

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:07.10.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.NPD.Nos.733, 1516 and 1533 of 2011

and

M.P.Nos.1+1+1 of 2011

J.Kubendran ...Petitioner in C.R.P.No.733 of 2011

1.M/s.Anna Restaurant
represented by T.Riyaz

2.T.RiyazPetitioners in C.R.P.No.1516 of 2011

K.Harishankar ... Petitioner in C.R.P.No.1533 of 2011

Versus

D.Rajappa ..Respondent in C.R.P.Nos.733 and 1533 of 2011

1.D.Rajappa
2.Kunju Mohamed
3.Majid
4.Kalith
5.T.Riyaz

..Respondents in C.R.P.Nos.1516 of 2011

Prayer: Revision petitions are filed against the judgment and decree, dated 23.11.2010 and made in R.C.A.Nos.115, 114 and 113 of 2009 on the file of the learned Rent Control Appellate Authority (VIII Judge, Court of Small Causes), Chennai reversing the fair and decretal order, dated 28.1.2009 and made in R.C.O.P.Nos.2299 and 2300 of 2003 and 1206 of 2004 on the file of the learned XII Judge, Rent Controller, Court of Small Causes, Chennai.

For Petitioner in

C.R.P.No.1533 of 2011 : M/s.Vijay Shankar

For Petitioner in

C.R.P.No.1516 of 2011 : Mr.V. Manohar

For Petitioner in

C.R.P.No.733 of 2011 : M/s.A.Kanagasabapathy

For Respondents : Mr.M.L. Ramesh

COMMON ORDER

These memorandums of civil revision petitions have been preferred against the common judgment and decree, dated 23.11.2010 and made in Rent Control Appeals in R.C.A.Nos.113, 114 and 115 of 2009 on the file of the learned Rent Control Appellate Authority (VIII court of Small Causes, Chennai) reversing the order and decretal order dated 28.1.2009 and made in Rent Control Proceedings in R.C.O.P.Nos.2300 of 2003, 1206 of 2004 and 2299 of 2003 on the file of the Rent Controller (XII Court of Small Causes, Chennai).

2.The revision petitioners are the respondents/tenants in the Rent Control Proceedings, whereas the respondent herein is the petitioner/landlord.

3.With the revision petitions (three in numbers) are inter-related with each other and the issue involved in all the petitions is common in nature, all the revision petitions have been consolidated together, heard jointly and disposed of in this common order.

4.The respondent herein being the landlord had filed three petitions in R.C.O.P.Nos.2299 of 2003, 2300 of 2003 and 1206 of 2004 under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter may be referred to as, "the Act" wherever the context so require), for the eviction of the revision petitioners/tenants and to put him in possession of the petition mentioned premises.

4A.These three petitions were strenuously contested by the revision petitioners/tenants. Ultimately, the learned Rent Controller on appreciation of the evidences both oral and documentary had proceeded to dismiss all the three petitions mainly on the following two grounds:-

a. Though it is permissible in law that the respondent/landlord can seek eviction for partial demolition of the building without an expert opinion, the Rent Control Court cannot hold that there is a possibility for demolition of the entire building excluding the Kalyana Mandapam portion and the Kalyana Mandapam building would stand on its own during demolition of the remaining portion.

b. The intention of the respondent/landlord was not bona fide and that his only intention was to evict the revision petitioners/tenants somehow or other.

5. Having been aggrieved by the impugned order, dated 28.1.2009, the respondent/landlord had preferred an appeal before the learned Rent Control Appellate Authority in R.C.A.Nos.113, 114 and 115 of 2009.

6. The learned Rent Control Appellate Authority, after hearing both sides and on scrutinisation of the evidences on record had allowed the appeals after reversing the order of the learned Rent Controller with a finding that:-

a. Since the landlord has not claimed that the petition mentioned premises are in a dilapidated condition, he need not prove the age and condition of the building. But the learned Rent Controller has made a finding that the landlord has failed to prove the age and condition of the building by examining the expert witness and hence, the findings of the learned Rent Controller are absolutely unwarranted on the aspect of age and condition of the building.

b. The age and condition of the building are not the determinative factors to decide whether the requirement of the building for demolition and reconstruction is bona fide. Since the demolition is intended to put up a new multi-storied structure for better financial returns, the landlord can seek eviction of the tenant on the ground of demolition and reconstruction.

7.The Rent Control Appellate Authority has placed reliance upon the decision of the Apex Court in ***Shakeelulr Rahman vs. Syed Mehdi Ispahani (2002 AIR SCW 4876)***.

8.Having not been satisfied with the judgment of the appellate authority, the tenants stand before this Court with these revision petitions.

9.Heard Mr.V. Vijay Shankar, learned counsel appearing for the petitioner in C.R.P.No.1533 of 2011, Mr.V. Manohar, learned counsel appearing for Mr.C. Rajan, learned counsel, who is on record for the petitioner in C.R.P.No.1516 of 2011, Mr. A. Kanagasasbapathy, learned counsel appearing for the petitioner in C.R.P.No.733 of 2011 and Mr. M.L. Ramesh, learned counsel appearing for the respondent in all the petitions.

10.Mr.V. Vijay shankar, (for the revision petitioner/tenant in C.R.P.No.1533 of 2011) has submitted that the respondent/landlord had not chosen to examine himself and that the only witness examined on his side was one Mr.Mohanraj, who was his authorised agent. In fact, he had disowned his personal knowledge in respect of the material particulars.

11.Secondly, he would contend that with reference to the age and condition of the building, the respondent/landlord had not examined any expert such as engineer or technically qualified architect.

12.Thirdly, he would argue that as contemplated under Section 14(1)(b) of the Act, whenever the landlord had sought the eviction of tenant on the ground of demolition and reconstruction, the onus was wholly on him to prove the condition as well as the imminent requirement of the building for demolition and reconstruction.

13.Fourthly, he has contended that as it was revealed from the evidences available on record, the building was reconstructed only in the year 1987 and it was hardly 16 years old at the time of filing the rent control proceedings and hence, there was no necessity for demolition and reconstruction.

14.Fifthly, he has added that as evident from Ex.P.9 Building Demolition Plan, the respondent/landlord was only intended to demolish a portion of the building and not the Kalyana Mandapam, which was situated on the back side of the building.

15.Finally, he has adverted to that since the intention of the landlord was not bona fide and his main intention was only to evict the revision petitioners/tenants, the Rent Control Appeals ought to have been dismissed confirming the order of the learned Rent Controller and hence, he has urged to set aside the judgment of the appellate authority and to confirm the order of the learned Rent Controller.

16.Mr.A.Kanagasabapathy, learned counsel appearing for the revision petitioner/tenant in C.R.No.733 of 2011, while advancing his argument has indicated that since the Rent Control Act was a beneficial legislation to protect the interests of the tenant from unreasonable eviction, the appellate authority could not go overboard to believe the evidence of the respondent/landlord's agent for the purpose of eviction of the revision petitioners/tenants.

17.He has also pointed out that the respondent/landlord had taken out yet another rent control proceedings in R.C.O.P.No.865 of 1999, which was still pending on the file of the learned Rent Controller and that without considering this fact, the learned Rent Control Appellate Authority had committed wrong in deciding the appeal in favour of the respondent/landlord.

18.Mr.V. Manohar, learned counsel appearing for the revision petitioner/tenant in C.R.P.No.1516 of 2011 has also projected his argument on the ground that the bona fide requirement of the landlord had not been established by any evidence especially when the respondent/landlord wanted to demolish a small portion of the building occupied by the tenant while keeping the remaining portion intact.

19.He has also pointed out that with an ulterior motive

the eviction was sought for and in fact there was no bona fide requirement as contemplated under Section 14(1)(b) of the Act and hence, he has also urged this Court to set aside the judgment of the Appellate Authority after confirming the order of dismissal of the learned Rent Controller.

20. In support of his contentions, Mr. V. Vijay Shankar, has relied upon the following three decisions:-

a. Shakeelulr Rahman vs. Syed Mehdi Ispahanni (2002 AIR SCW 4876).

b. Vijay Singh and others vs. Vijayalakshmi Ammal ((1996) 6 SCC 475).

c. Parasmal, Prop. Mehta Stores Vastralaya, Chennai-79 and another vs. R. Mohan (2007 (1) CTC 617).

21. In ***Shakeel Ur Rahman***, cited first supra, a suit for eviction was filed by the respondent/landlord on the ground available under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It was dismissed by the Rent Controller as well as by the Rent Control Appellate Authority. However, the High Court exercising its revisional jurisdiction had allowed the prayer for eviction. Hence, the tenant had filed the above said appeal before the Apex Court.

22. In the above said civil appeal, the landlord had claimed that the eviction was required for demolition and reconstruction of the building for the purpose of utilising the property to earn better income. The landlord had also decided to demolish the said building completely so as to enable him to construct a multi-storied building in the place where the building was located.

23. When the appeal preferred by the tenant came up before the Division Bench of the Supreme Court, the Hon'ble Mr. Justice Arijit Pasayat, while speaking on behalf of the Division Bench, has observed in Paragraph Nos. 8 and 9 as under:-

"8. As observed in para 11 (supra) where the landlord wanted to demolish the building in order to construct a new shopping complex for which necessary permission from the authorities had already been obtained and sufficient financial resources were available for the construction the bona fide requirement is established. In the case at hand both the Rent Controller and the Appellate Authority held that the respondent-landlord wanted to demolish the building in order to construct a new complex and had requisite financial resources for undertaking the construction. High Court has referred to Exts. P8 to P10 and the evidence of PW1 to hold that the requisite financial soundness was to put up new multi-storied complex. In addition, agreement vide P-11, to which reference has been made supra, was referred to in this context.

9.

The main contention of the learned counsel for the appellant is that the High Court interfered with the concurrent finding of the lower authorities in regard to the age of the building which is illegal. No exception can be taken to the contention, but it does not alter the result. As noted above, both Rent

Controller and the Appellate Authority proceeded on the basis as if age and condition of the building are the sine qua non for application of Section 14(1)(b) of the Act, based on the view expressed in **P. Orr and Sons case** (supra). But in view of the decision rendered by the Constitution Bench in **Vijay Singh's case** (supra), though age and condition of the building sought to be demolished are relevant factors to test bona fides of the landlord, they are not determinative of the issue. Though we do not approve the High Court's approach in interfering with the concurrent findings of fact, yet we do not consider it necessary or just to interfere with the order under challenge, as on the other concurrent findings of facts recorded by the lower authorities, referred to above, a finding of bona fide requirement of the landlord has been recorded by the High Court which is affirmed by us."

24. The decision in **Vijay Singh and others (1996) 6 SCC 475**), cited second supra, the paragraph Nos.10 and 11 have been highlighted in **Shakeel Ur Rahman's case**, cited first supra, under paragraph No.7, which read as follows:-

"7. The said provision was interpreted by this Court in **P. Orr and Sons case** (supra). It was observed that landlord could succeed in an application under Section 14(1)(b) only when it is established that the building is in dilapidated condition which require immediate demolition. This decision was applied by the Rent Controller for rejecting landlord's application for eviction. View in the said case was diluted by a subsequent Constitution Bench decision in **Vijay Singh and Ors. vs. Vijayalakshmi Ammal (1996(6) SCC 475)**. Some of the relevant observations made in the said case read as follows:-

"10. Permission under Section 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to

immediately demolish the building in question to erect a new building. At the same time it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under Section 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller.

11.

Respondent also wanted to demolish the entire building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the respondent that she had sufficient financial resources for construction of the new building. An undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of three months from the date the said respondent recovered possession of the building."

25.In **Parasmal, Prop. Mehta Stores Vastralaya** cited third supra, the learned Single Judge of this Court in paragraph No.12, with regard to the age and condition of the building, has

observed as under:-

"12. Age and condition of the building:

While the age and condition of the buildings are relevant factors to be taken into account, it is not possible to insist that the condition of the building must be such that there is imminent threat of the building collapsing in the near future and only in such contingency, the Landlord could resort to the process under Section 14(1)(b) of the Act. It has been held in numerous decisions that the building need not be very old and dilapidated. Some of the decisions of this Court on this point are: Lakshmanan and Others v. Kanniammal alias Pattammal, 1995 (2) MLJ 178, Sultan Sheriff alias Basha v. Hassan Mohideen and others, 1984 (97) LW 166, Narayanaswami Iyer v. Ramakrishna Iyer, 1965 (1) MLJ 78, Daniel Parthasarathy v. Manickavasagam, 1965 (78) LW 24, Bharath Trading Co. v. Shanmugasundaram, 1982 (1) MLJ 94 and Ammal Pillai and others v. M/s. Varadarajulu Complex etc. 1997 (1) LW 364."

26.This Court with very great caution has gone through the above cited three decisions. When comparing the facts and circumstances narrated in the above cited decisions with the facts and circumstances of the given case on hand, this Court is of considered view that all the above cited decisions are only in favour of the respondent/landlord and not in favour of the revision petitioners/tenants.

27.It is obvious to note here that the property described in all the three rent control petitions, viz., 2299 and 2300 of 2003 and 1206 of 2004 is one and the same. The landlord has filed the above said rent control petitions under Section 14(1)(b) of the Act for the eviction of the revision

petitioners/tenants and to put him in possession thereof.

28.The building described in all the three rent control petitions is a non residential building. As it appear from the rent control petitions, the revision petitioners are the tenants in respect of the three different shopping portions measuring 10.25 feet North-South and 10 feet East-West. The above said three portions were rented out to the revision petitioners/tenants 16 years ago for running a laundry, tailoring shop and Hotel.

29.According to the respondent/landlord, the whole building including the petition mentioned premises is a old building and the income from the lodge and the rental income from the rented premises are very meagre and therefore, he wanted to demolish and reconstruct the building including the rented premises as a luxurious lodge with modern amenities for getting more and maximum income. He has also stated that he is a man of means and got sufficient fund for demolition and reconstruction.

30.Ex.P.9 is the building demolition plan. Ex.P.8 is the demolition permit. There is no dispute about the ownership of the building. The revision petitioners have contended that the whole building including the petition mentioned premises, is not at all an old building and in fact the respondent/landlord had also demolished and reconstructed the building in the year

1987 and he constructed 46 new rooms in all the three floors and on account of this reason, there is no necessity to demolish and reconstruct the entire building and that the sole intention of the respondent/landlord is to evict the revision petitioners/tenants from the petition mentioned premises for the purpose of inducting new tenants to get more rental income.

31. But Mr. M. L. Ramesh, learned counsel appearing for the respondent/landlord has submitted that as observed in ***Shakeel Ur Rahman vs. Syed Mehdi Ispahanni (2002 AIR SCW 4876)*** for demolition and reconstruction of the building for the purpose of putting up a multi storied building, the age and condition of the building were not determinative factors. When the demolition was intended to put up a new multi-storied structure in a commercial locality for better financial returns, the respondent/landlord need not prove the age and condition of the building.

32. He has also argued that Ex.P.7 and Ex.P.9, i.e., Corporation receipt and Chalans and demolition plan respectively would go to show that the requirement of the landlord was bona fide for demolition and reconstruction of the building.

33. Mr. M. L. Ramesh, had also made reference to the decision in ***Parasmal, Prop. Mehta Stores Vastralaya, Chennai-79 and another vs. R. Mohan (2007 (1) CTC 617)***, wherein, the learned Single Judge of this Court, in respect of bona fide requirement,

has observed that the bona fide requirement of the landlord includes the means of the landlord for the reconstruction of the building and steps taken in this regard. The landlord need not jingle coins before the court to prove his means. He had obtained license for demolition and showed fixed deposit receipts to prove his bona fide.

34.Mr.M.L. Ramesh has also argued that as observed by the Apex Court in ***S.Venugopal vs. A. Karrupusami and another (AIR 2006 SC 1930)***, if the landlord was wishing to construct a multi-storied building to fetch higher rent and also to serve his business needs, a plan approval obtained from the competent authority and showing of his means would be sufficient to prove his bona fide and this would go to show that the requirement of the landlord was bona fide and therefore, the revision petitioners/tenants were liable to be evicted.

35.This Court has considered the submissions made by the learned counsels on either side.

36.Section 14 contemplates, "Recovery of Possession by landlord for repairs or for reconstruction".

Sub-section (1) of Section 14 enacts that, "Notwithstanding anything contained in this Act, but subject to the provisions of Sections 12

and 13, on an application made by a landlord the Controller shall, if he is satisfied:-

Clause (b) to Sub-section (1):- "that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

37.The provisions of Section 12 of the Act provides for the, "Recovery of possession by landlord for repairs or for reconstruction of building in respect of which the Government shall be deemed to be the tenant."

38.Section 13 contemplates, "Authorised officer to give notice to landlord in certain cases."

39.What Sub-Section (1) to Section 14 envisages that notwithstanding anything contained in this Act, but subject to the provisions of

Sections 12 and 13, if the Rent Controller is satisfied on an application made by the landlord that the building is bonafide required by the landlord for the immediate purpose of demolishing it and as such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, shall pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

40.The essence of sub-clause (b) to Sub-Section (1) of Section 14 is that the Rent Controller shall pass an order directing the tenant to deliver possession of the building if he is satisfied that the requirement of the landlord is bona fide for demolition and reconstruction of the building on the site of the building sought to be demolished.

41.In so far as the given case on hand is concerned, the building which encompasses the non residential portions in which the revision petitioners/tenants are in occupation is located in prime area of Anna Nagar.

42.Admittedly, the petition mentioned premises are part and parcel of the entire building excluding Kalyana Mandapam. All the three portions are situated in the ground floor.

43.As it appear from the averments of the petition, the old building is consisting of ground, first and second floors. All the three shopping portions have been rented out to the revision petitioners/tenants for the purpose of running a laundry and tailoring shop and hotel business.

44.In this connection, the respondent/landlord would state that the restaurant, which is being run by one of the revision petitioners/tenants under the name and style of "Anna Restaurant" occupies a portion of the first floor also and in the remaining portion of the first floor, the respondent/landlord has been doing his own business by running a lodge.

45.As stated in the foregoing paragraphs, in order to augment the income from the lodge and the rental income from the petition mentioned premises, the respondent wanted to demolish the entire building and reconstruct as a luxurious lodge with modern amenities.

46.He has also stated that he had got sufficient fund for demolition and reconstruction and he had also obtained planning permission under Ex.P.9 for the purpose of demolition and reconstruction of a multi storied building.

47.The documentary evidences produced by the

respondent/landlord would go to show that he is a man of means and is in well placed position to reconstruct a multi storied building.

48. Under these circumstances, the age and the condition of the building is immaterial.

49. As observed by a Division Bench of the Apex Court in ***Harrington House School vs. S.M. Ispahani and another (2002 (2) CTC 549***), there is a pressure of population on developing city and the fact that several multi-storied complexes have come up in the vicinity of the property. There is nothing to cast a shadow of doubt on the bona fides of the landlord's pleading with regard to immediate need for demolition followed by reconstruction.

50. Keeping in view of the above facts, it is thus made clear that the age and the condition of the building may be one of the components of bona fides, but that alone is not the material ground. The non examination of expert with regard to the age and condition of the building is also immaterial. Based on the evidences available on record, this Court finds that the requirement of the respondent/landlord for demolition and reconstruction of the building is bona fide and hence, this Court does not find any reason for interfering with the judgment of the learned Rent Control Appellate Authority holding that the revision petitioners/tenants are liable to be evicted

under Section 14(1)(b) of the Act.

51. In the result, the revision petitions are dismissed with costs. The judgment and decree of the Rent Control Appellate Authority are confirmed. The Revision Petitioners/tenants are directed to vacate the petition mentioned premises and surrender the same to the respondent/landlord within a period of four months from the date of receipt of a copy of this order. Connected M.Ps. are also dismissed.

rnb

07.10.2015

Index:Yes/No.

Internet:Yes/No.

To

1. VIII Judge, Small Causes Court, Chennai.
2. XII Judge, Small Causes Court, Chennai.

T.

MATHIVANAN, J.

RNB

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