

Narayanan Vs. Chandrasekaran

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Court : Chennai

Decided On : Jul-11-2005

Reported in : 2005(3)CTC693

Judge : S. Sardar Zackria Hussain, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 30

Appeal No. : C.R.P. (NPD) Nos. 4082 of 2001 and 373 of 2002 and C.M.P. No. 22089 of 2001

Appellant : Narayanan

Respondent : Chandrasekaran

Advocate for Def. : A. Muthukumar, Adv.

Advocate for Pet/Ap. : S. Soundar, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. The revision petitioner in both the revisions is the tenant under the respondent/landlord in respect of the petition premises. Both the revisions have

been filed challenging the order of eviction passed by the learned Rent Control Appellate Authority on the ground of demolition and reconstruction in confirming such order of the learned Rent Controller.

2. The mother of the respondent, viz., Pattammal has filed both the Rent Control Original Petitions for eviction on the ground of wilful default in payment of rent and demolition and reconstruction. In addition in respect of the tenant Narayanan, it is stated that the premises is used other than for which it was leased. Both the Rent Control Original Petitions have been filed by the landlady claiming that the premises in both the petitions belonged to her son, the respondent Chandrasekaran, who is a college lecturer, in that, she was collecting rent on behalf of the respondent as authorised by him, which fact has not been disputed by the tenants in both the revisions. As per the Rent Control Original Petitions, both the tenants committed wilful default in payment of rent for the months of November and December, 1996. According to the landlady, the premises in both the petitions are required bona fide for demolition and reconstruction, since the building is very old and decrepit and some portions of the building partially Madras terraced and partially tiled. The doors, walls and floorings are in damaged condition. The building is situated in the heart of the town. If new building is put up, it will fetch more income, for which the landlady is having sufficient funds. The necessary undertaking also furnished as contemplated under the Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter referred to as 'the Act'). In addition, R.C.O.P. No. 6 of 1997 has been filed against the tenant Narayanan that the petition premises was let out for residential purpose which is a portion of the main house, but contrary to the terms of tenancy, the tenant Narayanan is running a cycle shop and as such, he is using the premises for the purpose other than for which it was leased.

3. Both the Rent Control Original Petitions have been resisted that the tenants in both the petitions have not committed default, much less wilful default in payment of rent as claimed by the landlady and that the requirement of the premises in both the petitions for the purpose of demolition and reconstruction is without bona fide. The tenant Narayanan also challenged the ground of eviction that he is using the premises other than for which it was leased out by stating that right from the

inception of the tenancy, he is carrying on business in cycle shop and also residing therein.

4. In R.C.O.P. No. 6 of 1997, the landlady examined herself as P.W.1 and her son, the respondent herein as P.W.2 and marked Exs.P-1 and P-2. The tenant Narayanan examined his wife Tmt. Mohana as R.W.1 and marked Exs.R-1 to R-5. The report and rough plan of the advocate-commissioner has been marked as Exs.C-1 and C-2.

5. In R.C.O.P. No.7 of 1997, the landlady examined herself as P.W.1 and her son, the respondent herein as P.W.2 and marked Exs.P-1 and P-2. The tenant Sivasamy examined himself as R.W.1 and marked Exs.R-1 to R-5.

6. In considering such evidence, accepting the case of the tenants in both the petitions that they have not committed wilful default in payment of rent as claimed for the months of November and December, 1996, in that, the rental amount sent for the months of November and December 1996 and January, 1997 by money order under Exs.R-1 to R-3 were refused by the landlady and thereafter the rent for the months of November 1996 to February, 1997 were paid at the rate of Rs. 230 per month to the counsel for the landlady under Ex.R-4 and thereafter from March, 1997 to August, 1999 under Ex.R-5 and also accepting the case of the tenant Narayanan that he has been carrying on business right from the inception of the tenancy and also residing therein, in view of the admission made by P.Ws.1 and 2 that the tenant Narayanan is carrying on business in cycle shop and also residing therein for more than 15 years and accordingly the learned Rent Controller denied eviction on the ground of wilful default in payment of rent and used the premises other than for which it was leased, but, however, the learned Rent Controller accepting the case of the landlady, ordered eviction in both the petitions on the ground of demolition and reconstruction directing the landlady that on such eviction, the landlady has to reinduct the portions of the same measurement to the tenants herein after putting up new construction.

7. Challenging the orders of eviction passed against the tenants in both petitions, both the tenants have filed Rent Control Appeals R.C.A. Nos. 1 and 2 of 1997. During pendency of the Rent Control Appeals the landlady died. Hence, the

respondent Chandrasekaran as landlord has been added. The learned Rent Control Appellate Authority dismissed both the Rent Control Appeals, confirming the eviction ordered by the learned Rent Controller on the ground of demolition and reconstruction. Such orders are challenged in these revisions.

8. Though both the revisions arise out of separate orders, since the facts almost similar, both the revision petitions are disposed by this common order.

9. Heard the learned counsel for the revision petitioner/tenant in both petitions and the learned counsel for the respondent/landlord in both petitions.

10. The learned counsel for the revision petitioner in both the revisions submitted that the eviction ordered on the ground of demolition and reconstruction by the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority is not proper, in that, the landlady has failed to establish that the requirement of the petition premises in both the petitions for demolition and reconstruction is bona fide. The other submission made by the learned counsel for the revision petitioner is that the landlady failed to prove that they have sufficient means to demolish and put up new construction. It is also submitted by the learned counsel that though there are other tenants in the very same building, but, no eviction petition has been filed to evict the said tenants. The learned counsel also submitted that some of the tenants have been evicted and in that place new tenants have been inducted. As regards the argument advanced by the learned counsel for the respondent in both the revisions that though no cross appeal is filed by the respondent/landlady against the eviction denied on the ground of wilful default in payment of rent, he can advance such a case seeking eviction on that ground also in this revision, the learned counsel for the revision petitioner in both the revisions strenuously argued that since no cross appeal has been filed by the landlady, it is not open for the respondent now to contend seeking eviction on the ground of wilful default in payment of rent. To that view, the learned counsel for the revision petitioner in both the petitions has relied on the decision of this Court in *T. Soundarapandian v. G. Rathinam* in which, this Court has held that the landlord cannot raise the ground of wilful default when he has not preferred any appeal against the finding of the Rent Controller. In the revision also the landlord

has not preferred any appeal against the finding of the learned Rent Controller and it is not open to the landlord to raise such a plea in the revision, in that, if it is allowed, the opposite party would be caught unaware.

11. The learned counsel for the respondent/landlord vehemently contended that though cross-appeals are not filed by the landlady against the order of the learned Rent Controller denying eviction on the ground of wilful default in payment of rent, it is open to him to urge such a contention in these revisions.

12. As rightly argued for the tenant in both the revisions, in view of the decision of this Court in *T. Soundarapandian v. G. Rathinam* (cited supra), inasmuch as the landlady has not filed cross appeal challenging the denial of eviction on the ground of wilful default in payment of rent before the learned Rent Control Appellate Authority, it is not open to the landlord to raise such contentions seeking eviction on the ground of wilful default in payment of rent.

13. The learned Rent Controller considering the evidence adduced on either side and more particularly, Exs.R-1 to R-4, has found that the tenants in both the revisions have not committed default much less wilful default as claimed by the landlady and such finding was not disturbed by the learned Rent Control Appellate Authority since no cross appeal has been filed.

14. The learned counsel for the respondent also advanced argument that though the premises in both the petitions are portions in the very same building, the respondent/landlord is entitled for demolition and reconstruction of the said portions of the building without disturbing the other portions of the building, in view of the improved Engineering Technology.

15. As regards the means, the learned counsel for the respondent submitted that the respondent herein, who is the college professor has got sufficient means and the respondent as R.W.2 has stated in the evidence that he is having Rs. 8 lakhs by way of fixed deposit in banks and it is admitted by the respected tenants in both the revisions that besides the petition premises, the landlord also own some other buildings in Karaikudi town and as such, the landlord can also raise funds.

16. As regards not obtaining sanctioned plan, it is submitted by the learned counsel for the respondent that such plan can be obtained once the building is handed over by the tenants.

17. The learned counsel for the respondent vehemently argued that the condition made by the learned Rent Controller, as per which after constructing new building, the landlord has to hand over possession of the same measurement portions which were let out to the said tenants, is improper and the order of eviction on the ground of demolition and reconstruction is to be confirmed deleting such clause.

18. It is also argued by the learned counsel for the respondent that the premises in both revisions are adjacent portions as noted by the advocate-commissioner in his report and plan and the petition premises alone can be demolished and reconstructed without demolishing other portions of the same building. The learned counsel also relied on the decision in T. Balasubramaniam, A v. T. Balasubramaniam and Ors. 2000 (3) LW 419 in which, this Court held that rejecting the plea of the tenant that demolition will affect the remaining portion in view of the improved Engineering technology that such portion of the building can be demolished and reconstructed and non-production of plan and licence will not disentitle the landlord from getting eviction. In Shakeelulr Rahman v. Syed Mehdi Ispahani 2002 (4) CTC 753 the Hon'ble Supreme Court held that the tenant directed to be evicted on the ground of demolition and reconstruction could not seek reinduction as tenant after reconstruction.

19. The petition premises are portions and are situated in the building bearing door No. 125, Pattamangala Street, Mayiladuthurai town. In the Rent Control Original Petitions it is stated that the building is very old and decrepit and in some portions the building partially Madras terraced and partially tiled. The doors, walls and the floorings are in a damaged condition. The building is situated in the heart of the town and if new building is put up it will fetch more income. P.Ws.1 and 2 have also stated so in their evidence.

20. The advocate-commissioner in his report and plan Exs.C-1 and C-2 has stated that the front portion of the building is a terraced construction which is shown as 'ABCDEFGH' in the plan Ex.C-2 that on the west of the said terraced portion there

is a portion on the north without door by putting up a separation wall. The next southern portion is the pathway and on further south of that portion there is a stair case and on the east of stair case there are apparatus to repair cycle and also compressor motor machine. Further west on the north is the 'koodam portion' separated by two with screen. It was informed that in northern portion, the tenant Sivasamy and in southern portion the tenant Narayanan are residing. Further, on the west there are two rooms of tiled roofing supported by bamboo sticks, in which southern room is used by the tenant Narayanan and the northern portion is used by the tenant Sivasamy. The portion is very old. There have been cracks in the walls and graders ???(l) The terraced portion shown as GDEF have been damaged and the iron rods have been protruding outside. Further, entire western portion is tiled roofing and the backyard portion is without tiles. Iron graders in GDEF portion are in damaged condition.

21. The landlady Pattammal as P.W.1 in both petitions has stated in her evidence that the tenants Narayanan and Sivasamy occupied the front portions of the building. P.W.1 raised wall in the way leading to 'Koodam' to support the roofing. It is further her evidence that the petition building is very old and some portions of the building partially Madras terraced and partially tiled. Periodical repairs are being done. The portion occupied by Doctor, Finance Company, Covering shop were also in dilapidated condition. But the said tenants had repaired and they are now in good condition. Since the petition premises is in dilapidated condition, and are in leaky during rainy season they are going to demolish the portions occupied by the tenants Narayanan and Sivasamy and back portion occupied by Ramu. The other tenants have agreed to vacate. They have got sufficient means to demolish and reconstruct the petition premises.

22. The landlord Chandrasekaran as P.W.2 in both petitions has stated in his evidence that he deposited Rs. 8 lakhs in his name and in the name of his wife and mother in Karaikudi and Mayiladuthurai. The petition premises as well the building in the same street belonged to his sister are more than 100 years old.

23. The tenant Sivasamy as R.W.1 in R.C.O.P. No.7 of 1997, subject matter of C.R.P. No. 373 of 2002 has stated in his evidence that on the south, north and

opposite to the petition premises, several multi-storied buildings have been put up and the petition building alone is old building. The petition building is situated in important business locality. The landlord will get more income if new building is put up after demolishing the petition premises. The portion on the west to the petition premises is also tiled portion.

24. The tenant Narayanan's wife Mohana as R.W.1 in R.C.O.P. No. 6 of 1997, subject matter of C.R.P. No. 4082 of 2001 has stated in her evidence that in the portion occupied by her, the roofing is tiled supported by bamboo sticks. Further, it is her evidence that the petition premises is situated in important locality of Mayiladuthurai and no objection has been filed to the report of the advocate-commissioner. The petition premises is situated in Pattamangala Street, Mayiladuthurai opposite to Kaliyakudi Hotel.

25. Therefore, it is clear on such evidence adduced on either side that the petition building is more than 100 years old and some of the portions are Madras terraced and some portions are tiled roofing, especially the portions occupied by the tenants Narayanan and Sivasamy are tiled roofing and in fact a wall has been raised to support the roofing in the portion occupied by the tenant Narayanan. In the modern improved Engineering Technology, the portions occupied by the tenants Narayanan and Sivasamy alone can be demolished and new construction can be put up. The landlord has got sufficient means to put up new construction and in fact he has deposited a sum of Rs. 8 lakhs in his name and in the name of his wife and mother in Karaikudi and Mayiladurai. Admittedly, the landlord owned other buildings and as such, funds can be raised through that buildings also.

26. It is settled now that non-production of plan and licence will not disentitle the landlord from getting eviction. Therefore, the requirement of the petition premises in both the petitions, subject matter of these revisions as sought for by the landlord is bona fide and the learned Rent Control Appellate Authority rightly confirmed the eviction order of the learned Rent Controller, considering all these aspects that the requirement of petition premises for demolition and reconstruction is bona fide. The learned Rent Control Appellate Authority misdirected itself in confirming the order of the learned Rent Controller that on such eviction, the landlord has to

reinduct the portions of the same measurement to the tenants herein after putting up new construction. As per Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the said Act is not applicable to any building for a period of five years from the date on which the construction is completed. Therefore, once, the petition premises, subject matter of the revisions are demolished and reconstructed, since the Tamil Nadu Buildings (Lease and Rent Control) Act is not applicable for such premises, the revision petitioners in both the revisions are not entitled for reinduction as tenants in respect of the portions of the same measurements occupied by them as held by the Hon'ble Supreme Court in Shakeelur Rahman v. Syed Mehdi Ispahani 2002 (4) CTC 753 (cited supra). The landlord has given necessary undertaking. Therefore, the eviction order of the learned Rent Control Appellate Authority in confirming the eviction order of the learned Rent Controller does not call for any interference excepting the clause that on such eviction, the landlady/landlord has to reinduct the portions of the same measurement to the tenants herein after putting up new construction and the same is deleted.

27. In the result, both the Civil Revision Petitions are dismissed. No costs. The clause in the eviction order of the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority that on such eviction, the landlord has to reinduct the same portion of the same measurement to the tenants/revision petitioners herein after putting up new construction is deleted. Consequently connected petition C.M.P. No. 22089 of 2001 is closed.

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