

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/06/2004

Coram

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. No.2453 of 1996

P.S.Janakavalli Ammal
rep. by Power of Attorney
P.S.Govindan .. Petitioner

-VS-

The Regional Manager,
Tamil Nadu Handloom Weavers' Co-op.
Society Limited,
Vellore-1. ... Respondent

Civil Revision Petition against the judgment and decree dated 17.11.1995 made in R.C.A. No.1 of 1994 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Chengalpattu reversing the fair and decretal orders dated 15.3.1994 in R.C.O.P.No.4 of 1993 on the file of the Rent Controller (District Munsif), Madurantakam.

!For Petitioner : Mr.N.C.Ramesh

^For Respondent : Mr.V.Natarajan

:O R D E R

The revision petition is filed by the landlady represented by power of attorney agent challenging the fair and decretal orders in R.C.A. No.1 of 1994 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Chengalpattu reversing the fair and decretal orders passed by the Rent Controller (District Munsif), Madurantakam in R.C.O.P.No.4 of 1993.

2. The petition under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as Tamil Nadu Act 18 of 1960) was laid for eviction of the tenant/ respondent from the petition premises on the ground of bona fide requirement of the premises for carrying on the business of the grandson of the landlady. The respondent resisted the claim of the petitioner on the ground that the same is not bona fide. The learned Rent Controller having analysed the evidence adduced on either side and after considering the arguments held that the claim made by the landlady is bona fide. The respondent preferred the appeal before the

Rent Control Appellate Authority and the learned Subordinate Judge having analysed the evidence on record and upon hearing the arguments of both sides allowed the appeal holding that the claim of the landlady is not bona fide. Hence, the revision.

3. The petition premises in Door No.23-C at G.S.T. Road, Madurantakam was let out by the landlady to the respondent on a monthly rent of Rs.1,000/- for non-residential purpose. The power of attorney agent who is the son of the landlady filed the petition as he is managing the petition premises on behalf of the landlady. Both of them are residing on the eastern wing of the premises in Door No.5 and are doing retail business in the western portion of the same building. According to the landlady, her grandson who has been given wholesale agency in respect of the consumer products of number of leading industrial houses has been accommodated to run the agency business in a cramped room between the said shop and the house. Since there is crunch of

space for running the agency business of her grandson, the landlady through her power of attorney agent requested the respondent to vacate the premises, but the respondent has failed to vacate the premises.

4. The contentions of the petitioner/power of attorney agent of the landlady may be stated briefly as follows: Since the grandson of the landlady has to store the goods and exhibit the products through visible show room as per the terms and conditions imposed by the company people who supplied goods, he requires the petition premises. Moreover, for loading and unloading the goods, the vehicles have to be used and therefore, the parking space in front of the petition premises is also essential. Hence, the requirement of the landlady is a bona fide one.

5. The tenant/respondent raised the following contentions in the counter. It is true that the respondent is the tenant of the petition premises on a monthly rent of Rs.1,000/-. The allegation regarding the wholesale agency for consumer products taken by the grandson of the landlady is denied. The petitioner has been demanding higher rent from 1991 onwards at Rs.1,800/- per month and even though the respondent agreed to pay the said rent, the continuance of the agreement for further period of 5 years was insisted to which the petitioner agreed to give only for two years. Since the continuance of the rental agreement was not finalised, the respondent has not issued any reply for the notice given by the petitioner. Hence, the petitioner's claim is not bona fide. The respondent is running the Co-Optex, (i.e.,) handloom textile goods in the petition premises for the past 15 years. Since the organisation is service oriented, inasmuch as the public are very familiar with the retail show room of the respondent, irreparable loss and hardship will be caused to the respondent if eviction is ordered.

6. In the above circumstances, the following points arise for consideration:-

(i) Whether the petition filed by the power of attorney agent is maintainable as per Rule 11(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules 1974.

(ii) Whether in the facts and circumstances of the case, the claim of the landlady for possession of the premises under Section 10(3)(a)(iii) of the Act is bona fide.

7. The parties to the proceedings are referred to hereunder as they were arrayed before the authorities below.

8. The learned counsel for the petitioner has argued at the outset that the finding of the Appellate Authority regarding the maintainability of the petition on the ground that the power of attorney executed by the landlady in favour of the petitioner was not recognised under Rule 11(3) of the Tamil Nadu Buildings (Lease and Rent Control) Rules 1974 is against the evidence on record and therefore he has urged that in view of Section 2(iv) of the said Act, the petitioner is representing "landlord" so as to sustain the petition filed by him under law. He has also pointed out that the respondent having failed before the learned Rent Controller to take up such a plea was not entitled to urge the same before the Appellate Authority and therefore he has contended that the finding rendered in this regard by the learned Appellate Authority has to be reversed.

9. In this context, the learned counsel for the petitioner has referred to the records of the case relating to the rent control proceedings before the learned Rent Controller and contended that the copy of power of attorney executed by the landlady in favour of the power of attorney agent was filed along with the Vakalath in the said proceedings.

10. It is seen from the records that the petitioner was permitted to represent the landlady in view of the copy of the power of attorney executed by the landlady in his favour throughout the proceedings before the Rent Controller. Hence, the learned counsel for the petitioner has cited the decision, B.PRECHAND BANTHIA -vs- MRS.YASHBALA R. PROHIT, REP. BY POWER OF ATTORNEY M. SUBRAMANIA RAO(1992 T.N.L.J. 51) in support of the argument that the petition signed and verified by the petitioner as power agent representing the landlady amounted to proper presentation of the same.

11. It is useful to refer to the ratio of the decision rendered by RATNAM, J. (as he then was) which reads as under:-

"Thus, on a due consideration of the provisions of the Act, the contents of the power executed by the landlady in favour of the agent and on the facts of this case, it cannot be said that there was any violation of Rule 11(3) of the Rules framed under the Act and the application for eviction was rightly entertained."

12. Here also, the records and the evidence of the case disclose clearly that the power of attorney was recognised by the learned Rent Controller, though not by passing a specific order to that effect on a separate application and therefore the view of the learned Rent Controller that the petition was sustainable under law has to be confirmed. It follows necessarily that the finding of the learned Rent Control Appellate Authority rendered against the facts and the evidence as well as the proposition of law

laid down in the decision cited above has to be reversed.

13. The next contention of the learned counsel for the petitioner is that the learned Rent Controller appreciated the facts and the evidence of the case and rendered the finding that the claim of the landlady through her power of attorney agent is bona fide and that therefore the contrary finding rendered by the learned Rent Control Appellate Authority has to be set aside.

14. In this context, it is necessary to find out from the evidence adduced on either side as to whether the petitioner has established that the claim made by the landlady for eviction of the respondent from the petition premises is bona fide as adumbrated under Section 10(3)(a)(iii) of the Tamil Nadu Act 18 of 1960. Admittedly, the landlady and her son, the power of attorney agent in this proceedings are residing in one portion of the building at Door No.5, G.S.T.Road, Madurantakam and the remaining portion of the said building is used for running the business.

15. In this context, it is useful to refer the evidence of both sides. P.W.1 is the elder son and P.W.2 is the younger son of the power of attorney agent of the landlady as well as the grandsons of the latter. In their evidence, they have stated that in the nonresidential portion of the said building in Door No.5, G.S.T. Road, retail business in grocery is carried on under the name and style of 'Andal Stores', that P.W.2 is looking after the same and his elder brother is doing the wholesale business in another building at Door No.73, G.S.T. Road and that the petition premises is required for opening a show room to carry on the business by P.W.1, who has been given wholesale agency. In support of their evidence, P.W.1 has produced Exs.P-3 to Ex.P-10, the documents to show that he has been appointed as wholesale agent for Tata Oil Mills, Nestle India Co Ltd, Scientific components Company and the other relevant documents for owning vehicles to carry on such business. According to P.Ws.1 and 2, the premises at Door No.5, G.S.T. Road is not sufficient to expand the business and also to open a show room.

16. On the contrary, it is not disputed that the respondent is a tenant running the business in Co-Optex textile goods by having a godown and a show room in the petition premises. The evidence of R.W.1, Senior Assistant working in the respondent business premises is to the effect that there is sufficient space between the petition premises and the road to park vehicles, that the stock of textile goods is stored in the petition premises so as to be distributed to the retail Co-Optex show rooms, that the show room is also available in the petition premises for retail sale of textile goods by the Co-Optex store, and that he is not aware of the space and measurement of the present business premises of the power of attorney agent of the landlady at Door No.5, G.S.T. Road. He has candidly admitted that the area of the petition premises is 920 Sq.ft.

17. Similarly, R.W.2, Manager of the respondent Co-Optex stores has also admitted that the plinth area of the petition premises would be about 900 sq.ft. with frontage of 30 ft. width from the shop to the margin of the road, that a clear 8 feet wide space is available in front of the shop, that the petition premises is provided with a show room with a shutter door

measuring 9 feet in width and that in front of the petition premises, there is enough room to park vehicles. He has also admitted candidly that the petitioner is running the business in a portion of the residential building and that the petitioner who is the power of attorney agent of the landlady as well as his two sons, P.Ws.1 and 2 herein are carrying on business as they are not employed elsewhere and that P.W.1 who is the elder son of the petitioner has been given wholesale agency in oil business and other products.

18. In view of the above evidence, the learned counsel for the petitioner has argued and rightly in my opinion that the learned Rent Control Appellate Authority has miserably failed to appreciate the same so as to arrive at the right conclusion. The requirement of the landlady as put forth in the petition is made on her behalf of her grandson, P.W.1 herein who does not own any other non-residential building in Madurantakam town. The evidence of both R.W.1 and R.W.2 is not specific with reference to the ownership of any non-residential building by P.W.1 in Madurantakam Town.

19. On the contrary, the evidence of both P.Ws.1 and 2 is categorical to the effect that P.W.1 does not own any non-residential building in the said town and therefore, the learned counsel for the petitioner has relied on the decision MASILAMANI v. V.BALIAH (1989-1-L.W. 123) to fortify his contention that the burden of proving that the person on whose behalf the landlady requires the non-residential building does not own any such building in the same town lies on the tenant and that the landlord cannot be expected to prove a negative aspect. On a careful perusal of the evidence of the case in the light of the ratio laid down in the said decision, this Court is inclined to accept the contention put forth on behalf of the petitioner in this respect and hold that it is not proved by the tenant herein that P.W.1 owns any other non-residential building in the said town.

20. The next contention of the learned counsel for the petitioner is that in view of the provision under Section 10(3)(a)(iii) of the Tamil Nadu Act 18 of 1960, the petitioner has to establish the salient ingredients so as to prove that the claim of the landlady is bona fide. In this context, he has referred me to the decision V. RADHAKRISHNAN v. S.N.LOGANATHA MUDALIAR (1998 (6) S.C.C. 431) in support of his contention that the claim of the landlady should be held to be bona fide for the simple reason that P.W.1 herein for whose benefit the petition has been filed does not own any non-residential building in Madurantakam Town. He has cited the decision T.V.JAGATRAKSHAGAN AND OTHERS v. N.FUTAREE BAI AND OTHERS (2000-3-L.W. 195) in support of his contention that the essential ingredients under Section 10(3)(a)(iii) have been satisfactorily explained by the petitioner on the basis of the evidence on record.

21. In this connection, it is essential to extract Section 10(3)(a)(iii) of the Tamil Nadu Act 18 of 1960 which reads as follows:-

"10(3)(a) - A landlord, may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building.

(iii) In case of any other non-residential building, if the landlord

or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a nonresidential building in the city, town or village concerned which is his own."

Hence, the ratio laid down in paragraphs 8 and 9 in the said decision is in my opinion squarely applicable to the facts of the present case. Therefore, it follows necessarily that the claim of the petitioner is proved to be bona fide.

22. Yet another contention projected by the learned counsel for the respondent is that the petitioner has not specifically stated in the petition that the petition premises is required for the personal occupation by the grand son of the landlady, P.W.1 herein and that therefore the requirement of the landlady is not bona fide. He has relied on the decision, BATA INDIA LTD v. M.R.MANICKAM (2004)(1) C.T.C. 94 in this regard.

23. In answer to such contention the learned counsel for the petitioner has drawn the attention of this Court to the averments in paragraph 4 of the petition which reads as follows:-

"The eldest son of P.S.Govindan, viz., the grandson of the landlady has taken a 'wholesale agency' for the consumer products of a number of leading Industrial houses. Now, the said grandson of the landlady as an interim measure, has accommodated his agency in a cramped room in between the shop and the house. The same is absolutely insufficient for him. The landlady through her power agency requested the respondent to vacate the premises as early as in the letter dated 18.5.19 92 citing the separate requirement of her grandson. More than a year has elapsed and despite appreciating the difficulty of the landlady, the respondent has failed to vacate the premises."

24. In view of such categorical averments in the petition as to the bona fide requirement of the building in the light of the evidence of both sides as narrated above, this Court is of the considered view that there is sufficient pleading and evidence available to prove the bona fide requirement of the building by the landlady.

25. In view of the above finding based on evidence, this Court is of the considered view that the ratio laid down in 2004 (1) C.T.C. 668 cannot be made applicable to the facts of the present case for the simple reason that P.W.1 has established by both oral and documentary evidence that the requirement of the petition premises is not based on mere desire to carry on a business, but based upon materials to show that he was actually engaged in the wholesale business. Hence I am unable to accept the contention of the learned counsel for the respondent that the petitioner has not proved the imminent necessity and requirement of the landlady for her own possession of the petition premises. As has been rightly contended by the learned counsel for the petitioner, the requirement of the landlady for and on behalf of her grandson, P.W.1 herein, who does not own any other non-residential building in Madurantakam Town is proved to be genuine and bona fide.

26. The next contention of the learned counsel for the respondent is

that since the respondent has refused to pay enhanced rent, the petition on false grounds is sought to be pressed into service. Per contra, the learned counsel for the petitioner has adverted my attention to the notices exchanged between the parties and contended that long prior to the filing of the petition, the landlady requested the respondent to pay enhanced rent, but however the last notice issued prior to the filing of the petition under Ex.A-1 dated 7.5.1993 contains the specific plea that the eldest son of the petitioner and grandson of the landlady has taken wholesale agency and want to improve his business and that since the premises under occupation at present is not sufficient, the petition premises is required for expansion of his business. Though the respondent received the said notice under Ex.A-1, no reply was given.

27. Hence, it goes without saying that the petition was not filed for mere enhancement of the rent in respect of the petition premises and in view of the ratio laid down in M/S.AKTHARS -vs- HITESH V. SHAH (2000(1) M.L.J. 413), mere demand of higher rent by the landlord will not be a factor to hold back bona fide requirement of the premises and therefore the contention of the learned counsel for the respondent regarding enhancement of the rent demanded by the petitioner long back is no ground to resist the claim of the landlady. For the reasons stated above, this Court is inclined to accept the contentions of the revision petitioner. In any view of the matter, the respondent has not succeeded in establishing the various contentions put forth in this proceedings.

28. Thus, the Civil Revision Petition is allowed setting aside the fair and decretal orders passed by the learned Rent Control Appellate Authority and restoring that of the Rent Controller. The respondent/tenant is given four months' time to vacate the property subject to condition that he files an affidavit within ten days from today giving an unconditional undertaking that he will vacate the property on or before 29-10-2004 failing which the revision petitioner/landlady will be at liberty to execute the order of eviction.

Index: Yes
Website: Yes

dpp

To

1. The Rent Control Appellate Authority (Principal Subordinate Judge), Chengalpattu.
2. The Rent Controller (District Munsif), Madurantakam.
3. The Section Officer, V.R.Section, High Court, Madras.

□