

Mangalambal Vs. Anjali Devi

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Court : Chennai

Decided On : Feb-18-1998

Reported in : 1998(1)CTC679

Judge : S.S. Subramani, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 -- Sections 10(3)

Appeal No. : C.R.P.No. 3060 of 1997

Appellant : Mangalambal

Respondent : Anjali Devi

Advocate for Def. : Mr. K. Ramachandran, Adv.

Advocate for Pet/Ap. : Mr. S. Sampathkumar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. Landlady who lost her case before the Appellate Authority, has come to this Court, challenging the legality and propriety of the judgment of the Appellate Authority.

2. Eviction petition was filed against the tenant on the ground that the building is required for the occupation of the landlady's daughter, Bhanumathi, who needs regular treatment and constant attention by her parents. The present space is insufficient to accommodate Bhanumathi and, therefore, the portion in the occupation of the tenant is required for the additional accommodation of the revision petitioner/landlady.

3. In defence, respondent contended that the building was let out to her for non-residential purpose. The present requirement of the landlady being residential, eviction cannot be ordered. At any rate, the claim is not bona fide.

4. Rent Controller, after taking evidence, came to the conclusion that the claim of the landlady is a genuine. He found that Bhanumathi, daughter of the landlady, is not having a building of her own, and she requires constant attention by her parents. He also found that even though the tenant is making use of the premises for non-residential purpose, since it is part of a residential building and also could be made use of for residential purpose, eviction could be ordered. It was found that the claim of the landlady was bona fide.

5. Rent Controller did not enter a finding as to the relative hardship of the parties. He ordered eviction.

6. Tenant preferred RCA No. 5 of 1996. Appellate Authority was of the view that if a building is let out for non-residential purpose, the landlord can demand eviction only if he requires the demised premises for non-residential purpose. In this case, since the landlady demands eviction only for the purpose of residential purpose, the claim cannot be sustained. It also came to the conclusion that the evidence regarding bona fides is also not sufficient to order eviction. It also came to the conclusion that the hardship of the tenant will outweigh the advantage of the landlady. The findings of the Appellate Authority are challenged in this revision.

7. Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads thus:-

' A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in Clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for. residential purposes or for purposes of a business which he is carrying on, as the case may be.'

On a reading of this Section, I do not think that the finding of the Appellate Authority could be accepted.

8. The Appellate Authority has held that the landlady is not entitled to get eviction on that portion of the building, since it has been let out for non-residential purpose. Impliedly the Authority has held that because the letting is for non-residential purpose, the building occupied by the tenant must be taken as a non-residential building. This, according to me, is not the correct approach. In such cases, what is a 'residential building' and what is 'non-residential building' has to be considered taking into account the nature of construction. The structure should be given the predominance and not the user. The user of the building is not the conclusive test to decide the nature of the building.

9. I had occasion to consider a similar question in *The Manager, Deluxe Roadlines, etc. v. Jainullabudeen*, 1998 (1) LW 95 wherein the entire case law on the point has been considered.

10. In *Indira v. Vinayagam Chettiar* 1988 (2) L.W. 454 which is a case under the Pondicherry Buildings (Lease and Rent Control) Act, it was held thus:-

'... Whether a building is non-residential building or not will have to be determined on the structural characteristics of the building and the purpose for which it has been constructed. A building which has a bathroom and kitchen and other amenities which are characteristics of a residential building can therefore be treated as a residential building notwithstanding its for non-residential purpose.'

11. In *Shelat Brothers v. Lodd Narendradas* 1988 (2) L.W. 8 (Short Notes), Ratnam, J., as he then was, has held thus:-

'The mere user of a room in a residential building for non-residential purposes will not make the building as a whole a non-residential building as to bar the landlords from availing the benefits of S. 10(3)(c)(iii) of the Act. This has been laid down in R. Rangaswami Iyengar v. Postmen's Co-op. Credit Society through its President and another 91 LW 403.

12. In Kovilpillai Nadar F Tiresha Ammal 1997 (1) LW 585 it was held thus:-

'... If the structure of a building indicates that it is a residential purpose, and it is used for non-residential purpose, a petition for eviction filed against a tenant who is carrying on business in that place, is maintainable by the landlord, who wants it for residential purpose.'

13. In view of this settled legal position, the finding of the Appellate Authority that because it was let out for non-residential purpose, the petitioner cannot apply for residential purpose, cannot hold good. That finding is, therefore, set aside.

14. The Rent Controller has entered a finding that the claim of the landlady is bona fide. He has taken into consideration the evidence of P.Ws. 1 and 2, petitioner and her son-in-law, and has come to the conclusion that the petitioner requires the demised portion by way of additional accommodation since Bhanumathi needs constant attention by her parents, and Bhanumathi has also no building of her own. The Appellate Authority has reversed the finding of the Rent Controller mainly for the reason that when once the landlady has let out the portion for non-residential purpose, she cannot seek eviction for residential purpose. The finding of the Appellate Authority is that regard is not correct. The bona fides also have to be found in favour of the petitioner/landlady.

15. If it is a case of additional accommodation, naturally, there must be a finding as to whether the hardship of the tenant will outweigh the advantage of the landlord. In regard to the same, the Rent Controller has not entered a finding. But the Appellate Authority has entered a finding, but not taking into account the relevant provisions of law. The evidence in that respect has also not been considered. The Appellate Authority has taken into consideration irrelevant factors. It also should not have entered a finding when there was no finding by the Rent

Controller.

Under the above circumstances, I am constrained to set aside the judgment of the Appellate Authority and remand the matter to the Rent Controller to enter a finding whether the hardship of the tenant will outweigh the advantage of the landlord. For this limited purpose alone, the matter is remanded. Parties are permitted to adduce evidence on this aspect alone. I hold that the eviction petition is maintainable, and the claim of the landlady is bona fide. The remand is only for the purpose stated above. Rent Controller is directed to pass final orders on that point, after giving reasonable opportunity to both parties to adduce evidence on the limited point. Rent Controller is directed to dispose of the matter before the Court closes for Summer Recess. The revision petition is allowed as indicated above, however, without any order as to costs.

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