

Ramamurthy Vs. M. Rani

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Court : Chennai

Decided On : Oct-10-2006

Reported in : (2007)1MLJ60

Judge : S. Rajeswaran, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10(2), 14(1) and 18A; ;[Constitution of India](#) - Article 227

Appeal No. : C.R.P.(PD) No. 332 of 2005

Appellant : Ramamurthy

Respondent : M. Rani

Advocate for Def. : P.R. Dinesh Kumar, Adv.

Advocate for Pet/Ap. : C. Ravichandran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Rajeswaran, J.

1. This Revision Petition has been filed against the order dated 10.2.2005, passed in Memo in S.R. No. 2197/2005 in R.C.O.P. No. 669/2003, on the file of the XII

Judge, Small Causes Court, Chennai.

2. The tenant in RCOP No. 669/2003 is the revision petitioner.

3. RCOP No. 669/2003 was filed by the respondent herein under Section 10(2)(ii)(b) and 10(2)(iii) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act'). The landlady filed a memo before the rent controller, praying to mark the advocate commissioner's report dated 20.7.2003 as a court document by consent of both parties as the advocate commissioner by name Ms.Usha Menon left her office a year back and her address is not traceable in spite of the best efforts of the landlady. This was seriously objected to by the revision petitioner/tenant herein by filing his objections to the memo. The rent controller by order dated dated 10.2.2005 allowed the memo by permitting the landlady to mark the commissioner's report dated 20.7.2003 as court exhibit subject to the cross-examination of the advocate commissioner and the reliability of the report to be decided by the final judgment. Aggrieved by the order dated 10.2.2005, the tenant has filed the above revision petition under Article 227 of the [Constitution of India](#).

4. Heard both the learned Counsel for the petitioner and the learned Counsel for the respondent. I have also gone through the documents and the judgments referred to by them in support of their submissions.

5. The learned Counsel for the revision petitioner/tenant vehemently contended that since the advocate commissioner's report dated 20.7.2003 was already marked in an earlier proceedings between the same parties in R.C.O.P. No. 1193/2002, that too through the landlady herein and not through the advocate commissioner, the same cannot be permitted to be marked as court exhibit before the rent controller in the absence of the advocate commissioner. He relied on the decision reported in 1995 AIHC 6680(V. Sannappa v. V. Annaiah) for this purpose.

6. Per contra, the learned Counsel for the respondent/landlady submitted that the advocate commissioner was appointed only in the present proceedings in R.C.O.P. No. 669/2003 and therefore once it is submitted before the rent controller, it will become a part of the court record and therefore there is no

illegality in the order passed by the Rent Controller. He relied on the decision reported in 1991 2 L.W.268(A.K. Panchatchara Mudaliar v. A.N. Srinivasan) in support of his contention.

7. I have carefully considered the rival submissions.

8. The facts are not in dispute. Before filing the present rent control proceedings in R.C.O.P. No. 669/2003, the respondent/landlady initiated the earlier rent control proceedings in R.C.O.P. No. 1193/2002 under Section 10(2)(i) and 10(2)(v) of the Act.

9. In the present proceedings namely, RCOP. No. 669/2003, the respondent/landlady filed M.P. No. 345/2003 for appointment of an advocate commissioner and by order dated 20.6.2003 an advocate commissioner was appointed and after inspection, a report was filed by the advocate commissioner. But the report filed before the court is only a copy of the report and the original was handed over to the respondent herein. Thus the original report was not at all filed before the court by the advocate commissioner in RCOP No. 669/2003.

10. The respondent/landlady after receiving the original report from the advocate commissioner, marked the same as Ex.P5 before the rent controller in the previous proceedings pending RCOP No. 1193/2002. By order dated 13.11.2003 RCOP No. 1193/2002 was dismissed by the rent controller, wherein the rent controller has correctly observed that Ex.P5 is the report of the advocate commissioner prepared for the purpose of rent control proceedings in RCOP No. 669/2003 and the same was not filed through the advocate commissioner nor received from the court as a certified copy of the advocate commissioner's report.

11. Now in the present proceedings, i.e., RCOP No. 669/2003 a memo was filed by the respondent/landlady herein to mark the report of the advocate commissioner dated 20.7.2003 as court document by consent of both parties. In the memo dated 12.1.2005 it was specifically stated that the advocate commissioner Ms. Usha Menon left practice a year ago and her present address is not at all available.

12. The rent controller having held that the advocate commissioner report has to be marked as court document by consent of both parties and having observed that the consent was not given by the revision petitioner/tenant, still held that the report should be marked as exhibit.

13. In 1991(2) L.W. 268 , this court held as follows:

12. I cannot agree with this contention. As I have pointed out, the purpose of the section is to empower the Rent Controller to appoint a Commissioner for the purpose of gathering evidence and submitting a report to the Court. If the Legislature had intended that the Commissioner should be examined for the purpose of marking the report, the section need not have been introduced in the Act at all. That was the position prevailing before the introduction of the section. When the section had been introduced, it had been done to alter the situation so that the Rent Controller can gather evidence through one of its officers viz., the commissioner. It is well-known that parties will adduce evidence conflicting in order to substantiate their respective cases. In a case arising under Section 14(1)(b) of the Act the landlord will examine one engineer or an expert to prove that the building is in a dilapidated condition, while the tenant will examine another expert to prove that the building is in a good condition. In order that the Court may have an impartial report of the situation, the Legislature introduced Section 18-A enabling the Rent Controller to appoint a Commissioner. That purpose will be defeated if the section is interpreted to mean that it will not enable the Rent Controller to treat the report as part of the records or mark the report in evidence without examining the Commissioner as a witness.

14. In the above decision this court held that even without examining the advocate commissioner as a witness, the report could be treated as a part of the court record and if any of the parties wants to challenge any part of the report, it is for him to seek permission of the court to cross-examine the advocate commissioner.

15. From the above, it is clear that the report submitted by the advocate commissioner before the rent controller will automatically become a part of the court record even without examining the advocate commissioner as a witness.

16. Relying on this decision (1991(2) L.W.268 the learned Counsel for the respondent/landlady contended that as the report was already submitted by the said Ms. Usha Menon the advocate commissioner, even if she was not available for cross-examination, the said report could be marked as a court exhibit.

17. I am unable to accept the contention of the learned Counsel for the respondent/landlady.

18. It is settled law that once a report is submitted by the advocate commissioner that report forms part of the court record. But what is important is that the report of the advocate commissioner should be submitted by the advocate commissioner before the court which appointed the advocate commissioner. In the present case, the advocate commissioner Ms. Usha Menon did not submit her original report dated 20.7.2003 before the rent controller who appointed her and what was submitted by the advocate commissioner was a copy of the original report. Therefore it is to be treated as, no report was submitted by the advocate commissioner before the rent controller.

19. Very strangely, the original report was submitted by the respondent/landlady herein who for the reasons best known to her marked that report in the earlier rent control proceedings initiated by her in RCOP No. 1193/2002 and pointing out the serious lacuna in filing the original commissioner's report which was sought to be filed in RCOP No. 669/2003, the rent controller has correctly disregarded the same in RCOP No. 1193/2002.

20. The respondent/landlady herein now wanted the report of the advocate commissioner dated 20.7.2003 to be marked as a court document in RCOP No. 669/2003 by consent of both the parties. The very prayer in the memo will make it clear that the report dated 20.7.2003 is not yet a part of the record of the rent controller since the original was not submitted by the advocate commissioner before the rent controller. That is why the same was sought to be marked by consent. Once the consent was not forthcoming and in fact when there was serious objection for marking the report dated 20.7.2003, the rent controller ought not to have marked the same as prayed for. By permitting the respondent/landlady herein to mark the report as a court exhibit, the rent controller has gone beyond

the scope of the memo filed by the respondent/landlady without realising that the original report was not at all filed by the advocate commissioner before the rent controller. Now the genuineness of the advocate commissioner report itself is in question and therefore the same could be marked only through the advocate commissioner Ms. Usha Menon. If she has left the practice and the present address is not known, as rightly pointed by the revision petitioner/tenant that the report could not automatically become a part of the record and as the original was not filed by the advocate commissioner.

21. In 1995 AIHC 6680 , the Karnataka High Court held that when a report is filed by the advocate commissioner in a particular suit, it is a piece of evidence in that case only even without examining the advocate commissioner and its evidentiary value and its admissibility in other legal proceedings is not automatic unless the advocate commissioner has been examined even to prove the contents and accuracy of the report.

22. This decision is not applicable to the facts of the present case as the advocate commissioner was appointed not in RCOP No. 1193/2002 but only in the present RCOP No. 669/2003. Therefore the report will become part of the record automatically in RCOP No. 669/2003 if the original is filed by the advocate commissioner by herself. As the same was not filed and the original was given to the respondent/landlady herein and only a copy of the original was filed before the rent controller, the genuineness and its admissibility could be established only by the advocate/commissioner. Admittedly, the advocate commissioner is not available and therefore the report of the advocate commissioner dated 20.7.2003 could not be marked as a court exhibit.

23. In the result, the order of the rent controller dated 10.2.2005 is vitiated and hence the same is set aside. The C.R.P. is allowed. No costs. C.M.P. No. 3206/2005 is closed.