

M.P.M. Hameed Ibrahim And One Another vs V.S. Bagirathan And Others on 30 January, 1999

Equivalent citations: 1999(1)CTC396

ORDER

1. The first respondent in this revision is the landlord/petitioner in R.C.O.P.No.704 of 1990 on the file of the Rent Controller (14th Small Causes Court) Madras. The second respondent in this revision is the first respondent/tenant in the above referred to proceedings. The first petitioner in this revision was arrayed in that proceedings as the 2nd respondent /unauthorised sub-tenant under the first respondent. On the first respondent's counter in that proceedings, the 2nd petitioner herein also came to be impleaded as the 3rd respondent, in the category of an unauthorised sub-tenant under the 1st respondent. Respondents 3 and 4 are the legal representatives of the deceased first respondent herein. Eviction of the respondents in the rent control petition was sought for on two grounds namely, owner's occupation of a non-residential building falling under section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act and sub-letting falling under section 10(3)(a)(ii) of the said Act. Another ground namely, putting the building to a different user was also put forward before the rent controller. The rent controller found that there were sub-letting and different user. On the ground of owners' occupation also, the finding went in favour of the landlord. All the respondents in the rent control petition appealed before the appellate authority, Madras in R.C.A.No.610 of 1993. The appellate authority, on the question of sub-letting found against the landlord. Likewise on the issue of different user also, the finding went against the landlord. However the appellate authority concurred with the rent controller on the issue of owner's occupation and affirmed the order of eviction. This revision is before this Court at the instance of the 2nd and the 3rd respondents before the rent controller, who were added in that proceedings only as unauthorised sub-tenants, questioning the correctness or otherwise of the order of the authorities below.

2. I heard Mr. T.V. Ramanujam, learned senior counsel appearing for the revision petitioners and Mr.K. Alagirisamy, learned senior counsel appearing for the first respondent represented by his legal representatives. Even at the outset, Mr.K. Alagirisamy, learned senior counsel for the 1st respondent/landlord made it very clear that though the appellate authority reversed the finding on the ground of sub-letting and different user, yet he is not going to advance arguments on the finding of the appellate authority on those issues, which went against the landlord and that he would be advancing arguments only to sustain the finding of the appellate authority on the issue of owners occupation. Besides that, Mr.K. Alagirisamy, learned senior counsel also raised a preliminary point on the maintainability of the C.R.P. before this Court at the instance of the petitioners in this petition. Mr. T.V. Ramanujam, learned senior counsel on the point of maintainability contended that the petitioners are the aggrieved persons and they having been impleaded in the rent control proceedings, have every right to file a revision before this court questioning the correctness or otherwise of the order of eviction passed against them. On merits, the learned senior counsel would contend that the requirement of the landlord for owner's occupation is not established at all and in

any event, the requirement does not appear to be bona fide in the back drop of several earlier proceedings initiated by the landlord to evict the tenant and failing in the same. The learned senior counsel for the petitioners also argued that the materials placed before the court in support of the contention that the landlord's son is carrying on business are far from convincing and no person of ordinary prudence would act on the same to pass an order of eviction against the tenant. Mr. T.V. Ramanujam, learned senior counsel contended that inasmuch as the landlord is now in a portion of the very same tenanted premises, the application under section 10(3)(a)(iii) is not at all maintainable and if at all the landlord can have the right to evict the tenant, it can only be done under section 10(3)(c) of the said Act, in which event the pleadings would be different and the consideration would also be different, wherein the relative hardship would play a vital role.

3. In the light of the arguments advanced by the learned senior counsel on either side, I applied my mind very carefully to the facts available in this case. Since the maintainability of the revision itself is argued as the foremost point by the learned senior counsel for the first respondent, it is my duty to consider that first. According to the learned senior counsel for the first respondent, the petitioners in this revision are not the tenants and the tenant is only the first respondent before the rent control court, who appears in this revision as the second respondent, Since he accepted the order of eviction, the petitioners herein have no locus standi or any legal right to question the correctness or otherwise of the order passed against the tenant. Therefore the revision is not maintainable at the instance of the petitioners. As already stated, Mr. T.V. Ramanujam, learned senior counsel on this point would contend that the petitioners were before the rent controller as respondents 2 and 3 and were before the appellate authority as appellants 2 and 3 and since they are parties to the proceedings at all stages and as the order of the authorities below has gone against them, it is needless to state that they are in fact the aggrieved persons and therefore they have every right to question the correctness of that order before this Court.

4. From a reading of the preamble to the Tamil Nadu Buildings (Lease and Rent Control) Act, hereinafter referred to as the Act, it is clear that it was an Act to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu. Therefore it is clear that the object of the Act is to protect only the tenant. The word 'tenant' is defined in sub-section (8) of section 2 of the Act meaning as any person by whom or on whose account rent is payable for a building. The premises in question in the case on hand is a non-residential building. The definition of the tenant in respect of a non-residential building is deemed to include the surviving spouse, or any son, or daughter, or the legal representative of the deceased tenant, who in the case of a non-residential building, had been in continuous association with the 'tenant' for the purpose of carrying on the business of the 'tenant' upto the death of the 'tenant'

5. The main allegation in the rent control petition is that the first respondent in that proceedings is the tenant under the landlord in respect of a non-residential portion. The other respondents were not recognised as the tenants under the landlord and in fact they were shown as unauthorised sub-tenants. The First respondent (the tenant) in his counter would admit that he came into possession of the premises as a tenant in the year 1962 and since then he has been there. The

counter would further disclose that the first respondent is a partner of Melody house, carrying on business in the petition premises along with R2 and R3, before the rent controller and who are now here as petitioners 1 and 2. From the inception of the tenancy in the year 1962, the landlord had taken proceedings against the tenant (the first respondent before the rent controller) for his eviction and for other reliefs. The first respondent before the rent controller would contend that as the business which he was carrying on was not profitable, he took respondents 2 and 3 as partners in his business. The partnership deed is produced before the rent controller as Ex.R.10 and it is dated 7.12.89. Therefore it is clear that respondents 2 and 3 became partners of the first respondent's business, even assuming it to be correct, only from 7.12.89 and the tenancy, having commenced in the year 1962, was in the name of the first respondent at its inception and continued to be so even as on date, despite respondents 2 and 3 having become partners.

The tenant in his evidence as R.W.1 would also affirm that only in January, 1990, the partnership business was formed. As far as the payment of rent is concerned, he would state that it is he, who is paying the rents and he has accounts. The second respondent in the rent control petition examined himself as R.W.2 and he would also admit in his chief examination that one Subramaniam (the first respondent in the rent control petition) is the tenant and he only sends rent in his own name. He would further admit that the rent is not paid from the partnership firm and it has always been paid from the personal account of the first respondent. In cross examination, he would categorically admit that Subramaniam (the first respondent in the rent control petition) is the tenant and there is absolutely no record to show that the rent was ever paid in the name of the firm or it was paid through the firm. Therefore it stands established in a crystal clear manner that the first respondent before the rent controller is the tenant and respondents 2 and 3 therein, who are the petitioners before this court, do not make any claim that they are the tenants.

6. I have already referred to the preamble of the Act as well as the definition of 'tenant' under the said Act. It is not the case of the petitioners before this Court that the tenant is no more and they have been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant. The definition of the word 'tenant' with reference to the non-residential building is so very clear that it admits no ambiguity. Therefore so long as the tenant (the first respondent before the rent controller) is alive, the present petitioners have no legal right at all in the tenancy rights. A learned Single Judge of this Court in a judgment reported in Natesan v. Mrs. Santhalakshmi, 1971 (2) M.L.J. 164 has held as follows:

The definition of a 'tenant' in section 2(8) of the Act will only take any sons or daughters or the legal representatives of the tenant..... upto his death only and not when the tenant himself is alive."

Therefore it is clear from a reading of the Act vis-a-vis the status of the tenant, to my mind it is only the 'tenant', who can agitate his rights under the Act before the forum created under the Act and it is impermissible in law for any person other than a 'tenant' to question the correctness or otherwise of the order of eviction passed against the 'tenant'. The Act is not meant to protect the rights of a person who has no privity of contract with the landlord in respect of a tenanted premises and who does

not fit into the description of the term 'tenant' as defined under the Act. Therefore I have no hesitation to hold that the objection of Mr. K. Alagirisamy, learned senior counsel for the first respondent on the point of maintainability of the revision has to be sustained and accordingly it is sustained. Consequently it is held that the revision at the instance of the petitioners is not maintainable. The judgment relied upon by the learned senior counsel for the petitioners namely, the one reported in Thangaraj v. Balasubramanian, 1998 (2) M.L.J. 715 to show that the petitioners can be a tenant within the meaning of the Act, can be distinguished on facts and it does not really help the present petitioners.

7. Even on merits, the authorities below have concurrently found that the requirement of the landlord falling under section 10(3)(a)(iii) of the Act is well established and it is also found to be bona fide. P.W.1 is carrying on business in selling chicken. Ex.P.9 is the licence given by the Corporation of Madras for the said business. Exs. P.10 and P.11 are the receipts evidencing purchase of refrigerator and weighing scales. Ex.P.12 is the letter given by the State Bank of Hyderabad to P.W.1 Exs. P. 13 and P.14 are the photographs and negatives evidencing the business carried on by P.W.1 in the said building. The authorities below, on going through the documentary as well as the oral evidence let in on behalf of the landlord, held that it stands established that P.W.1 is carrying on business in the said premises. There are no materials whatsoever on record to hold that either the landlord or his son (P.W.1), for whose business purpose, the petition premises is sought for, is in occupation of a non-residential building of their own. The Hon'ble Supreme Court of India in a judgment reported in V. Radhakrishnan v. S.N. Loganatha Mudaliar, has held as follows:

"On a plain reading of section 10(3)(a)(iii) of the Act, it appears that the legislature intended that a landlord seeking eviction of the tenant could be disentitled from claiming possession of the non-residential premises where he requires those premises for his own use, if he is occupying a non-residential building of his own. Similarly, the landlord would also be disentitled from claiming possession of non-residential premises for the benefit of a member of his family, if that member of the family was in occupation of a non-residential building of his own. Any other interpretation of this section would not only be doing violence to the plain language of the section but would result in absurdity, inasmuch as the benefit of the provision would stand denied to the family members of the landlord, who do not occupy any premises of their own and for whose benefit eviction is sought, if the landlord himself is in occupation of a non-residential premises of his own."

The finding of the authorities below in favour of the landlord that his son namely, P.W.1 carrying on business in the manner stated above is based on evidence; being concurrent and since it is not shown to be perverse, hearing the revision, it is not possible for this court to interfere with the said finding. The mere fact that the landlord has been initiating a number of proceedings against the tenant at the earlier point of time for eviction, does not by itself would go to the root of the bona fides of the landlord, if the materials available on record do clinchingly show that the requirement of the landlord's son for the purpose of the business which he is carrying on is genuine.

8. The argument of the learned Senior Counsel for the petitioners that the petition under section 10(3)(a)(iii) of the Act is not maintainable and only a petition under section 10(3)(c) of the Act is maintainable, as the landlord is in occupation of a portion of the very same premises, does not appear to be correct, in view of the judgment of the Hon'ble Supreme Court of India referred to above. Even if this argument is correct, yet I am of the Opinion that the order of the authorities below cannot be interfered with for more than one reason. Mere quoting a wrong provision of law cannot be a ground to deny the relief to the landlord, if the materials otherwise available on record enables him to get the relief, is too well settled. It is no doubt true that in the rent control petition, the provision of law quoted is only under section 10(3)(a)(iii) of the Act and there is no pleading on the ground of additional accommodation as well on the ground of relative hardship. In the counter affidavit of the first respondent, a point has been taken that the petition under section 10(3)(c) alone is maintainable and in that event the relative hardship should be gone into. There is also no pleading by the respondent before the rent controller on relative hardship. However, P.W.1 in his chief examination would state that the premises is required for his business purposes and if the tenant does not vacate, he is likely to suffer and the tenant would not have any sufferings at all. P.W.1 would further add in his evidence in chief that for want of space, he is storing the birds in the open terrace under asbestos sheet covering and during summer the birds the unable to bear the heat. He would also add that since his business premises is situated interior, womenfolk are not ready to come in. There is no cross examination at all of P.W.1 on this aspect. R.W.1 would state in his evidence that he (R.W.1) has one other shop in the very same high road and that since he is carrying on two businesses, it cannot be said that he is not likely to suffer any hardship, if he is asked to vacate. Therefore it is clear that there are some materials available on record on relative hardship. Hence I am of the opinion that though there is no pleading on relative hardship arising on the requirement of additional accommodation, yet there is some evidence on that aspect. I applied my mind to the evidence, as noted above, on relative hardship and in conclusion I am of the opinion that it is enough to hold that the disadvantages which the landlord is is likely to suffer, if an order of eviction is not granted would out-weigh the advantages that is likely to accrue to the tenant, in that regard. Under these circumstances, I find no merits in this revision and it is accordingly dismissed. No costs. C.M.R.No.12095 of 95 is closed.