

CRP(MD).No.230 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 11.08.2023

PRONOUNCED ON : 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD).No.230 of 2011

1.T.Murugan Babu

2.M.Eswari@Sadhana

.....Petitioners

Vs

1.A.Narayanasamy (died)

2.Lakshmi(died)

3.Malliga

4.Shanthi

5.Jeyanthi

6.Gopala Krishnammal (died)

7.A.Venkidusamy

...Respondents

(Memo in USR No,42138 recorded as Respondents 2 & 6 died. Respondents 3,4 and 5 who were already on record and recorded as legal heirs of deceased Respondents 1, 2 and 6 vide Court order dated 16.10.2019)

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(Respondents 3,4 and 5 are brought on record as legal heirs of deceased sole respondent vide Court order dated 16.10.2019)

(7th respondent is impleaded vide Court vide Court order dated 11.07.2022)

PRAYER:- Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair and decretal order dated 02.09.2010 passed in RCA.No.11 of 2008 on the file of the Principal Subordinate Judge, Rent Control Appellate Authority, Dindigul, reversing and fair and decretal order dated 04.12.2007 passed in RCOP.No.31 of 2005 on the file of the Principal District Munsif, Rent Controller, Dindigul.

For Petitioners : Mr.M.R.Sreenivasan

For R3 & R7 :Mr.M.P.Senthil

For R4 & R5 : No appearance

ORDER

The revision petition has been filed by the landlords challenging the order of Rent Control Appellate Authority reversing the eviction order passed by the Rent Controller.

2.According to the revision petitioners/landlords, they had purchased the petition mentioned property on 16.09.2002 and rented out the same to the respondents for running a godown on 12.10.2002 for a



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period of 3 years and the said period had expired on 05.09.2005. The revision petitioners had further contended that they are running a business under the name and style of New India Pipe Stores in a rented building for the past 5 years. The landlords had orally requested him to vacate the said premises and had also issued a letter under Exhibit P4 requesting him to vacate the premises.

3.The landlords had further contended that they had issued a legal notice to the respondents on 15.10.2005 and the tenant had issued a reply on 24.10.2005 contending that he is running a business in the said premises for the past 30 years and had refused to vacate the property. The landlords had further contended that they want to shift their business to their own property and they does not own any other property in the town which is suitable for running the said business and hence, they prayed for evicting the tenant on the ground of own use and occupation.

4.The tenant had contended the he is in possession of the premises for the past 30 years as a tenant from the time of the vendor of the revision petitioners and he is running a business in agricultural products. The monthly rent is Rs.1000/- and the landlords demanded enhanced rent of Rs.1500/-. Since the tenant did not agree for enhancement, the



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landlords had refused to receive the September month rent and therefore, the tenant was constrained to remit the rent through money order on 13.10.2005. The tenant had further contended that the property is not required for the landlords for their own use and occupation and the landlords are having other properties in Dindigul Town for running their business. He had further contended that he is doing credit sales and he cannot collect the amount from the agriculturists if he was asked to vacate the premises.

5.The Rent Controller after considering the evidence on either side, had arrived at a finding that the tenant is running a business in a rented premises and the landlords of the said premises had asked him to vacate the premises by their notice dated 18.11.2005. Though the tenant had contended that the landlords are owning some other premises in the Dindigul Town, it has not been proved. The Tribunal further found that it is for the landlords to choose the building which is suitable for them and the tenant cannot have any say in the matter. The Tribunal further found that the landlords bonafidely required the petition mentioned premises for their own use and occupation. The rental amount was received by the landlords under protest only due to the fact that the rental agreement had



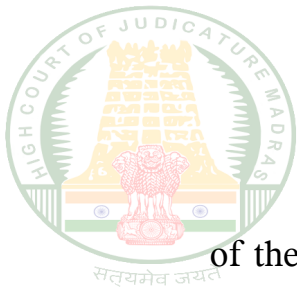
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expired. Based on the said findings, the Tribunal ordered eviction.

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6.The Tenant filed RCA.No.11 of 2008 before the Rent Control Appellate Authority(Principal Subordinate Court) Dindigul. The Appellate Authority accepted the contentions of the tenant that the landlord did not ask the tenant to vacate the property in the year 2002 itself when they purchased the property instead they had chosen to rent out the property. The Appellate Authority had further found that Exhibit P4 letter dated 18.11.2005 said to have been issued by the landlords of the landlords is doubtful and it seems to have been created for the purpose of filing of this eviction petition. The Appellate Authority had further found that the present premise would not be suitable for the landlords to carry out their business. Based upon the said findings, the Appellate Authority dismissed the eviction petition filed by the landlords. Challenging the same, the present revision petition has been filed by the landlords.

7.According to the learned counsel for the revision petitioners, the landlords had established that they are running a business in a rented premises and they does not have any other commercial property in the town to shift their business. He had further contended that the landlords



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of the present premises had already issued a notice under Exhibit P4 to vacate the same and therefore, he is constrained to seek eviction of their tenant. The Appellate Authority ought not to have considered the submissions of the tenant with regard to the suitability of the premises to the landlords. The landlords had got absolute discretion with regard to the suitability of the property for running their business, especially when they do not own any other commercial property in the town. Hence, he prayed for reversing the order of the Appellate Authority and to restore the order of eviction passed by the Rent Controller.

8.Per contra, the learned counsel for the tenant/respondent had contended that the premises had been rented out to the tenant in the year 2002 immediately after purchase of the property by the landlords. According to the landlords, they are running a business in a rented premise in the year 2000 onwards. Therefore, the request of the landlords is not a bonafide one. He had further pointed out that the petition mentioned premises is not suitable for the business. The landlords had created Exhibit P4 notice for the purpose of evicting the tenant and the landlords are not in dire need of the petition mentioned premises. If really the landlords had wanted to their building for their own



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occupation, they would have occupied the same in the year 2002 itself when they purchased the property. The landlords were not able to establish any other reason for seeking owners occupation.

9.I have considered the submissions made on either side and perused the materials available on record.

10. There is no dispute between the landlord and tenant relationship with regard to the petition mentioned premises. The landlords had purchased the property on 16.09.2002 and they had entered into rental agreement with the tenant on 12.10.2002 for a period of 3 years.

11. A perusal of the reply notice sent by the tenant under Exhibit P3 and the counter filed to the Rent Control Petition discloses that the tenant is in occupation of the petition mentioned premises for the past 30 years. Therefore, it is clear that the tenant was not inducted for the first time into the property in October 2002, but he was in possession of the same right from the days of the vendor of the landlords. The landlords are running the business under the name and style of India Pipeline Stores in the rented building only from the year 2000 onwards. Therefore, it is clear that when they purchased the property, the tenant was already there in the premises and the rental agreement was only renewed by the new



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landlords. Therefore, the contention of the tenant that the landlords would not have rented out the property in the year 2002 had they required the property for their own occupation is not sustainable in the eye of law.

12.The tenant has not disputed the fact that the landlords are running a business in a rented property from 2000 onwards. Though the tenant had contended that the landlords own some other commercial property in the same town, he has not let in any oral or documentary evidence to the said effect. Therefore, it is clear that the petition mentioned property is the only commercial property that is available to the landlords in Dindigul Town.

13.It is the case of the tenant that the landlords had created Exhibit P4 notice as if their landlords are attempting to evict him and the said document is not legally sustainable. The First Appellate Court had also spent most of its time only on the discussion about Exhibit P4 notice said to have been issued by the landlords of landlords. Even assuming that the landlords had not received any notice from their landlords, when the landlords want to shift their business from a rented building to their own premises, the tenant cannot question the same.



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14.The Appellate Authority had accepted the contention of the tenant that the present premises would not be suitable for running a pipe shop on the ground that the length and width of the property may not be suitable for storing the pipes. Our High Court in a judgement reported in *2021 (2) MWN (Civil) 645 (H.Balaraman Vs. M.J.Sivasachidanandam)* has categorically held that the tenant cannot prescribe the suitability of the premises for his landlord and it is the prerogative of the landlord to choose the place, where he wants to continue his business. Therefore, it is clear that it is for the landlords to decide about the suitability of the premises for running their business. Neither the tenant nor the Court could decide about the suitability of the premises when the eviction is sought for by the landlords on the ground of own occupation.

15.Therefore, this Court is of the considered opinion that the landlords are bonafidely requiring the premises for shifting their business from a rented building to their own building.

16.In view of the above said deliberations, this Civil Revision Petition is allowed. The order of the Rent Control Appellate Authority is set aside and the eviction order of the Rent Controller is restored. Considering the fact that the tenant is in occupation of the property for



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more than 30 years and he is running a Mandi relating to agricultural products, the tenant /respondent is granted time till 31.12.2023 to vacate and hand over vacant possession of the property to the landlords. No costs.

25.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Principal Subordinate Judge,
(Rent Control Appellate Authority)
Dindigul

2.The Principal District Munsif,
(Rent Controller)
Dindigul.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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Pre-delivery order made in

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