Sunil Vs. Express Construction Company

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SooperKanoon Citation : sooperkanoon.com/1169592

Court : Chennai

Decided On : Jun-16-2014

Judge : M.Sathyanarayanan

Appellant : Sunil

Respondent : Express Construction Company

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 16-6-2014 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN CIVIL REVISION PETITION (NPD) No.1043 of 2010 and M.P.No.1 of 2010 Sunil Proprietor of M/s.Square No.78/829, Anna Salai Chennai 600 002 .Petitioner vs Express Construction Company By its Managing Partner C.M.Ibrahim 78/829, Anna Salai Mount Road, Chennai 2 .Respondent Civil revision petition preferred under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree dated 13.11.2009, made in R.C.A.No.58/2008, on the file of the VIII Judge, Small Causes Court, Chennai, confirming the fair and decreetal order dated 20.11.2007, made in R.C.O.P.No.2262/2006, on the file of XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.O.R.Santhanakrishnan For Respondent : Mr.G.Ramachandran

ORDER

The revision petitioner is the tenant/respondent in R.C.O.P.No.2262/2006, on the file of the Court of XIV Judge of Small Causes (Rent Controller) at Chennai and the said eviction petition filed by the respondent/landlord seeking demolition of the shop in the occupation of the tenant in the ground floor of the premises bearing No.78/829, Anna Salai (Mount Road).Chennai 2, admeasuring about 200 sq.

ft.

and for reconstruction, came to be ordered after contest, vide fair and decreetal order dated 20.11.2007, and aggrieved by the same, the tenant filed an appeal in R.C.A.No.58/2008, on the file of the Court of VIII Judge of Small Causes (Rent Control Appellate Authority) at Chennai, and the said appeal was also dismissed vide judgment and decree dated 13.11.2009, and challenging the concurrent findings, rendered by the Rent Controller as well as by the Rent Control Appellate Authority, the present revision is filed by the tenant.

2.A perusal of the materials available on record in the form of typed-set of documents, would disclose that the respondent/landlord had purchased the entire premises, which also consist of a shop leased out to the revision petitioner/tenant by means of a registered sale deed dated 28.6.2006, and the revision petitioner/tenant attorned the tenancy in favour of the respondent/landlord after their purchase.

The revision petitioner/tenant came into possession of the petition premises for non-residential purpose on a monthly rent of Rs.1,700/- and according to the respondent/landlord, the entire building had become very old and is in a dilapidated and dangerous condition as it was constructed about 100 years back by using brick and mortar, and the walls and flooring of the premises had also completely worn out.

The respondent/landlord further contended that the premises is situated in the heart of the City of Chennai at Anna Salai (Mount Road) and the Corporation of Chennai had also issued a notice for demolition and after demolition and reconstruction, the premises is going to be used as an Information Technology Park and in this regard, the landlord sent a lawyer's notice dated 12.12.2006, calling upon the revision petitioner/tenant to vacate and deliver vacant possession, and though it was acknowledged, the revision petitioner/tenant has failed to vacate the premises.

3.The revision petitioner/tenant has filed counter affidavit denying the averments made in the petition filed for eviction, and further contended that the respondent/landlord is not a registered firm under the Partnership Act, and it is only the firm that can prosecute the proceedings and the mandatory provisions of Section 69(2) of the Partnership Act, have not been complied with.

The tenant further contended that the remedy open to the landlord, if any, is to file a petition for fixation of fair rent and accordingly, he also filed a petition in R.C.O.P.No.52/2007 and therefore, it is very clear that the intention of the landlord was not to evict the revision petitioner/tenant.

The tenant also denied the age and condition of the building and also the capacity of the landlord to demolish and put up a new construction and further contended that the requirement is not at all bonafide.

4.During the couRs.of enquiry before the Rent Controller, on behalf of the landlord, P.Ws.1 and 2 were examined and Exs.P1 to P10 were marked.

The revision petitioner/tenant examined himself as R.W.1 and no exhibits were marked.

The learned Rent Controller, on a consideration of the averments made in the petition and counter statement, and oral and documentary evidence, found that the preliminary objection raised by the landlord, is unsustainable for the reason that Ex.P4 firm registration certificate, as well as Ex.P9 partnership deed, show that the firm of the landlord has been registered and it is having two partners including the Managing Partner.

The Rent Controller has also taken into consideration various decisions rendered by this Court, and found that for filing a petition for eviction, the partnership firm need not be registered and the partners being the agents of the firm, could very well institute eviction proceedings independently, in the absence of the firm being registered.

On merits of the case, the Rent Controller found that Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, does not contemplate that the building sought to be demolished, must necessarily be in a dilapidated condition and it is not necessary that the building is likely to come down very soon and even for better economic prospects and also for yielding better income, the building can be demolished and placed reliance upon very many decisions rendered by this Court.

The learned Rent Controller found that the building is in a dilapidated condition and in Ex.P2 sale deed, executed in favour of the respondent/landlord also, it is stated that the building is more than 100 years old and has further found that even on the ground of better return also, the building can be demolished for the reason that according to the landlord, after demolition, an Information Technology Park is likely to exist.

As regards means of the landlord to undertake demolition and reconstruction, the learned Rent Controller found that the property in question, was purchased by the landlord under Ex.P2, for a sum of Rs.10 Crores and considering the fact that since the property is in a very busy and an important locality of Chennai, there cannot be any difficulty on the part of the landlord to raise funds, found that the landlord is having means to demolish and put up a new construction.

The tenant also contended that in the absence of sanctioned plan, the requirement cannot be termed as bonafide and on the said contention, the learned Rent Controller found that the erstwhile landlord has applied for demolition and it is open to the present landlord also to apply for renewal and therefore, rejected the said submission.

The Rent Controller further found that the requirement of the landlord is bonafide and therefore, ordered eviction vide fair and decreetal order dated 20.11.2007, and aggrieved by the same, the revision petitioner/tenant filed an appeal in R.C.A.No.58/2008, on the file of the Court of VIII Judge of Small Causes (Rent Control Appellate Authority).A perusal of the judgment rendered by the Rent

Control Appellate Authority, would also disclose that the Appellate Authority has independently appraised the oral and documentary evidence in proper perspective and by placing reliance upon number of decisions rendered by the Hon'ble Supreme Court of India as well as by this Court, has found that the requirement for demolition and reconstruction is bonafide and the age of the building is also more old and considering the fact that an Information Technology Park is likely to come, found that for better economic return also, such a requirement is bonafide and further found that the respondent/landlord is having sufficient means to demolish and reconstruct the building and the requirement is also bonafide and therefore, confirmed the order of eviction passed by the Rent Controller, vide judgment and decree dated 13.11.2009, and aggrieved by the same, the present revision is filed.

5.Mr.O.R.Santhanakrishnan, learned Counsel appearing for the revision petitioner/tenant, would contend that both the Authorities below have not taken into consideration the oral and documentary evidence in proper perspective and has chosen to arrive at an erroneous finding that the condition of the building as well as the better economic return require immediate demolition and reconstruction and the other finding rendered on the ground of bonafide also, is also liable to be interfered with and hence, prays for setting aside the impugned judgment and decree passed by the Rent Control Appellate Authority, in confirming the order of eviction passed by the Rent Controller.

6.Per contra, Mr.G.Ramachandran, learned Counsel appearing for the respondent/landlord, would submit that in the premises bearing No.78/829, Anna Salai (Mount Road).Chennai 2, there were other tenants and an eviction petition in R.C.O.P.No.2270/2006 was also filed against them on the ground of demolition and reconstruction and it was ordered by the Rent Controller on 20.11.2007, and the tenants' appeal in R.C.A.No.59/2008 was also dismissed by the Rent Control Appellate Authority/VIII Judge of Small Causes Court vide judgment and decree dated 13.11.2009, and it was put to further challenge by filing C.R.P.(NPD) No.1044/2010 and it was also dismissed by this Court on 18.12.2013, granting some time to the tenants to vacate the premises and in fact, some of the tenants had also vacated the premises and therefore, prays for confirmation of the order of eviction passed by the Rent Controller, as confirmed by the Rent Control Appellate

Authority.

7.This Court paid its best attention to the rival submissions and also perused the materials available on record in the form of typed-set of documents.

8.As per Ex.P2 sale3 deed, the building is aged about more than 100 years and the sale consideration paid in respect of the entire building, was also huge.

As rightly found by the Rent Controller and also confirmed by the Rent Control Appellate Authority, de hors the condition of the building, for better economic return also, the landlord is entitled for eviction on the ground of demolition and reconstruction and the age of the building is 100 years old and it is in a dilapidated condition.

Further, after demolition, a new Information Technology Park building is likely to come up, which may yield better return for the respondent/landlord.

As regards the means of the landlord to undertake demolition and reconstruction, both the Authorities below found that the entire premises was purchased for a huge sum and since the location is in a prime area, there cannot be any difficulty on the part of the respondent/landlord to raise funds and to undertake demolition and reconstruction.

Both the Authorities below also found that the requirement of the landlord is bonafide as he has also given necessary undertaking in terms of the statutory provisions and on preliminary objections, both the Authorities below found that a partner, who is acting as an agent of the firm, is also entitled to initiate proceedings and the petition for eviction has not been filed with a view to coerce the tenant to pay the enhanced rent.

9.Similar contentions were put forth by the tenants in respect of the other portions, in C.R.P.(NPD) No.1044/2010 and the learned Judge of this Court had found that such contentions merit rejection and therefore, dismissed the revision and granted six months' time to the tenants to vacate the premises.

10.In the considered opinion of the Court, the findings of the Authorities below came to be rendered on a proper appreciation of oral and documentary evidence and correct application of law and however, taking into consideration that similar contentions put forth by the other tenants, were also rejected by this Court in C.R.P.(NPD) No.1044 of 2010, this Court is of the considered view that the present revision lacks merit and is liable to be dismissed.

11.In the result, this civil revision petition is dismissed confirming the judgment and decree dated 13.11.2009, made in R.C.A.No.58/2008, on the file of Court of VIII Judge of Small Causes (Rent Control Appellate Authority).Chennai, in confirming the fair and decreetal order dated 20.11.2007, made in R.C.O.P.No.2262/2006, on the file of the Court of XIV Judge of Small Causes (Rent Controller).Chennai.

However, in the circumstances, there shall be no order as to costs.

Consequently, connected MP is also dismissed.

12.The learned Counsel appearing for the revision petitioner/tenant, after the disposal of this revision, prays for some time to enable the revision petitioner/tenant to vacate and hand over vacant and peaceful possession of the premises.

On the said submission, the Court heard the submission of the learned Counsel appearing for the respondent/landlord also.

13.In the light of the plea made by the learned Counsel appearing for the revision petitioner, the revision petitioner/tenant is granted six months' time from today, to vacate and deliver vacant and peaceful possession of the premises in question, subject to the condition that he shall pay the rent regularly and also file an affidavit of undertaking within a period of two weeks from the date of receipt of copy of this order, undertaking to vacate the premises within six months' time from today, with further undertaking that he will not alter the physical features and will not create any third party rights.

16-6-2014 Index: yes/no nsv To: 1.The Rent Controller Court of XIV Judge of Small Causes Chennai 2.The Rent Control Appellate Authority Court of VIII Judge of Small Causes Chennai M.SATHYANARAYANAN, J.

nsv C.R.P.(NPD) No.1043 of 2010 Dt: 16-6-2014