NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7546-7547 OF 2019
(Arising out of SLP (Civil) Nos.12365-66 of 2019)

D. Sasi Kumar ....Appellant(s)

Versus

Soundararajan .... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The appellant herein was the petitioner before the Principal District Munsif/Rent Controller in the petition seeking eviction of the respondent therein. The said proceedings resulted in an appeal filed by the appellant herein before the Rent Control Appellate Authority (sub-Court) which upheld the decision of the Rent Controller. Against the said concurrent orders the respondent herein approached the High Court of Judicature at Madras in

the Civil Revision Petition. The High Court reversed the concurrent decisions, which is assailed by the appellant herein. Since the rank assigned to the parties is different in the various proceedings, for the sake of convenience and clarity the appellant herein who was the original petitioner before the Rent Control Court would be referred to as the 'landlord', while the respondent therein would be referred to as the 'tenant'.

3. The brief facts are that the landlord contending to be the owner of the petition schedule premises had filed the petition under Sections 10(3)(a)(iii) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ('Act', 1960' for short) seeking for an order to direct the tenant to vacate and deliver the peaceful possession of the petition schedule property to the landlord. The manner in which the landlord had become the owner of the property based on a partition deed dated 24.02.1997 was referred. The tenant was in occupation of the premises for non-residential purpose on a monthly rental of Rs.600/-. The landlord contended that the premises is

bonafide required by him for setting up a garment shop and in that regard had further contended that since the premises requires alterations to be made in that regard, the landlord also intended to demolish the existing structure and put up a construction suitable for his purpose. The tenant had appeared and opposed the said petition by filing his objection statement, denying the entire case of the landlord including his claim to ownership over the property as well as the jural relationship. It was contended that the intention of the landlord is only to secure higher rent and as such the claim cannot be considered as a bonafide requirement.

4. The Rent Control Court on having taken note of the rival contentions had framed two points for its consideration. The entire consideration revolved on the claim made by the landlord for own use and occupation as also the alternate premises available to the tenant. In order to establish the claim, the landlord examined himself as PW-1 and marked the documents at Exhibits P1 to P5. The tenant, on the other hand, examined three

witnesses and relied upon the documents at Exhibits R1 to R9. The Court of the Rent Controller on analysing the documents and the evidence of the parties arrived at the conclusion that the claim as put forth by the landlord is established and accordingly on allowing the petition had directed eviction of the tenant by granting two months time to vacate.

5. The tenant claiming to be aggrieved was before the Appellate Authority in the statutory appeal provided under Section 23 of the Act, 1960. The Appellate Authority having adverted to the contentions has reappreciated the oral as well as the documentary evidence. In that background making detailed reference to the legal position from the decisions cited before it had upheld the order dated 19.01.2011 passed by the Rent Control Court and had dismissed the appeal. Against such concurrent orders the tenant approached the High Court in the Civil Revision Petition. The High Court once again referring to the evidence and the conclusion reached by the courts below had differed from the same

and accordingly allowed the petition by holding that the bonafide requirement as claimed by the landlord had not been proved. It is in that view the landlord claiming to be aggrieved is before this Court in this appeal.

6. Heard Shri R. Balasubramanium, learned senior counsel appearing for the landlord and Shri R. Gopalakrishnan, learned counsel for the tenant and perused the appeal papers.

7. At the outset it is to be taken note that the Civil Revision Petition before the High Court is not to be considered as in the nature of an appeal. The scope of consideration is only to take note as to whether there is any perversity in the satisfaction recorded by the original Court, namely, the Rent Controller and in that light as to whether the Appellate Authority under the statute has considered the aspect in the background of the evidence to arrive at the conclusion to its satisfaction. The reappreciation of the evidence in the Civil Revision Petition to indicate that another view is possible would not arise. To that extent, a perusal of the impugned

order indicates that the High Court in fact has proceeded as if the entire evidence required reappreciation by it. In that background what is necessary to be taken note at this juncture is as to whether the Rent Controller has considered the matter in its correct perspective by satisfying himself of the bonafide claim, as required under Section 10(3)(e) of the Act, 1960 and the hardship if any to the tenant as contemplated under the proviso thereto.

8. In the instant case what is necessary to be taken note is that the tenant despite being in possession and knowing the ownership of the property and also paying the rent, has sought to urge a contention denying the jural relationship. The said aspect has been taken note by the Rent Controller and taking into consideration the partition deed dated 24.02.1997 and further taking into account the fact that the rent was being paid, has answered the said issue in favour of the landlord. Insofar as the requirement of the premises by the landlord the evidence as tendered has been taken note. In that regard

the claim put forth is that the landlord intends to run a garment shop for which the premises is required and he also intends to demolish and reconstruct. It is no doubt true that in an appropriate case when eviction is sought under Section 14(1)(b) of the Act, in proof thereof the approved plan for construction and financial capacity to construct is to be established. However, in the instant facts it is noticed that the eviction sought is not just for demolition and construction but is also for the bonafide use to set up a garment shop. The landlord, in that direction had also contended that the shop would require alteration and, in that view, he has decided to demolish and reconstruct. When that be the case even if not demolished and reconstructed the requirement of the premises is to run a garment shop even if it be by altering the premises to that extent. In that circumstance the eviction was also sought under Section 10(3)(a)(iii) of the Act, 1960.

9. Since the tenant was running a metal shop, the fact that the premises was suitable for running a garment

shop cannot be in dispute. That apart what is also to be kept in view is, apart from the bonafide requirement of the landlord the consideration relating to hardship of the tenant, even if kept in view, in the instant case the Rent Controller has referred to the cross examination of the tenant who was examined as RW-1 wherein he has admitted that he has two buildings as business places in addition to the business being run in the petition schedule premises. Though he states that one floor is used as a godown and the other is in the name of his wife, the fact remains that he is running the business in the other shop for the benefit of his family. In that circumstance when the need of the landlord was weighed in the background of the fact that the tenant had another premises wherein he is carrying on the business the Rent Controller as a statutory authority under the Act was of the opinion that the evidence available on record would be sufficient and recorded the satisfaction as provided under Section 10(3)(e) of the Act, 1960 and arrived at the conclusion that the landlord requires the premises for his bonafide occupation. Such conclusion while being taken

note by the Appellate Authority has also received a similar consideration. In that light the nature of findings as recorded by the High Court is not appropriate in the facts and circumstance of the present case.

10. It is no doubt true that as observed by the High Court the plan for construction and the financial capacity to construct has not been placed as evidence. However, as already indicated above, the nature of the requirement as stated by the landlord would be for running a garment shop which in any event could be run in the premises as it exists with minor alterations though the desire of the landlord is also to demolish and reconstruct. Therefore, in that circumstance the mere non-production of the approved plan or the documents to indicate financial capacity at this juncture cannot be held fatal in the instant facts. That apart as indicated above, the need of the landlord while being examined has been weighed in the background of the fact that the tenant owns two other premises and no hardship will be caused. Though the High Court has in that regard also recorded that no

documentary evidence is placed, the fact of possession of alternate premises has been admitted by the tenant in his cross examination. There can be no better proof than admission.

11. Further the High Court has also erroneously arrived at the conclusion that the bonafide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights. Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011. The appeal was thereafter disposed of by the Appellate

Authority in the year 2013. The High Court had itself taken time to dispose of the Revision Petition, only on 06.03.2017. The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in the case of ***Gaya Prasad vs. Pradeep Srivastava***, (2001) 2 SCC 604 has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bonafide requirement of landlord is the date of application for eviction, which we hereby reiterate.

12. Therefore, in the present facts the bonafide requirement as claimed by the landlord stands established. The learned counsel for the tenant as an alternative submission had sought for sufficient time to vacate and handover the vacant possession if the tenant was required to vacate the premises, which also needs to be addressed in the order.

13. In the result the order dated 06.03.2017 passed by the High Court in CRP (NPD) No. 3754/2013 and MP No. 1/2013 is set aside. The order dated 19.01.2011 passed by the Principal District Munsif/Rent Controller, Vellore, Vellore District in Rent Control Original Petition No.43/2004 is restored. Taking into consideration all aspects, the tenant is granted time till 31.01.2021 to vacate and handover vacant possession of the premises to the landlord subject to the undertaking being filed in four weeks, wherein it be undertaken to voluntarily vacate and handover possession on or before 31.01.2021, without creating any third-party rights or damage to the property. The rents shall also be paid without default.

14. Accordingly, the appeals are allowed with no order as to costs. All pending applications shall stand disposed of.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

New Delhi,
September 23, 2019