

K. Doraiswami Naidu

Vs

Church of Christ, The King, By Its Parish Priest

Civil Appeal No. 1206 of 1969

(D. A. Desai, P. S. KailasamJJ)

27.10.1978

JUDGMENT

KAILASAM, J. –

1. This is an appeal by special leave under Article 136 of the Constitution of India against the judgment of the High Court of Judicature at Madras in C.R.P. No. 459 of 1967 dated November 7, 1968. The landlord is the Church of Christ, the King, by its Parish Priest in Coimbatore applied for eviction of the tenant, the appellant herein. The tenant occupied the premises on a monthly rent of Rs. 165. The tenancy agreement was for a period of 5 years. The respondent-Church issued a notice Ex. A-1 on April 22, 1963 calling upon the tenant to vacate the premises since the Church wanted to demolish and reconstruct the existing building. Ultimately, the Church filed R.C.O.P. No. 232 of 1963 under Section 14(1)(b) of the Madras Buildings (Lease and Rent Control) Act. The petition was contested and the Rent Controller held that the plea of the Church that the premises was required for demolition and reconstruction was not bona fide and dismissed the petition. On appeal, the Court of Subordinate Judge, Coimbatore, in appeal no. 39 of 1964 allowed the appeal and ordered eviction of the appellant from the premises. The tenant took up the matter to the District Judge and the District Judge in exercise of his revisional powers under Section 25 of the Madras Buildings (Lease and Rent Control) Act, allowed the revision and dismissed the eviction petition filed by the Church. The Church thereupon filed Civil Revision Petition No. 459 of 1967 to the High Court under Section 115 of the Civil Procedure Code. The High Court reversed the findings of the District Judge holding that the requirement of the Church was bona fide, allowed the revision petition and ordered the eviction of the appellant.

2. Before us, the appellant-tenant challenged the order of the High Court on the ground that it has jurisdiction to interfere with the order of the District Judge. We find from the facts that there could be no difficulty in accepting the contention of the Church that it bona fide required the building for the purpose of demolition and reconstruction and the view taken by the District Judge in revision revising the order of the appellate Court is unsustainable. It is also clear that the Church had ample funds. Apart from the other circumstances, it is seen that in the court of appeal before the Subordinate Judge the Church offered that it would have no objection to lease out one portion of the new building to the tenant for the same rent as paid by the other adjoining tenants. The Church further agreed to give sufficient space behind the new buildings for use as a godown. This offer was unfortunately not accepted by the tenant. We agree with the appellant Court on the facts, that there could be no doubt that the claim of the Church is bona fide and irresistible. The High Court was right in ordering eviction. Before us the learned counsel for the Church told us that the Church would abide by the undertaking it gave to the appellate Court, namely, that he would lease out one portion of the new building to the appellant for the same rent as may be paid by the adjoining

tenants of the new building. The appeal is without merits. The fair offer strengthens our view that the claim of the Church is bona fide. In dismissing the appeal we direct that the landlord-Church will abide by the undertaking. The tenant will have 3 months' time from today to vacate and give vacant possession of the property to the Church. The Church will demolish and reconstruct the building within eighteen months from the date on which vacant possession is delivered to it by the appellant. The appeal is dismissed. As the tenant did not avail himself of the fair offer that was made to him by the Church in the Court of appeal, we direct that the appellant will pay the costs of the respondent throughout.

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