B. Selvaraj Vs Krishna Reddy

Civil Revision Petition (NPD) No. 61 of 2006 and C.M.P. No. 472 of 2006

Court: Madras High Court

Date of Decision: Aug. 19, 2014

Acts Referred:
Transfer of Property Act, 1882 â€" Section 108

Citation: (2014) 5 LW 299

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S. Vimala, J.
Whether all acts of waste allegedly committed by the tenant would amount to a ground for eviction or it is only those acts of

waste, which would very probably impair the value of the building or its utility, would be a ground for eviction.

1.1. In other words, is it enough to prove that some impairment has been caused to the building or the proof that the impairment was capable of

diminishing the value or utility of the building (materially) to a substantial degree must be proved to substantiate the ground for eviction.

1.2. Whether the impairment in the value or utility of the building has to be considered from the point of view of the landlord or of the tenant;

- are the issues raised in this Civil Revision Petition.

The tenant is the revision petitioner. On the death of the tenant/sole revision petitioner, (B. Selvaraj), his legal representatives have been brought on

record, as petitioners 2 to 6 (vide order, dated 19.03.2014, made in CMP Nos. 927 to 929 of 2013).

1.3. Respondents 1 and 2 are landlords.

2. The landlords sought for eviction of the tenant on the ground that the tenant altered the super-structure of the rented building, without the

consent of the landlords and that it has impaired the value and utility of the building.

2.1. The Rent Controller, allowed the petition, directing the tenant to vacate and handover possession, within two months from 25.02.2002.

2.2. The tenant has filed an appeal in RCA No. 30 of 2002. The said appeal was dismissed, as against which, the present Civil Revision Petition

has been filed.

Brief facts:-

3. The property is located at Station Road, Pallavaram, bearing Door No. 3; it was let out to the tenant on a monthly rent of Rs. 500/-; during

April 1994, the tenant modified the structure of the building without the permission of the landlords; at the time, when the property was let-out, the

roof of the shop had been made up of Mangalore tiles; the tenant has removed the same and has put asbestos sheets; the landlords had twenty-

three shops, out of which the tenant has taken the shop bearing Door No. 3; despite telegram by the landlords, asking the tenant not to make any

alteration, the tenant has done the alteration; therefore, after issuing notice, the landlords have filed a petition, seeking eviction.

3.1. The petition was opposed by the tenant on the following grounds:-

1. The tenant is running a haircutting saloon in the rented premises. The tenant is regularly paying rents, including the enhanced rents.

2. The tenant did not make any alterations and for the past ten years, there had been only asbestos sheets. Therefore, the tenant is not liable to be

evicted.

3.2. The Rent Controller gave a finding that the tenant has materially altered the structure of the building, without the written consent of the

landlords, and therefore, he is liable to be evicted. While giving a finding, the Rent Controller has taken into account, the contradictory stand taken

by the tenant. In the counter, the tenant has stated that he did not make any alterations and the asbestos sheet, which were alleged to be newly put,

was originally available, even at the time when the property was let-out. But, in the evidence, i.e., during the cross-examination of P.W.1, the

suggestion put to P.W.1 was that, it was altered only with the permission of the landlords, thereby indirectly admitting that there had been

alterations. Apart from that, the Rent Controller has also taken into account, the newly put up lintel and the wall over it. Considering that the age of

the building was 50 to 60 years old and the additional construction would affect the value and utility of the building, the Court has ordered eviction.

3.3. This finding has been confirmed by the appellate authority also. The tenant has challenged those findings in this Revision Petition.

4. It is the case of landlords that the tenant has altered the structure of the building without their written consent and thus, has committed ''acts of

waste'' which has materially impaired the value and utility of the building.

4.1. It is the case of the tenant that he did not alter the structure of the building and therefore, he is not liable to be evicted.

4.2. Whether those ''acts of waste'' which would affect or impair the value or the utility of the building alone would be a ground for eviction?

4.3. The landlords/respondents have relied upon the following decisions, in order to support this proposition:-

(i) (2000) 2 M.L.J. 527 (B. Ramesh v. H. Nandeeswari):-

8. In a recent decision of the Honourable Supreme Court reported in Rafat Ali Vs. Sugni Bai and Others, , a case coming under the Andhra

Pradesh Buildings (Lease, Rent and Eviction) Control Act, in paragraphs 19 and 20, their Lordships held thus:

19. The third ground for eviction is related to causing damage to the building. For damage to the building to amount to a ground for eviction, its

proportion must be as delineated in clause (iii) of Sec. 10(2) of the Act;

That the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building.

20. All acts of waste do not amount to a ground for eviction. It is only those acts of waste which would very probably impair the value of the

building or its utility. The word ""likely"" in the above clause must be understood as a condition which is reasonably probable that such acts would

cause impairment to the value or utility of the building. However, it is not enough that some impairment has been caused to the building. The value

of the building or utility thereof should have been lessened in a reasonably substantial degree. Then only it can be said that the acts of waste are

likely to impair the value or utility of the building ""materially"".....

(ii) Mohammed Arif and Others Vs. K.P.R. Jafarullah, :-

12. In M. Shanmugam Vs. C. Kannabiran and another , S.S. Subramani, J., has held as follows:

The other ground of eviction is ''acts of waste'' alleged to have been committed by the revision petitioner. Admittedly, some changes have been

made by the tenant. He may plead that the changes that have been made have not impaired the utility of the building. He may also contend that

what he has done has only added to its value. In this case, the evidence that has been let in is that he has put up a sun-shade, dug holes in the floor

and has effected changes for making, it convenient to run a watch repairing shop. Even if it is contended that it is only temporary, a big hall has now

been converted into small rooms and made use of for different purpose. While considering as to how far these changes have impaired materially

the utility, and value of the building, the same has to be judged and determined from the point of view of the landlord, and not that of the tenant.

(iii) Sha Nirbhayala Bahadurmal Vs. Krishna Rao M. Nikan, :-

6.....Changing the nature of the demised premises tantamount 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 had 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.

(iv) Contending that the word ''or'' used in Section 10(2)(3) of the Act should be read not conjunctively but disjunctively, the decision reported in

2010 (3) MWN (Civil) 175 (G. Subburaj v. B.V. Vidyasekar) is relied upon:-

18. The Honourable Supreme Court in the judgment reported in Babu Manmohan Das Shah and Others Vs. Bishun Das, , has observed as

follows:-

There is no reason why the word ""or"" should be construed otherwise than in its ordinary meaning. If the word ""or"" were to be construed meaning

and"" it would mean that the construction should not only be such as materially alters the accommodation but also such that it would substantially

diminish its value. Such an interpretation is not warranted for the simple reason that there may be conceivably material alterations which do not

however diminish the value of the accommodation and on the other hand there may equally conceivably be alterations which are not material

alternations but nevertheless would substantially diminish the value of the premises. It seems the Legislature intended to provide for both the

contingencies and where one or the other exists it was intended to furnish a ground to the landlord to sue his tenant.

Contending that impairment in the value or utility of the building has to be considered from the point of view of the landlord and not of the tenant,

the following observation is relied upon:-

20. Further, in the judgment reported in 2000(2) MLJ 527, in the case of B. Ramesh vs. H. Nandeeswari, Justice Mr. S.S. Subramani has

discussed the entire case law in this aspect and held that impairment of value or utility of building is to be considered from the point of landlord and

not of the tenant. Therefore, even assuming that repairs effected by the tenant, in the view of the tenant, the utility of the building is not impaired that

should not be taken into consideration and the utility of the building should be considered from the view point of the landlord.

5. The learned counsel for the petitioners/tenants submitted that the ''act of waste'' must be judged from an objective standard and if the subjective

standard is adopted, it would likely to lead to injustice. It is also pointed out that, whenever there is no express provision governing the relationship

between the landlord and tenant, in the Buildings Act, then, provisions of Transfer of Property Act can be invoked to find out whether the act

complained of against the tenant would be a permissible one or impermissible one. In order to support these propositions, the following decisions

were relied upon:-

(i) G. Natarajan Vs. P. Thandavarayan, :

While considering the content of Section 10(2)(iii) of the Act it is necessary that certain objective standards have to be set, before a tribunal or

Court engaged, in the adjudication of rights of parties decisively concluded that the act complained of is or has to be characterised as one impairing

materially the value or utility of the building. Here rendering of subjective opinion may not be of any avail unless such opinion is backed by expert

evidence. What is contemplated in the section is the lowering of the economic value of the building and not a possible mental inconvenience

suffered subjectively by the landlord on a prima facie examination of the building. Unless there is clinching evidence to satisfy the conscience of the

Court that the acts complained of have caused damage to the building or its utility, it would be in the region of wild speculation to conclude that the

necessary ingredients or the sine quo non of the selection have been satisfied.

(ii) 1999 L.W. 678 (R.R. Dhinakaran v. Chinna Kuppasamy):-

12. Another decision in Sha Jetmull Genmull Vs. Gocooldass Jamunadass and Co., was also cited to contend that the works carried out by a

tenant may increase materially the value but affect the utilitarian value or vice versa and that in either case it is not open to a tenant to contend that

since the material or utilitarian value has been increased, the application of S. 10(2)(iii) of the Act is not called for.

(iii) Rajarani Silk Palace and Others Vs. C.K.B. Murugan, :-

14....The landlord states that by putting up the construction, the value and utility of the petition premises are impaired. If that is so, it is for the

landlord to establish the same. No evidence was adduced to establish this ground. No Engineer"s report was filed and no Engineer was examined

in order to show that the alleged construction put up by the tenants impaired the value and utility of the petition premises. In the absence of any

evidence on the side of the landlord, the authorities below concurrently came to the conclusion that the landlord failed to establish the acts of waste

alleged to have been committed by the tenants. Even before this Court, no fresh material was placed to vary the findings given by the authorities

below on this aspect. Thus, in the absence of any evidence on the side of the landlord to show that the construction put up by the tenant impaired

the value and utility of the building, the eviction sought for under Section 10(2)(iii) of the Act cannot be granted. Thus, on a careful consideration of

the facts arising on this aspect, I am of the opinion that the authorities below were correct in dismissing the petition filed on the ground of acts of

waste under Section 10(2)(iii) of the Act.

(iv) A. Duraiswami Vs. A. Arumugham, :-

....The Rent Control Act is a self-contained code insofar as grounds of eviction are concerned. But, in regard to certain matters for which there is

no provision under the Rent Control Act, the ordinary law under the Transfer of Property Act applies. Under Sec. 108 of the Transfer of Property

Act, a tenant is entitled to make use of the property as a man of ordinary prudence. A lease is a transfer of immovable property for enjoyment. If

the lease is for the purpose of doing a business, naturally, the tenant is entitled to make use of the same and necessary convenience also could be

made.....

(v) M. Karuppanna Gounder Vs. C. Visuvasam and Others, :

12.....The meaning of the word "impair" as given in the Law Lexicon by P. Ramanatha Iyer was accepted. The meaning given in that Lexicon

reads thus:

Impair: To diminish in quality, value, excellence or strength of a thing.

The word "impair" means to make worse; to weaken; to enfeeble. To make or become worse or less; to lessen, reduce or diminish the quantity or

quality.

5.1. It cannot be disputed that, it is the objective standard that would be applicable to find out whether there is any impairment to the value and

utility of the building. It is equally true that it is for the landlord to prove the same. But, so far as this case is concerned, from the contradictory

stand taken by the tenant himself, it is proved that the tenant has altered the structure of the building, without the consent of the landlords.

5.2. Therefore, the remaining question is, whether the alterations so made had an impact upon value and utility of the building.

5.3. It is only in those cases, where the provisions of the Act do not govern the relationship, the question of invoking the provisions of the Transfer

of Property Act arise. But, in this case, the relationship is governed by the provisions of the Act and hence, there is no necessity of invoking the

provisions of the Transfer of Property Act. Therefore, the decisions relied on the side of the tenants will not help their case.

6. The allegation against the tenant is that, the tenant made alteration in the roof of the rental premises by replacing the old Mangalore tiles by a

new asbestos sheets.

6.1. It is the contention of the learned counsel for the tenant that the landlords have not discharged the burden of establishing that the tenant has

committed acts of waste and that the Courts below are wrong in relying upon the evidence of P.W.2, photographer. To prove the acts of waste,

evidence of photographer may not be of any use, except perhaps to show that there had been some alterations.

6.2. A perusal of the orders passed by the Courts below would go to show that they had relied upon the evidence of the landlords, tenant and the

pleadings of the tenant. In paragraph 3 of the counter affidavit, the tenant has stated that the roof was not altered and he has denied the fact that he

has replaced the tiles with asbestos sheets. The first respondent/landlord, in his evidence, has spoken about the alterations done by the tenant and it

has been suggested to the landlords that the tenant has done alterations in the superstructure only with the permission of the landlords.

6.3. This mutually destructive and contradictory plea taken by the tenant would go to show that the tenant is guilty of having made alterations in the

rented premises, without the consent of the landlords.

7. The only issue to be decided is, whether this alteration would be material and it would impair the value and utility of the building in question.

8. As per the reported decisions, the impairment in the value and utility must be judged from the landlords" point of view. In the case on hand, it is

the case of the landlords that because of the alterations done, the value and utility of the building has been impaired. The value of utility may be

different for the landlords and for the tenant depending upon the need. What is useful for the tenant need not be useful for the landlord and vice-

versa. The works carried out by a tenant may increase the material value, but may affect the utilitarian value. Therefore, the reasons stated by the

Courts below on a finding of fact does not require any interference from this Court. Those findings cannot be said to be perverse. In the result, this

Civil Revision Petition is dismissed. The decree and judgment, in RCA No. 30 of 2002, dated 02.08.2005, and order and decretal order in

RCOP No. 63 of 1997, dated 25.02.2002 are confirmed. Three months time is hereby granted to the tenant to vacate the premises. No costs.

Consequently, the connected CMP is closed.