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Court : Chennai

Decided On : Aug-24-1976

Reported in : AIR1978Mad62

Judge : V. Ramaswami, J.

Acts : Madras Building (Lease and Rent Control) Act, 1960 - Sections 10(3)

Appeal No. : S.A. No. 622 of 1975

Appellant : P. Raju

Respondent : Balakrishnan

Disposition : Appeal dismissed

Judgement :

1. The plaintiff is the appellant. He is the tenant under the defendant in respect of one room bearing shop No. 2 in premises No. 61 Arappalayam Cross Road, Madurai town. The landlord was using the remaining building for the purpose of his business as also his residence. He filed a petition under Sections 10(2)(i) and 10(3)(c) of the Madras Buildings (Lease and Rent Control) Act, 18 of 1960, for eviction of the tenant on 3-4-1968 and this was numbered as R. C. O. P. 273 of 1968 on the file of the District Munsif Court, Madurai town, who was the Rent Controller. The two grounds on which the petition for eviction was sought for are willful default in the payment of rent falling under Section 10 (2) (i) and bona fide requirement of additional accommodation for the landlord's occupation for carrying

on his business falling under Section 10 (3) (c). It does not appear that a counter-statement was filed by the tenant in R.C.O.P. No. 273 of 1968. At any rate, there is no evidence in these proceedings that any such statement was filed by the tenant. On 19-7-1969 the parties made a joint endorsement on the petition for eviction which read as follows --

"The respondent submits to an order of eviction provided he is granted four years from today for vacating. Respondent to draw the sum of Rs. 100/- deposited by him into Court. There are no petition mentioned arrears. The respondent will not press the fair rent application. The respondent will pay the rent at Rs. 40/-. Respondent contends that there are no arrears."

On this joint endorsement, the Rent Controller made the following order on the same date:

1. That the respondent do put the petitioner in possession of the petition mentioned building within the period of four years from the date; and

2. That there be no order as to costs." The tenant did not deliver possession on the 19th July 1973, as agreed to by him in the joint endorsement; but filed the present suit for a declaration that the order of eviction in R. C. O. P. 273 of 1968 was made without jurisdiction and, therefore, it is void ab initio and unenforceable. The plaintiff also prayed for consequential injunction restraining the defendant-landlord from executing the decree or otherwise interfering with his possession and enjoyment. The trial Court decreed the suit holding that the Rent Controller had not exercised his mind and given a finding On the existence of the grounds for eviction and that the order of eviction was made simply on the basis of the joint endorsement made by the parties and that there was no other materials except the joint endorsement for ordering eviction. Therefore, the order of eviction was held to be null and void. The trial Court relied on certain portions in the judgment in K.K. Chari v. R. M. Seshadri, , in support of these findings

and also held that the landlord in this case did not come within the exception pointed out in that case. On appeal by the defendant, the lower appellate Court held that though the order ex facie does not show that the Rent Controller was

satisfied that the requirements of the landlord are bona fide, the fact that the tenant did not defend the petition coupled with the fact of submitting to an order of eviction clearly showed that he accepted as true the claim of the landlord that he required the premises bona fide for his own occupation. This amounted to the acceptance by the Rent Controller that the landlord had made out the statutory requirement entitling him to ask for possession of the premises for owner's occupation and that, therefore, under the decision in *K. K. Charj v. R. M. Seshadri*, , itself the order of eviction was valid

and, therefore, the suit was liable to be dismissed. I may add that on the question of willful default, the lower appellate Court also came to the conclusion concurring with the trial Court that the joint endorsement showed that there was no willful default in the payment of rent. In the view that under Section 10 (3) (c) of the Act the landlord was entitled to an order for eviction and the order of eviction made by the Rent Controller was valid, the appeal was allowed and the suit dismissed.

2. In this second appeal, the learned counsel for the appellant contended that the finding of the lower appellate Court that the Rent Controller was satisfied as to the bona fide requirement of the landlord for additional accommodation for the purpose of business is not borne out either by the order of the Rent Controller or the joint endorsement made by the parties and that, therefore, squarely on the ratio of the judgments of the Supreme Court in *Kausalya Devi v. K L. Eansal*, ; *Feorozilal v. Manmal*,

; *K. K. Chari v. R. M. Seshadri*,

and *Nagindas v. Dalpatram*, , the order of the Rent

Controller was void and unenforceable.

3. In the first two cases, the Supreme Court held with reference to the provisions in Delhi and Ajmer Rent Control Act, 38 of 1952, that the jurisdiction of the Rent Controller to pass a decree for recovery of possession of any premises depends upon his satisfaction that one or more of the grounds mentioned in Section 13 (i) of that Act have been proved. Where the Rent Controller had proceeded solely on

the basis of the compromise arrived at between the parties, it was not competent for him to order eviction and the decree for eviction made on the basis of such compromise alone was a nullity. In these two decisions, the ratio of the judgment of the Supreme Court in an earlier reported decision in *Bahadur Singh v. Muni Subrat Das*, (1969) 2 SCR 432 was followed. The majority judgment in *K. K. Chari v. R. M. Seshadri*, , while approving and following the principle laid down in the earlier two cases, held that the satisfaction of the Rent Controller of the existence of the grounds of eviction might be gathered either from the order made by the Rent Controller or from other materials on record which showed the existence of such grounds which could have satisfied the Rent Controller. In the words of the Supreme Court (at p. 1320)

"The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact, viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a prerequisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

It is no doubt true that before making an order for possession the Court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry." The Supreme Court hastened to add that each case will have to be decided on its own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the statutory grounds. On the facts of that case, it was noticed that the basis of the claim for eviction by the landlord was denied by the tenant and, before the compromise was entered into, P. W. 1 was examined in chief and as many as 45

documents were marked through him. Before P.W. 1 could be cross-examined, the parties settled the matter. In view of the fact that the tenant in that case was a knowledgeable person and having been seen the evidence of P. W. 1 in chief and the documents filed the Supreme Court came to the conclusion that the tenant entered into the compromise being fully aware of the existence of the grounds for eviction and the possibility of the Court satisfying on that evidence itself and the ordering eviction. It is on that basis the Supreme Court held that the order made on the basis of the compromise memo was not invalid or without jurisdiction. In a later case reported in *Nagindas v. Dalpatram*, , the

Supreme Court went a little further than *K. K. Chari v. R. M. Seshadri*, , and held that admissions in pleadings

or judicial admissions admissible under Section 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case are fully binding on the party that makes them and constitute a waiver of proof. Those admissions can be made the foundation of the rights of the parties. The Supreme Court further held (at p. 477)--".....in cases where an objection as to the non-executability of the decree on the ground of its being a nullity is taken the executing Court is not competent to go behind the decree, if the decree on the face of it, discloses some material on the basis of which the Rent Court could be satisfied with regard to the existence of a statutory ground for eviction. In such a case it must accept and execute the decree as it stands. If, on the face of it, the decree does not show the existence of such material or jurisdictional fact, the executing Court may look to the original record of the trial Court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that *prima facie* such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding of the trial court on the basis of that material. All that it has to see is whether there was some material on the basis of which the Rent Court could have -- as distinguished from must have -- been satisfied as to the statutory ground for eviction. To allow the executing court to go beyond that limit would be to exalt it to the status of a super court sitting in appeal over the decision of the rent court. Since in the instant case, there was a clear admission in the compromise,

incorporated in the decree, of the fundamental facts that could constitute a ground for eviction under Section 12(3)(a), the executing court was not competent to go behind the decree and question its validity".

Thus when a question arises for consideration whether the Rent Controller was satisfied as to the existence of the grounds, it will have to be decided with reference to the pleadings in the rent control proceedings, the evidence available and the admission of parties both in the compromise memo and otherwise and if, there were some materials on the basis of which the Rent Controller could have been satisfied as to the existence of the statutory ground of eviction, the court could not set aside that order of eviction or refuse to execute the decree.

4. In this case, as already stated, the eviction was sought for on two grounds, namely, willful default in the payment of rent and bona fide requirement of additional accommodation for the landlord's own business. So far as willful default is concerned, the joint endorsement made by the parties is clear and shows that there were no arrears at all on the date when the petition was filed. There is no evidence to show that there was any delay in the payment of rent much less willful default in the payment of the same. The finding of the courts below that eviction could not have been ordered by the Rent Controller on the materials available on record and the Rent Controller could not have also been satisfied as to the willful nature of default, is, therefore, correct and does not call for interference. But on the question whether there are materials to show that the bona fide requirements of additional accommodation for the business carried on by the landlord, the courts below have differed and I am of opinion that the lower appellate court is correct in its finding that there were some materials on which the Rent Controller could have been satisfied as to the bona fide requirement of the owner's occupation. The first sentence in the terms of the joint endorsement relates to this ground of eviction under Section 10 (3) (c) of the Act and reads as follows--

"The respondent submits to an order of eviction provided he is granted four years from today for vacating".

This sentence read with the actual order made by the Rent Controller on the basis of the joint endorsement clearly shows that the tenant had conceded the

existence of the bona fide requirement of additional accommodation for the business carried on by the landlord. This concession was accepted by the Rent Controller and was made a decree in para 1 of the order. The joint endorsement really does not show that the landlord himself had granted four years' time for vacating the premises. This tenant had submitted to the order for eviction 'provided' he is granted four years' time for vacating. Therefore, it was for the Rent Controller to have decided to grant time or not to grant time. Maybe the Rent Controller could not have reduced the period of four years if the compromise had to survive. But the Rent Controller had to decide whether to grant four years' time and allow the parties to compromise or reduce the time for eviction. The order made by the Rent Controller shows that the Rent Controller had agreed to grant four years time. This in my opinion shows that the Rent Controller had exercised his mind and came to the conclusion that the bona fide requirements of the landlord was satisfied and an order for eviction should be granted, but the tenant will have to be given four years' time for vacating. The learned counsel for the appellant contended that the long period of four years' time granted itself showed that the claim of the landlord for bona fide requirement of additional accommodation could not be true and implied that the Rent Controller could not have been satisfied as to the bona fide requirement of the owner. I am unable to agree with this submission of the learned counsel. In these days of tenancy legislations and the difficulties of the landlord to secure possession, the landlord agreeing to grant four years' time for eviction cannot be said to be such an extraordinary period implying that the landlord was not requiring the building bona fide for purpose of his business. If he had not agreed for such four years, probably the tenant could have dragged on the proceedings for much longer period than that. In these circumstances, the contention that the mere fact that the time for eviction granted by the Rent Controller was four years itself showed want of bona fide requirement could not be accepted. It was then contended by the learned counsel that in the case of additional accommodation required by the landlord under Section 10 (3) (c) read with Section 10 (3) (e) and the proviso, the Rent Controller will have to be satisfied not only that the landlord bona fide requires additional accommodation but also the relative hardship which may be caused to the tenant by granting such relief. In other words, according to the learned

counsel, the Rent Controller will have to be satisfied also that the hardship caused to the tenant will not outweigh the benefit or the bona fide requirement of the owner for purpose of additional accommodation. Neither the joint endorsement nor the order of the Rent Controller implies a satisfaction to the fact according to the learned counsel. Though this argument is plausible, again on the facts of this case, I am unable to agree with this contention. When the Rent Controller orders eviction on the ground of bona fide requirement for additional accommodation, which I have already implied that there was such a finding, it necessarily follows that the Rent Controller must be also deemed to have been satisfied as to the relative hardship caused to the tenant. We must also keep in mind that in this case there is no evidence to show that the tenant filed any objection to the petition filed by the landlord under Section 10 (3) (c) of the Act. As already pointed out there is no evidence of any such objection produced in this court. We have, therefore, to presume that no such objection was filed before the Rent Controller. Though the non-filing of objections could not be taken as an admission, it goes a long way in understanding the joint endorsement made by the parties on the petition. I am, therefore, satisfied that this is not a case, where the order could be assailed on the ground that there is no evidence of satisfaction by the Rent Controller of the existence of the conditions for eviction. The second appeal therefore fails and it is dismissed. But there will be no order as to costs. No leave.

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