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Court : Chennai

Decided On : Jul-06-1983

Reported in : (1983)2MLJ505

Appellant : A. Ganesan

Respondent : Amaravathiammal

Judgement :

M. Fakkir Mohammed, J.

1. The revision petition has been filed by the tenant, who is an advocate at Wallaja, against the eviction order granted by the appellate Court in C.M.A. No. 77 of 1979 reversing the dismissal of the eviction petition in H.R.C.O.P. No. 8 of 1977 on the file of the Rent Controller, Ranipet.

2. The landlady, who is the respondent herein, filed the eviction petition under Section 10(3)(a)(i) of the Tamil Nadu Act XVIII of 1960, on the ground of personal occupation. The petition was opposed by the petitioner herein stating that the petition is motivated since the prior proceedings initiated by the landlady for evicting the tenant proved futile. The learned Rent Controller, on the evidence before him, gave the finding that the requirement of premises for personal occupation is not true and bona fide. According to the revision petitioner, the grounds on which the eviction petition was dismissed are cogent and convincing. But on appeal by the landlady the order of the Rent Controller was reversed and

the appellate authority came to the conclusion that the requirement of the landlady is true and bona fide. Hence this revision.

3. It is not disputed that the landlady, who is a widow now, had filed H.R.C.O.P. No. 25 of 1972 on the file of the Rent Controller, Ranipet, on two grounds viz., personal occupation and demolition for reconstruction. In the said petition, the ground of personal occupation was not pressed and the parties went for trial on the ground of demolition for reconstruction. The said eviction petition was dismissed vide Exhibit B-1 printed copy of the order dated 16th July, 1973. The appeal preferred by the landlady in C.M.A. No. 17 of 1974 was also dismissed-vide Exhibit B-2, certified copy of the judgment, dated 15th March, 1975. Thereafter the landlady filed H.R.C.O.P. No. 13 of 1976, on the file of the Rent Controller, Ranipet, for fixation of fair rent and the said petition was allowed to be dismissed as not pressed as seen from Exhibit B-3, dated 31st January, 1977. Immediately thereafter the present H.R.C.O.P. No. 8 of 1977 has been filed for personal occupation.

4. As already observed, the appellate authority came to the conclusion that the requirement for personal occupation is true and bona fide. It is not disputed at the time when the landlady instituted proceedings in 1973 under Exhibit B-1 and in 1975 under Exhibit B-2 the husband of the landlady was alive and that she become a widow thereafter. For coming to the conclusion that the requirement for personal occupation is true and bona, fide, the appellate authority took into consideration the occupation of the building by the landlady at Vellore as a tenant on a monthly rent of Rs. 17.50, the intention of the landlady to shift from Vellore, which is a big municipal town, to Wallajah, which is a small town, wherein the schedule building is situate, and the education of the five children of the landlady at Wallajah. It is seen from the order of the Rent Controller that the previous proceedings under Exhibits B-l to B-3 have weighed much whereas they have not weighed so much on the mind of the appellate authority.

5. Now, the only point to be considered is, whether under the present Section 10(3)(a)(i), the requirement of the landlady is true and bona fide. Section 10(3)(a)(i) of the Act XVIII of 1960, reads as follows:

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--

(i) in case it is a residential building, if the landlord requires it for has own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned.

It is not disputed that the landlady is not occupying a residential building of her own in Wallajah wherein the demised building is situate. Admittedly, it is a residential building. Hence that contingency is satisfied in this case.

6. The only remaining question that has to be considered is, whether the landlady requires the building for her own occupation or for the occupation of any member of her family. Section 10(3)(e) of the Act XVIII of 1960, reads thus:

The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building... and if the Controller is not so satisfied he shall make an order rejecting the application.

Therefore, the landlady has to prove that the building is not only required for her own occupation, but such requirement is bona fide. The appellate authority has found that the landlady being a widow occupying a rented building in a bigger town, Vellore, and educating five children has decided to settle in her own small town and that, therefore the requirement seems to be bona fide one. The conclusion of the appellate authority cannot be considered to be a perverse one and as not based on any evidence. The decision of the appellate authority is purely a question of fact and, he has rightly come to the conclusion that the requirement is a bona fide one.

7. Now, we have to see whether there is any illegality or any error of jurisdiction in the conclusion of the appellate authority. On the side of the revision petitioner, the following points have been urged. The first point is the institution of the eviction petition under Exhibits B-l and B-2 in 1972. The said point is met by the learned

Counsel for the respondent herein stating that because the landlady was residing with her husband and the husband would have found out resources for putting up construction after demolishing the existing building, the eviction petition was filed and at that stage the ground of demolition for reconstruction would have been dropped restricting the claim to owner's occupation and the landlady did not take the matter on revision as she might have decided to live with her husband. Simply because the eviction petition filed in 1972 was dismissed, the mind of the Court shall not be carried away or prejudiced in finding out whether the present requirement is bona fide. Therefore, the said ground urged on behalf of the revision petitioner cannot be entertained in this application .

8. The next point urged on behalf of the revision petitioner is the institution of application for fixation of fair rent in 1976 and the withdrawal of the same. The learned Counsel for the respondent has met that objection by stating that because the landlady has subsequently became widow and was greatly in need of the schedule building for her own occupation, she had withdrawn the fair-rent application and the said conduct goes to prove the bona fide of the landlady in filing this present application for owner's occupation.

9. It is not in dispute that the landlady has been educating five children at Vellore and that since the husband is no more and the landlady is in receipt of only her pension amount, it is quite probable that the landlady, in order to avoid incurring huge expenditure by educating five children at Vellore, which is a big growing municipal town, has decided to shift to Wallajah which is a small town where the cost of living must be comparatively very low than at Vellore. Out of the seven sons of the landlady, two sons; are employed in the Police Department in outside places. Hence, it is probable that the requirement of the building is: bona fide.

10. The next contention urged on behalf of the revision petitioner is that the landlady has given a wrong address in the petition as though she has been residing in Vannivedu. But on going through the cause title, it is seen that the landlady has referred the Vannivedu address as a temporary address. Therefore, nothing turns upon the address given in the petition and it cannot be advanced as a valid ground for treating the requirement of the landlady as a mala fide one.

11. The learned Counsel for the revision petitioner has argued that there was no threat of eviction of the landlady from her rented premises at Vellore wherein she has been residing. The said question is not at all germane since the landlady wants to shift to her own town and the amended section does not contemplate such a contingency. Of course, the argument advanced on behalf of the respondent, to say, that because the revision petitioner is an advocate there is a contingency not to let the building, is quite out of place and the same is not entertainable in this Court.

12. The learned Counsel for the respondent has drawn the attention of this Court to a decision rendered in Sri Rajalakshmi Dyeing Works v. Rangaswamy : AIR 1980 SC1253 . In paragraph 3 of the above decision, the Supreme Court has observed that even though Section 25 of Tamil Nadu Act XVIII of 1960, is wider than Section 115 of the Code of Civil Procedure, and the wordings in Section 25 appear to be wide, the wordings only indicate the supervisory powers of the High Court in revision and such powers shall not be exercised as a Court of appeal while sitting in revision under the said Section 25 of Act XVIII of 1960. It has been further observed that because the High Court can come to a different conclusion on the same set of facts from the conclusion that was arrived at by the appellate forum, it will not be correct to exercise the power akin to appellate authority by reversing the finding passed on facts by the appellate authority. Wherever two views are possible on the same set of facts, it will not be correct for the High Court sitting in revision to reverse the view of the appellate authority passed on the same set of facts under Section 25 of the Tamil Nadu Act XVIII of 1960. Thus, on the said legal basis also, the decision of the appellate authority does not call for any interference, especially when the Supreme Court has laid down the above principle. For the aforesaid reasons this Court finds that the the finding of the appellate authority cannot be deemed to be erroneous or an act of exercise of any wrong jurisdiction.

13. In the result, therefore, the revision petition is dismissed with costs and the order of the appellate authority is sustained. The tenant is granted, as a special case, four months time for vacating the schedule building as he is an advocate.

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