

N. Kuberan Vs. Indian Bank, Tindivanam Branch, Rep. by Its Branch Manager

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SooperKanoon Citation : sooperkanoon.com/834042

Court : Chennai

Decided On : Jul-18-2006

Reported in : 2006(4)CTC322; (2006)4MLJ105

Judge : S. Rajeswaran, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control), Act, 1960 - Sections 4 and 18A; [Code of Civil Procedure \(CPC\) , 1908](#); [Constitution of India](#) - Article 227

Appeal No. : C.R.P. PD No. 128 of 2005 and C.M.P. Nos. 4220 of 2005 and 8448 of 2006

Appellant : N. Kuberan

Respondent : Indian Bank, Tindivanam Branch, Rep. by Its Branch Manager

Advocate for Def. : Ritha Chandrasekaran, Adv.

Advocate for Pet/Ap. : Dhanasekaran, Adv. for ;N. Mani Narayanan, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

S. Rajeswaran, J.

1. The Civil Revision Petition filed against the order and Decree dated 13.10.2003 made in I.A. No. 55 of 2001 in R.C.O.P No.3 of 2000 on the file of the Court of the District Munsif, Tindivanam.

2. The landlord who filed R.C.O.P No. 3 of 2000 under Section 4 of Tamil Nadu Buildings (Lease and Rent Control) Act is the revision petitioner herein.

3. R.C.O.P.No.3 of 2000 was filed by the landlord/petitioner for fixing the fair rent and to direct the tenant bank to pay the same to the petitioner from 01.04.1999. The landlord/petitioner filed I.A. No. 55 of 2002 under Section 18(A) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (herein after called the Act) for appointment of an Advocate Commissioner to inspect the petition property with the help of a P.W.D Engineer to decide the fair rent of the petition property by filing a report before the rent Controller. This petition was seriously contested by the respondent Bank and by an order dated 13.10.2003, the Rent Controller dismissed the said I.A. No. 55 of 2002 by solely relying upon the judgment of this Court reported in 2002 3 LW 607 in (Thayammal v. Peria Isakki Thevar and Ors.). Aggrieved by the order of the Rent Controller, the landlord/petitioner preferred the C.R.P under Article 227 of the [Constitution of India](#).

4. Heard the learned Counsel appearing for the petitioner as well as the learned Counsel for the respondent. I have also perused the documents and judgments referred to by them in support of their submission.

5. Learned counsel for the revision petitioner submitted that under Section 18(A) of the the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 the Rent Controller shall have power to appoint the Commissioner in any proceedings pending before him and for this purpose he shall have all the powers of the Civil Court under CPC 1908. According to the learned Counsel, the rent Controller has failed to exercise his jurisdiction conferred on him under Section 18(A) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The learned Counsel relied on the judgment of this Court reported in 1999 1 LW 430 (K. Sivarajah v. B.K.N. Rajaram).

6. Learned counsel for the respondent on the other hand submitted that an Advocate Commissioner cannot be appointed to ascertain the market value of the property and for this purpose he relied on the judgment of this Court reported in 2002 3 LW 607 (cited supra) which was relied on by the Rent Controller to dismiss the application filed by the landlord.

7. Learned counsel for the respondent further submitted that during the pendency of I.A. No. 55 of 2001 and R.C.O.P. No. 3 of 2000, the landlord sold the property under two sale deeds dated 05.06.2002 and 12.07 .2002 and therefore, the landlord ceased to be a landlord and therefore, the R.C.O.P. itself is not maintainable. To establish the subsequent sale by the landlord the respondent herein filed C.M.P. No. 8448 of 2006 before this Court to admit the xerox copy of the sale deed dated 05.02.2002 and 12.07.2002 as additional evidence in this C.R.P. He relied on the judgment of this Court reported in 1999 T.L.N.J 299 (Neelavathy v. Indirani and Anr.) to contend that as the landlord ceased to be the owner of the property in question, he is not entitled to maintain R.C.O.P as well as C.R.P.

8. Section 18(A) of the the Tamil Nadu Buildings (Lease and Rent Control) Act empowers the rent Controller to appoint an Advocate Commissioner in any proceedings pending before him and for this purpose the rent Controller shall have all the powers of Civil Court.

9. The landlord filed I.A. No. 55 of 2002 for appointment of an Advocate Commissioner to inspect the property with the help of a P.W.D Engineer to decide the fair rent and to submit a report in this regard. The Rent Controller has no doubt relied on the judgment of this Court reported in 2002 3 LW 607 (cited supra) to come to a conclusion that the Advocate Commissioner report and P.W.D Engineer's report cannot be looked upon for arriving at the market value of the property.

10. In 2002 3 LW 607 (cited Supra) the learned Single Judge of this Court held that the petitioner is not entitled to seek the appointment of an Advocate Commissioner to prove the market value of the suit property. In that case, the petition was filed to seek the appointment of Advocate Commissioner to prove the

market value of the property without even framing any issue with regard to the value of the suit property. Only in that context, the learned Judge has passed an order, but the facts in this case are totally different. The landlord has not asked for any appointment of Commissioner to fix the market value of the property. On the other hand, he prayed for an appointment of Advocate Commissioner to inspect the petition property with the help of a P.W.D. Engineer to determine the value of the property for the purpose of fixing the fair rent by submitting a report before the Rent Controller. Therefore as rightly contended by the learned Counsel for the revision petitioner, the Rent Controller erred in law in dismissing I.A. No. 55 of 2001 by relying upon the judgment of this Court reported in 2002 3 LW 607.

11. In identical circumstances, another learned Single Judge of this Court in the judgment reported in 1999 1 LW 430 (cited supra) held that under Section 18(A) of the Act, the Rent Controller shall have powers to appoint a commissioner in any proceeding pending before him and therefore the argument of the learned Counsel that in the proceeding under Section 4 of the Act, the Commissioner cannot be appointed falls to the ground. The learned Judge in the above judgment observed as follows:

3. Mr. V. Raghavachari contended that the present application is outside the scope of Section 18(A) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and in any event what can be proved as a fact before the Court cannot be allowed to be collected by an Advocate Commissioner reproduced before the Court. In other words, actual proof in the normal course cannot be substituted by an Advocate Commissioner's report. A perusal of Section 18(A) of the Act reveals that the Rent Controller shall have powers to appoint a Commissioner in any proceeding pending before him and therefore, the argument of the learned Counsel that in the proceeding under Section 4 of the Act the Commissioner cannot be appointed falls to the ground. As far as the other submissions are concerned, viz., advocate Commissioner report cannot be a substitute for actual proof, taking into account the dispute between the parties in this Fair Rent proceeding, it is always essential that the engineer's report is necessary. The engineer had already filed a report, but that report is under criticism probably on the ground of bias. Under these circumstances, the landlord is cautious in having

the Advocate Commissioner appointed by the Court so that he can take an Engineer of his choice and file a report.

12. I am of the view that the law laid down by the learned Single Judge in the above decision, if applied in I.A. No. 55 of 2001 in R.C.O.P. No. 3 of 2000 which was filed by the revision petitioner under Section 18(A) of the the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the same has to be allowed and so is the civil revision petition. But the learned Counsel for the respondent contended that the revision petitioner is no longer the landlord as he had sold the property on 05.06.2002 and 12.07.2002 and therefore the R.C.O.P filed by him as well as the CRP is not maintainable.

13. In the judgment referred to by the learned Counsel for the petitioner reported in 1999 TNLJ 299 (cited supra), the learned single Judge of this Court has held that the landlord who ceased to have any interest in the property cannot be a landlord and if a person ceased to be a owner of the property, she also ceases to be a landlord. When a person who cease to be a landlord on the date of petition, before the rent controller the petition is not maintainable.

14. In the above judgment, the landlord who sold the property on 11.0 9.1992 filed the eviction petition on 21.10.1992. Therefore, the learned single judge held that the landlord cannot maintain the eviction petition as he ceased to be the landlord as early as on 11.09.1992. But in the present case, admittedly fair rent petition was filed in the year 2002 itself. Even according to the respondent herein the property was sold on 05.06.2002 and 12.07.2002 only and in such circumstances, as rightly contended by the learned Counsel for the revision petitioner, the landlord is entitled to fair rent from 01.04.1999 up to the date of sale. Therefore, I am constrained to reject the argument advanced by the learned Counsel for the respondent/tenant in this regard.

15. In the result, C.R.P is allowed. No costs. Consequently, C.M.P. No. 8448 of 2006 is dismissed and C.M.P. No. 4220 of 2005 is closed.