should consider three things viz., (1) bona fide intention of the landlord far from an object only to get rid of the tenant (2) age and condition of the building; and (3) financial position to demolish and construct a new building. As a matter of fact, the Appellate Authority has actually applied these parameters while reversing the decision of the Rent controller. Hence, I do not think that the decision is of any help to the Petitioners.

12. In the next decision relied upon by the learned Counsel for the Petitioners in [S.P. Sabura Begum Vs. M.K. Thangavelu](#), , J had considered the Constitution Bench decision and pointed out that the condition of the building need not be dilapidated or dangerous for granting a request u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

13. In view of the above, I find no justification to interfere with the order of the Appellate Authority. Hence, the Civil Revision Petition is dismissed.

14. However, if the Petitioner files an affidavit of undertaking, seeking time, on or before 15.11.2010 he will have the benefit of a period of one year viz., upto 31.10.2011 to vacate the property. Otherwise, it will be open to the 1st Respondent to execute the order eviction. No costs.