R. Srinivasan vs V. Thangaraju And Ors. on 28 January, 1999

Equivalent citations: (1999)2MLJ337, 1999 A I H C 1969, (1999) 2 MAD LJ 337, (1999) 1 MAD LW 398, (1999) 2 RENTLR 173

JUDGMENT

R. Balasubramanian, J.

1. The revision petitioner in each of the petitions is the landlord in R.C.O.P.Nos. 1 and 2 of 1988 respectively on the file of the Rent Controller, Manapparai. The respondents in both the revisions are the respective respondents in those proceedings, In R.C.O.P.No. 2 of 1988 there was only one tenant and on account of his death, his legal representatives have come to be brought on record. Eviction was sought for in both the cases on two grounds, viz., wilful default in payment of rent and on the ground of demolition and reconstruction. The learned Rent Controller ordered eviction on both the grounds. On appeal by the respective tenants, the Appellate Authority reversed the finding of the Rent Controller in both the cases. Hence, these two revisions.

2. I heard Mr. S. Parthasarathy, learned Counsel appearing for the petitioner in each case and Mr. D. Rajendran, learned Counsel appearing for the respondents in each case. The pleading in the first rent control case, on the material aspects is as follows:

> The tenancy is for non-residential purpose on a monthly rent of Rs. 40.00. The tenancy is oral and receipts are being issued for collection of the rent by the petitioner and at his instance by Srinivasan. The tenant has been paying the rent regularly and defaulted in the payment of rent from 1.5.1986 and is in arrears to the tune of Rs. 840.00 upto the month of January, 1988. The default is wilful. The building is in a damaged and dangerous condition and the petitioner intends to completely demolish the building including the portion in the occupation of the other tenants. Counter is that one Srinivasan was alone collecting the rent and once the present petitioner issued the notice, they started sending the rent by money order to the petitioner. But he refused to receive the same resulting in the tenant depositing each month's rent in a bank. The tenant had withdrawn that money from the bank and had deposited the same into court in this application. The building is not in a damaged and dangerous condition. The building was renewed by the respondents only 12 years ago. The petitioner's claim is not bona fide.
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> In R.C.O.P.No. 2 of 1988, the pleading on the material aspects by the landlord as well as by the tenant is more or less on the same lines. However, the period of default is stated to be from 1.6.1986 in this case.

3. The evidence of the landlord, examined as P.W.1 in the first case, on material aspects is as follows:

> The tenant was paying the rent. I cannot say correctly from when he is due. I gave notice Ex.A-1. The tenant received the same. Thereafter month after month, the tenant has been sending the rent by money order. I refused all those. I need the house and therefore I did not receive the "rent for 1 1/2 years, the rent is due. I intend to demolish and put up a construction where I am going to reside. The building is 100 years old. The condition of the building is. bad. I have, the means.
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> In cross-examination, he would state as follows:
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> At the inception, the tenancy was between the tenant and Srinivasan, my son in law. I have been collecting rent only through Srinivasan. I am an Ayurvedic doctor. I have no money deposits, My monthly income is Rs. 1,000. I want to borrow and then put up a new construction. I intend borrowing from my friends and son in law for that project. The building is old. I have not applied for any plan for the proposed construction. I have not obtained any permission to demolish. The tenant used to send the rent by money order and I refused to receive the same. Every time, he sent the rent by money order. I have refused it. The tenant had deposited that money in the bank and immediately after the case was filed, he deposited the money in court.
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> The evidence of the landlord in R.C.O.P.No. 2 of 1988 is more or less on the same lines.

4. The tenant in the first case gave evidence as follows:

> Srinivasan was collecting the rent regularly. I took the building on rent from Srinivasan and he was collecting the rent regularly. Srinivasan is the petitioner's son. When July 86 rent was paid to him he refused. The petitioner sent a notice. Then I sent the rent due to the petitioner by money order. Every month, I used to send the rent by money order and the petitioner refused it. I have deposited the rents in bank. On the filing of the rent control case, I withdrew the money and deposited the same, in the court. Building is new. I have made some repairs to the building. The petitioner has no means.
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> In the cross examination, he would state that after the notice issued by the landlord he had been depositing the money in the Bank. The tenant in the second case, gave evidence and it is more or less on the same lines on all aspects. The returned money order coupons are exhibited as Exs.R-1 to R-28 in the first case and as Exs.R-4 to R-26 and R-28 to R-32 in the second case. The bank passbook in the first case is exhibited as Ex.R-29 and as Ex-R-27 in the second case. In the face of these materials noted above, the Rent Controller ordered eviction on both grounds in each case. However the Appellate Authority differed on both the grounds and dismissed the petitions. The Appellate Authority, while reversing the finding on the ground of wilful

default, relied upon the judgment of this Court in Minor Rajakumari etc. v. N.V. Natarajan (1994) 1 L. W. 340.

5. The sum and substance of the argument of the learned Counsel for the petitioner is that the tenant cannot contend saying that the landlord refused to receive the rent and therefore he had been sending the rent by money orders, which were also refused resulting in the same being deposited in the bank. According to the learned Counsel for the petitioner, a legal duty is cast upon the tenant in such circumstances to have recourse to the procedure contemplated under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, which says that on the landlord evading to receive the rent, the tenant shall call upon by notice in writing the landlord to specify the bank within ten days into which the tenant can deposit the rent; failing compliance by the landlord, the tenant has to send rent by money order after deducting the commission and even if that is refused, the tenant should move the court for permission to deposit the rent. This procedure has been admittedly not done by the tenants in both the cases. Contending that if tenant fails to take proceedings under Section 8 of the above referred, then there is no option for the court except to hold that the tenant has wilfully defaulted in payment of rent, the learned Counsel for the petitioner relied upon the judgments reported in Abdul Fatha v. Villayudham , Rafuddin v. Yeswantha Rao (1997) 1 M.L.J. 581, Molly Joseph alias Nish v. George Sebatian alias Joy (1997) 1 M.L.J. (S.C.) 109, Kuldeep Singh v. Ganpat Lal and S. Sundararajan v. S.A. Viswanathan Chetty (1997) 2 L.W. 567. As far as the requirement on the ground of demolition and reconstruction is concerned, it is contended by the learned Counsel for the petitioner that it need not be established that the building is in such a bad shape to warrant immediate demolition and it is enough if the landlord establishes totality of the circumstances as laid down by the Honourable Supreme Court of India in Vijay Singh and Ors. v. Vijayalakshmi Ammal (1997) 1 M.L.J. (S.C.) 98 : (1997) 1 L.W. 218, from which it could be inferred that the requirement of the landlord for demolition and reconstruction is bona fide.

6. Contending contra on the ground of wilful default the learned Counsel for the respondents relied upon the judgment of this Court in Minor Rajakumari etc. v. K.V. Natarajan (1994) 1 L.W. 340 and Rajalinga Chettiar v. Nataraja Mudaliar (1995) 1 M.L.J. 211.

7. In the light of the arguments advanced by the learned Counsel on either side. I perused the entire materials including the judgments brought to my notice with care and caution. The finding of fact rendered by the Appellate Authority on the ground of wilful default in each case on the basis of the materials available is that the tenant in each case had been sending the rent due by him month after month to the landlord under various money orders and they have been refused. A perusal of the materials shows that the refusal appears to be unjustified. The finding of fact rendered by the Appellate Authority is also that the tenant had been periodically, month after month, depositing the rent due by him on the refusal of the money orders, in the bank. The fact also remains that immediately after the filing of the Rent Control Petition, the tenant had withdrawn the money from the bank and paid the same into Court. It is also not disputed that the tenant is not in arrears. Therefore, the only question that comes up for consideration is whether on the given facts available in this case, could it be said that the tenant is guilty of wilful default in the payment of rents. It may be true that there is a default but could it be said that it is wilful, is a question that has to be answered. A learned Judge of this Court in the judgment reported in Rajalinga Chettiar v. Nataraja

Mudaliar (1995) 1 M.L.J. 211 had considered all the judgments of this Court available both for an against on this issue and held that Section 8 of the Act is only an enabling provision. Seven judgments were cited for the above mentioned proposition and equal number of judgments were cited for the opposite proposition. One of the judgments considered by the learned Judge was a Division Bench judgment of this Court in Durgai Ammal v. R.T. Mani (1989) 1 L.W. 155. In Minor Rajakumari v. K.V. Natarajan (1994) 1 L.W. 340, a learned single Judge has held as follows:

> ...In this case, there is no dispute that the money order sent by tenant was refused by landlord. Thereafter, it was open to the respondent (tenant) to have followed the procedure laid down in the Act with reference to the deposit of rent, but instead he had opened an account and had been depositing the rents in that account so as to make it available to the petitioner whenever required. Though it may be that the respondent (tenant) was not in order in not having resorted to the provisions of the Act with reference to the payment of rents, inasmuch as the evidence of R.W.1 that he had deposited the amounts in a bank account has not been repudiated or rejected as unacceptable, it follows that there could not be any wilful default as such in the payment of rents in this case, as contended by the learned Counsel for the petitioner....
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> The facts in the two cases on hand are also identical to the judgment in Minor Rajakumari v. N.V. Natarajan (1994) 1 L.W. 340.

8. Let me now consider the judgment brought to my notice on behalf of the landlord. In Kuldeep Singh v. Ganpat Lal , the tenant moved the court under Section 19-A of the Rajasthan Rent Control Act and in fact deposited the money. But before moving the court, the preliminary mandatory requirements as contemplated under Sub-section (3) of Section 19-A of the said Act were not complied with. In that context only, the Honourable Judges of the Supreme Court of India held that though the deposit was in court, yet it was not a valid deposit in view of the preliminary legal requirements having not been complied with. Following the above referred to judgment of the Honourable Supreme Court of India, a learned single Judge of this Court in the judgment reported in Raffuddin v. Yeswandha Rao (1997) 1 M.L.J. 581, held, noticing that the tenant has not averred that he had issued a notice to the landlord to name the bank for it is his case that he had sent the amount by money order, that the deposit made by him in such a situation cannot absolve him from the disqualification he had suffered. Likewise in the judgment of the Honourable Supreme Court of India in Molly Joseph alias Nish v. George Sebatian alias Joy (1997) 1 M.L.J. (S.C.) 109, it was held that the tenant has got an obligation to pay the rent regularly and if he does not do so, he commits wilful default. It is further held that if he funds that the landlord is evading the payment of rent, procedures has been prescribed under Section 8 of the Act to issue notice to the landlord to name a bank and if he does not name the bank, the tenant has to file an application before the rent controller for permission to deposit the rent (this matter arose from the Andhra Pradesh Rent Control) Act and Section 8 therein is in part materia with the section in the Tamil Nadu Act). It was noticed that the tenant did not avail that remedy and the omission to avail of the procedures will not disentitle the landlord to seek eviction for wilful default. That was a case where the tenant suffered an order of eviction throughout. In the judgment reported in Sundararajan v. Viswanathan Chetty

(1997) 2 L.W. 567, it has been held as follows:

> Section 8 of the Act will have to be read along with Section 10. If the landlord has already a cause of action for non-payment of rent in time, by mere invocation of Section 8 of the Act, the cause of action cannot be taken away. That means, the tender of rent must be in accordance with the contract and if only the landlord refused to accept the same, the provision under Section 8 of the Act could be invoked.
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> The judgment reported in Raffuddin v. Yeswandha Rao (1997) 1 M.L.J. 581 dealt with a case of a tenant resorting to Section 8(5) of the Act without complying with the preliminary requirements of law as found enumerated in the proceeding sub-sections of Section 8 of the Act and in that context, it was held that though the deposit of the rent was in court, yet it will not absolve him from the liability. In the judgment reported in S. Sundararajan v. S.A. Viswanathan Chetty (1997) 2 L.W. 567, on facts, it was found that though the tenant complied with all the requirements of sub-section, when he got an order of deposit, yet the cause of action for the landlord having arisen even prior to that and the tenant not having shown to have discharged his obligation in paying the rent to the landlord as provided for under Section 10(2)(i) of the Act, the order of deposit so obtained by the tenant cannot take away the cause of action that as accrued to the landlord on account of such default. Therefore, in none of these two judgments, the question whether Section 8 of the Act is mandatory or only an enabling provision, has been raised and considered. In the Judgment of the Honourable Supreme Court of India in Kuldeep Singh v. Ganpat Lal , also, the tenant had taken steps for depositing the rent without complying with the requirement of law prior to the initiation of the said proceedings and in that context only. The Honourable Supreme Court of India held that the deposit made by the tenant is not in accordance with law. In the last judgment of this Court in Abdul Fatha v. Villayudham , the facts appear to be that the tenant moved an application under Section 9 of the Rent Control Act for permission to deposit, while in fact there was practically no dispute as to whom he should pay the rent. It was also held in that case that the tenant cannot jump procedural steps in Section 8 of the Act.

9. I have already noticed in this case that the finding of fact rendered by the Appellate Authority is that the tenant had been sending the rent month after month by money order to the landlord and he has been persistently refusing the same; the tenant in each case opened a bank account and went on crediting the same month after month with monthly rent due and on the Rent Control Petition being filed, the money was withdrawn and paid in to court. The judgment in Rajalinga Chettiar v. Nataraja Mudaliar (1995) 2 L.W. 211, after analysing all the judgments for and against, had laid down that Section 8 is only an enabling provision and not a mandatory requirement. In that situation, if the conduct of the tenant in each case is tested, then by no stretch of imagination could it be said that the tenant is guilty of wilful default. The conduct of the tenant as a whole with all the circumstances attended to it, should be taken into account and analysed to find out whether any wilfulness on the part of the tenant would be inferred or not. On facts in each case on hand, the learned single Judge of this Court in Minor Rqjakumari v. N.V. Natarajan (1994) 1 L.W. 340, had held that there could

not be any wilful default as such in the payment of rents. Under these circumstances, I am in entire agreement with the Appellate Authority in each of these two cases wherein it has been held that the tenant is not guilty of wilful default in payment of the rent. Accordingly, that finding is sustained.

10. Coming to the question of the requirement of the landlord on the ground of demolition and reconstruction. I find that the pleading is as vague as possible. The pleading is that the building is in a dilapidated condition and it is old. No attempt whatsoever has been made by the landlord to establish that fact. The circumstances as set out by the Honourable Supreme Court in the judgment in Vijay Singh v. Vijaylakshmi Ammal (1997) 1 M.L.J. (S.C.) 98, from which it could be inferred that the landlord bona fide required the building for demolition and reconstruction are neither pleaded nor proved to view the case in favour of the landlord Admittedly there is no sanction plan nor any permission from the Municipal Authorities. The landlord's income is only Rs. 1,000.00 a month and he had categorically admitted that he had no deposits worth its name to show that the landlord is financially sound. The Landlord had given evidence stating that he intend borrowing from his friends and his son in law. What is the cost of the estimated project, what is the fund available in his hand and to what extent the landlord is going to borrow, there is absolutely no material whatsoever. Under these circumstances, the finding of the Appellate Authority that the requirement of landlord for demolition and reconstruction is also not made out, cannot be interfered with at all. On the whole, I find that the judgment of the Appellate Authority in each case, dismissing the eviction petition is based on reasons. Accordingly I find no reasons to interfere in the revisions and accordingly these revisions are dismissed. No costs.