

G. Arunachalam (died) through L.Rs. and Another

Vs

Thondarperienambi and Another

Civil Appeal No. 3654 of 1991

(Dr. T.K. Thommen, N.M. Kasliwal JJ)

21.01.1992

JUDGEMENT

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THOMMEN, J.:-

1. This appeal is brought by the tenants against the order of the Madras High Court in Civil Revision Petition No. 358 of 1985 allowing the landlords' petition and reversing the finding of the first appellate Court. The High Court held that the ground of eviction under S. 10(2) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the "Act") was attracted by the facts of the case and the tenants were liable to be evicted. The first appellate Court had, however, found that there was no evidence to show that the tenants had "committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building" so as to attract the ground mentioned in S. 10(2)(iii). This finding was rendered on the basis of a report submitted by an Assistant Engineer of the P.W.D., who was appointed by the trial Court as a Commissioner to submit a report about the alterations alleged to have been made by the tenants in the building. The Commissioner stated:-

".....

3.The front door formerly of wooden planks has been replaced by rolling shutters, but the wooden frames have not been removed. For fixing the rolling shutter the party has lowered the front portion of the floor by 17 cm. For lowering this floor level the stone steel plate at the top of the basement has been cut down carefully, and refixed at the new level (i.e.) 17 cm. below the original floor level. This does not appear in any way to affect the stability or the value of the building.

4.In the two sides of the shop, two pillars of brick masonry (23 cm x 15 cm) in cement mortar have been provided with steel channel to withstand the reaction of the rolling shutters during operation.

5.It is also noted that the top of the rolling shutters does not touch the original beam spanning the front opening. The rolling shutter moves in the grooves provided in the new masonry construction at the sides. The top beam of the rolling shutter is only supported on the newly constructed brick pillars. So this also will not impair the stability or value of the building.

6. On inspection no damage is seen anywhere in the structure.

7. In conclusion, I am of the opinion that due to this structural alterations the value or the stability

of the scheduled building have not materially impaired

On the basis of this report, the first appellate Court, reversing the order of the Rent Controller and allowing the appeal of the tenants, held that no waste had been committed by the tenants which was likely to impair materially the value or utility of the building, so as to attract the provisions of S. 10(2)(iii). This is what the learned Sub-Judge stated:

".....From the above it is wrong to say that by the material alterations done by the Respondents/ Appellants the material value and utility of the petition building has been impaired and hence I decide this issue in favour of the Appellants/ Respondents....."

2. However, by the impugned judgment the High Court reversed the finding of the first appellate Court. In our view, the High Court ought not to have reversed the finding rendered by the first appellate Court which was based on the facts found by the Engineer-Commissioner. The Commissioner as an expert had submitted a detailed report, material portions of which we have extracted above. That report shows that the alterations effected by the tenants did not come within the ambit of S. 10(2)(iii), which is the only provision on the basis of which the landlords sought eviction of the tenants. The decisions relied on by the High Court do not support the conclusion to which it came by reason of the facts found by the first appellate Court and fully supported by the report of the Commissioner.

3. Having heard counsel on both sides and considered the judgments of the Courts below, and having considered the observations of the Commissioner, we are of the view that the High Court was not justified, in exercise of its revisional powers under Section 25 of the Act, in interfering with the judgment of the first appellate court.

4. The appeal is allowed in the above terms, but under the circumstances of the case we make no order as to costs. Appeal allowed.

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