

Reserved on : 07.10.2016

Delivered on : 20.10.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1880 of 2016

M/s.Hotel A.R.A.P. (P) Ltd.,
rep by its Managing Director A.Prabhakaran,
New No.37 & 39, Old No.17 & 18,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Petitioner

Vs

M/s.Buhari Sons Pvt. Ltd.,
rep by its Director M.B.Haja,
New No.41, Old No.19,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Respondent

Civil Revision Petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1980 as amended by Act 23 of 1973 and Act 1 of 1980 against the fair and decreetal order passed in R.C.A.No.260 of 2015 dated 21.03.2016 on the file of the VII Judge, Court of Small Causes, Chennai reversing the fair and decreetal order made in R.C.O.P.No.1083 of 2009 on the file of the XVI Judge, Court of Small Causes, Chennai dated 24.03.2015.

For Petitioner : Mr.K.P.Gopalakrishnan

For Respondent : Mr.B.Kumar, Senior Counsel
for Mr.M.Abdul Nazeer

ORDER

Challenging the judgment and decree passed in R.C.A.No.260 of 2015 on the file of the VII Judge, Court of Small Causes, Chennai reversing the order passed in R.C.O.P.No.1083 of 2009 on the file of the XVI Judge, Court of Small Causes, Chennai, the landlord has filed the above Civil Revision Petition.

2.The petitioner/landlord filed the R.C.O.P.No.1083 of 2009 for eviction on the ground of demolition and re-construction and additional accommodation.

3.The brief case of the petitioner/landlord is as follows:

(i)According to the petitioner, originally the property belonged to one Malliah Periasamy and the said Periasamy had settled the properties in favour of one M.Ganesan and others and thereafter, they sold the property to the petitioner under a registered Sale Deed. One Mohammed Buhari became a tenant under Periasamy in his personal capacity. The said Periasamy filed a Rent Control Original Petition for eviction and the dispute between the parties ended in a compromise before the Hon'ble Supreme

Court, whereby, the respondent was allowed to occupy the petition premises at the rate of Rs.550/- per month. The rent that was agreed in the compromise between Periasamy and late Mohammed Buhari was incorporated in the orders. The respondent is in occupation of 4,200 sq.ft. and is paying a meagre rent of Rs.550/- from 1984. The property is located in a prime business locality and the respondent claims to be a Director of Buhari Sons Private Limited. The petitioner is not a party to the compromise entered into between the parties before the Supreme Court of India.

(ii)Further, the petitioner has stated that the petition premises is in a dilapidated condition and if the petition premises is demolished and if a new construction is made, that will facilitate the petitioner to expand their existing business in hotel in the name and style of “Hotel Chennai Gate”. Further, the petitioner has stated that if the petition premises is pulled down and new construction is made, that will attract many customers and will in turn benefit the petitioner to augment their income. Further, the financial strength of the petitioner will improve. The petitioner has also stated that they possessed sufficient property to develop the petition premises and that the need of the petitioner is bonafide.

(iii)The petitioner has also undertaken that the process of

demolition and re-construction will be initiated within a period of one month from the date of attaining vacant possession and will complete the construction expeditiously. They have also stated that they have sound financial sources to complete the process of demolition and re-construction. In these circumstances, the landlord has filed the Rent Control Original Petition for eviction.

4.The brief case of the respondent/tenant is as follows:

(i)According to the respondent/tenant, in the year 1956, Late A.M.Buhari took a portion of the property on lease and was carrying on restaurant and Tea Stall business. Later, one B.A.Malliah came forward to grant lease of the entire property to Late A.M.Buhari. In the year 1961, Late A.M.Buhari took the entire premises from the then landlord B.A.Malliah and doing Hotel and Lodging business. Thereafter, Late A.M.Buhari put up a vast construction and extended his business with the permission of the then landlord. Subsequently, additions, alterations and re-constructions were carried out with the permission of the then landlord.

(ii)In the year 1979, the then landlord B.A.Malliah sold the entire property to one P.Periasamy, the brother-in-law of the 1st vendor of the respondent. After his purchase, in the year 1981, the said P.Periasamy filed

R.C.O.P.No.3631 of 1981 for eviction against Late A.M.Buhari, who is the founder of the Buhari Hotels. The eviction proceedings initiated by the said Periasamy against Late A.M.Buhari went upto the Hon'ble Supreme Court and ultimately, an amicable settlement was reached between A.M.Buhari and P.Periasamy and the Civil Appeal No.2718 of 1984 was disposed of on 28.09.1989.

(iii)As per the compromise, the said A.M.Buhari was allowed to retain the entire area on the Western side of the property measuring 105 feet North to South and 39.06 feet East to West (Frontage). The remaining portion was surrendered to P.Periasamy, including the construction on the Eastern side. Late A.M.Buhari was given permission to improve the portions allotted to him by making additions and alterations to suit his business. The Hon'ble Supreme Court of India took into consideration the buildings constructed by A.M.Buhari and the buildings constructed were agreed to be surrendered and the monthly rent of Rs.1,650/- for the entire building was reduced to Rs.550/-. Under Clause-8 of the compromise decree, Periasamy was entitled to develop the surrendered portion in any manner without interfering with the possession and enjoyment of the portion retained by Late A.M.Buhari.

(iv)As per the compromise decree, a dividing wall was also constructed. A.M.Buhari, who was the Managing Director of the respondent/ Hotel died on 09.02.1996. On 29.09.2004, the said Periasamy informed the respondent that he had settled the petition property in favour of M.Ganesan and others and requested to send the rent to him upto April 2004 and to send the rent from May 2004 to M.Ganesan and his sons. In November 2004, M.Ganesan and his sons demolished the building on the Eastern portion handed over to Periasamy and they started excavating the earth upto the depth of 10 to 12 feet. Thereafter, they started constructing multi-storeyed building.

(v)The said M.Ganesan and his sons filed fair rent petition in R.C.O.P.No.2222 of 2004 on the file of the 13th Judge, Court of Small Causes, Chennai against the respondent. The Rent Controller dismissed the Rent Control Original Petition as not maintainable. Thereafter, the said M.Ganesan and his sons filed R.C.O.P.No.350 of 2005 and R.C.O.P.No.2243 of 2005 on the file of the XVI Judge, Court of Small Causes, Chennai for eviction. The respondent filed their counter stating that the eviction petitions are not maintainable. Subsequently, the Rent Control Original Petitions were withdrawn by M.Ganesan and others. The tenant contended that since the present Rent Control Original Petition has been filed in total

disregard to the letter and spirit of the Compromise Order passed by the Hon'bl Supreme Court of India, the petition is not maintainable. The petition is also barred by the principles of res judicata. In these circumstances, the tenant prayed for dismissal of the petition.

5.Before the Rent Controller, on the side of the landlord, two witnesses were examined and 11 documents, Exs.P1 to P11 were marked. On the side of the tenant, 5 witnesses were examined and 43 documents, Exs.R1 to R43 were marked.

6.The Rent Controller, taking into consideration the oral and documentary evidences of both sides, ordered eviction on the ground of demolition and re-construction and dismissed the petition on the ground of additional accommodation. Against the order passed by the Rent Controller, the tenant preferred an appeal in R.C.A.No.260 of 2015 on the file of the Rent Control Appellate Authority, VII Judge, Court of Small Causes, Chennai and the Rent Control Appellate Authority reversed the order passed by the Rent Controller and allowed the appeal. Against the order passed by the Rent Control Appellate Authority, the landlord has filed the above Civil Revision Petition. Before the Rent Control Appellate Authority, the tenant also marked a copy of the petition in H.R.C.No.3861 of 1981 as an additional

document.

7. Heard Mr.K.P.Gopalakrishnan, learned counsel appearing for the petitioner and Mr.B.Kumar, learned senior counsel appearing for the respondent.

8.Mr.K.P.Gopalakrishnan, learned counsel appearing for the petitioner submitted that the Rent Control Appellate Authority had reversed the order of eviction passed by the Rent Controller on erroneous grounds. Further, the learned counsel submitted that the Appellate Authority had mis-interpreted Section 19 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The learned counsel submitted that the order dated 28.09.1989 passed by the Hon'ble Supreme Court of India will not operate as res judicata or estoppel for the reason that a compromise decree is not a decision by the Court and it is the acceptance of the Court to something to which the parties had agreed. Further, the learned counsel submitted that the compromise memo entered into between the erstwhile parties before the Supreme Court is not binding on the parties. The learned counsel also submitted that the building is more than 60 years old and the landlord had also obtained sanction from the authorities for putting up new construction.

9.In support of his contentions, the learned counsel appearing for the

petitioner, relied upon the following judgments:

(i)(1993) 3 Supreme Court Cases 271 [Prithvichand Ramchand Sablok Vs. S.Y.Shinde] wherein the Apex Court held as follows:

“...

4.The Act was enacted to amend and consolidate the law relating to the control of rents and of evictions from demised premises. It imposes certain restrictions on the right of the landlord from recovering possession so long as the tenant pays or is ready and willing to pay standard rent and permitted increases and observes and performs the other conditions of the tenancy which are consistent with the provisions of the Act. If the tenant has failed to pay the rent and permitted increases due from him he can be evicted for that neglect in the manner set out in section 12 of the Act. The other provision which confers a right of eviction is section 13 of the Act with which we are not concerned in this case. The facts of the case clearly reveal that the landlord had sought eviction under section 12 of the Act as the tenant had committed a breach of sub-section (1) thereof, in that, he had failed to pay the rent to the landlord. To comply with the requirement of sub- section (2) of that provision the landlord had served the tenant with a notice prior to the institution of the suit seeking eviction under section 12(3) of the Act. This sub- section is in two parts and may be extracted for ready reference

"12 (3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in

arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in subsection (2), the court may pass a decree for eviction in any such suit for recovery of possession.

12(3) (b) In any other case no decree for eviction shall be passed in any such suit if on the day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter continues to pay or tender in court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court."

Clause (a) sets out the circumstances in which the tenant forfeits the protection of the statute and entitles and landlord to evict him. If the case does not fall within the scope of clause (a) the question to be considered is whether eviction should be ordered under clause (b). This is clear from the opening words, "in any other case," If, however, the tenant satisfies the conditions of the said clause, the law protects him from eviction as is clear from the words, "no decree of eviction shall be passed in any such suit". The suit in the present case was filed under section 12(3) of the Act but before the court could adjudicate whether clause (a) or clause (b) was attracted the parties arrived at a settlement, the relevant terms hereof have been extracted hereinbefore. It is well-settled that a decree passed on the basis of a cc, promise by and between the parties is essentially a contract between the names which derives

supporting by the court superadding its seal to the contract. But all the same the consent terms retain all the elements of a contract to which the court's imprimatur is affixed to give it the sanctity of an executable court order. We must, however, point out that the court will not add its seal to the compromise terms unless the terms are consistent with the relevant law. But, if the law vests exclusive jurisdiction in the court to adjudicate on any matter, e.g. fixation of standard rent, the court will not add its seal to the consent terms by which the parties have determined the standard rent unless it has applied its mind to the question and has satisfied itself that the rent proposed by consent is just and reasonable. In such a case it is the independent satisfaction of the court which changes the character of the document from a mere contract to a court's adjudication which will stop the tenant from contending otherwise in any subsequent proceedings and operate as resjudicata. If the standard rent is fixed solely on the basis of agreement between the parties, such a decree in invitum will not preclude the tenant from contending in any subsequent proceeding that the rent is excessive and require the Court to fix the standard rent. Therefore, the character of the consent decree will depend on the nature of the dispute resolved and the part played by the court while superadding its seal to it."

(ii)2002-1 L.W. 810 [N.R.Narayan Swamy Vs. B.Francis Jogan]

wherein the Hon'ble Supreme Court held as follows:

"...

8. From the aforesaid section, it is apparent that fresh application under the Rent Act could be summarily rejected only if (i) if the proceedings are between the same parties or under whom they or any of them claim and (ii) substantially the same issues as have been finally decided in a former proceeding under the Act are raised. Thus the section as such, incorporates principles of res judicata. The aforesaid section would have no application as the previous proceedings for taking possession of the premises was not pressed and stood disposed of without deciding any issue.

9. The next question would be - whether Order XXIII Rule 1 sub-Rule (4) CPC is applicable to the facts of the present case, Sub-rule (4) reads thus:

“(4) Where the plaintiff:

(a) abandons any suit or part of claim under sub-rule(1) or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3)

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.”

10. The aforesaid Rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order 23, Rule (4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide

requirement even though the premises remains the same, the subject matter which is cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with similar contention in ***Vallab Das Vs. Dr.Madanlal and others [(1970) 1 SCC 761]***, this Court observed as thus:

“The expression “subject-matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit.””

(iii)AIR 1967 SC 591 [Pulavarthi Venkata Subba Rao and others VS.

Valluri Jagannadha Rao and others] wherein the Apex Court held as follows:

“...

The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the Court on the agreement of the parties. The Court did not decide anything. Nor can it be said that a decision of the Court was implicit in it. Only a decision by the Court could be res judicata, whether statutory under

S.11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests.”

(iv)M/s.Saree Sansar Partnership Firm rep by its Partner Suresh Vaswani & others Vs. Nandakumar] wherein this Court held as follows:

“...

14.In the said decision, it was held that one of the essential ingredients for deciding res judicata is that there must be a formal adjudication between parties in respect of the relief sought for and after full hearing and the matter should have been finally decided between the parties. Sec.19 of the Act, incorporates the principle of res judicata more or less on the same lines as that of C.P.C. There are two important requirements for complying this Section. One is that there must not be identity of issues in the two proceedings and the other is that former proceedings must have been decided on the very issues which arise in the latter proceeding. When a defence is taken raising the plea of res judicata, the burden of proof is heavily on the person who is raising the plea.”

(v)2007 (1) CTC 326 [C.Natarajan S/o Chinnathagagounder, Oomer Road, Ambur Town, N.A.A. District and another Vs. G.N.Shanmugam and others] wherein this Court held as follows:

“...

17. Family of the landlord owns a number of shops - five shops in Bazar street and another six shops in Liquor Shop Street and several other shops. It was submitted that though the landlords own several shops, they require only the demised premises for the purpose of running book shop and there is no bonafide requirement. The fact that the landlords own other shops cannot be the ground for doubting the bonafide of the landlords. In a Petition for eviction on the ground of demolition and reconstruction, in assessing the bonafide of the landlord, existing condition, age of the building and the preparations made by the landlord, by way of getting the plan for construction of new building, are relevant factors to be considered. The fact that the landlords own other shops cannot be the overriding consideration.”

(vi) **2004 (2) CTC 270 [Habibullah Vs. Mohamed Sultan]** wherein this Court held as follows:

“...

13. The Honourable Supreme Court in **Vijaya Singh, etc. etc. v. Vijayalakshmi Ammal, 1996 (2) CTC 586** had given the guidelines, what are the relevant materials to find out whether the requirement of the landlord is bona fide or not. The Apex Court has ruled, that the Rent Controller has to consider:

1. bona fide intention of landlord far from sole object only to get rid of tenant

2. age and condition of building

3. financial position of landlord to demolish and erect new building, in addition to other attending circumstances.

14. At present, it is a settled position of law, that it is not necessary, in order to seek eviction of the tenant under Section 14(1)(b) of the Act, the building should be in a dangerous and dilapidated condition, requiring immediate demolition on that ground, though it is necessary to find out the condition of the building, since the landlord is not entitled to an order of eviction, for mere asking, labelling the building as old one and not in good condition.

15. It is also held by this Court, placing reliance upon the above Apex Court ruling in *Kuttappan (died) v. Civil Advocates Clerks' Association*, 1997 (2) CTC 41 : 1998 (1) MLJ 260 that condition of the building is not so essential, and even if the building may not be that much dangerous and if it is shown, that the building is *bona fide* required by the landlord, for immediate purpose of demolition, the Rent Controller, satisfying himself has to order eviction.

16. In *S. Saraswathiammal (deceased) and 2 Ors. v. R.S. Mallikarjun Raja and 2 Ors.*, 1997 (1) CTC 280 : 1997 (2) L.W. 287, this Court has taken a view, that the building need not be in a dilapidated condition or in a dangerous state of affairs, for ordering a petition under Section 14(1)(b) of the Act, which is further affirmed by this Court in *M/s. Mohammed & Sons v. Abbabhai Jodhpurwala*, 2000 (1) MLJ 747. As of rule, when the landlord requires the building for demolition and

reconstruction, building need not be so dangerous, unfit for human habitation, nor it should be on the verge of collapse. Further, it is held that if the landlord establishes, all the grounds under Section 14(1)(b), a presumption arises, in his favour that his claim is bona fide in this way, it is held as follows:

“It is clear that for the purpose of seeking demolition and reconstruction, building need not be dangerous or unfit for human habitation nor it should be on the verge of collapse. The Honourable Supreme Court has held that on mere asking of landlord that he proposes to demolish the building an order of eviction cannot be passed. It is the bona fides of the claim that has to be considered and for the said purpose, the Apex Court has given certain guidelines, which is not exhaustive. When landlords establish all the grounds under Section 14(1)(b), a presumption arises in his favour that his claim is *bona fide*. It is for tenants to disprove the presumption by adducing contra evidence.””

(vii) 2003-2-L.W. 93 [P.Ganesan VS. 1.Subbiah Dharmanidhi, Tuticorin through its Managing Trustee D.Ganesan and another]

“...

8.The learned counsel for the revision petitioner mainly contended that the earlier rent control petition filed by the

landlord was withdrawn without any reason and not on any technical grounds. He also produced the certified copy of the order passed by the Appellate Authority granting permission to withdraw the rent control appeal with liberty to file a fresh appeal on the same cause of action. The order passed by the Appellate Authority is a mistake because permission is given to withdraw the rent control petition only and to file a fresh petition on the same cause of action and not any fresh appeal. Whatever it may be, the earlier rent control petition was filed in the year 1982, whereas the subsequent rent control petition was filed in the year 1991. It is seen from the counter filed by the revision petitioner himself to the main rent control petition that the building is more than 30 years old and it is in the occupation from the father's time and it would only establish the age of the building. Simply because the earlier rent control petition was withdrawn, it cannot be said that there is any bar in filing a second petition on the same ground."

(viii)2002 (4) CTC 542 [P.S.Mohamed Ali and five others Vs.

S.Govindan and another] wherein this Court held as follows:

"...

6.A plain reading of Section 19 of the Act makes it clear that the same is enacted on the basis of the principles of res judicata, a well known doctrine, which requires compliance of

two important requisites, namely, (i) there must be an identity of issues in the two proceedings; and (ii) that the former proceeding must have been decided on the very issues which arise in the latter proceedings. In other words, in the doctrine of res judicata no magic is involved but it is essentially a pragmatic principle which has to be applied on the facts and circumstances of each case, as held by this Court in ***R.J.Mehta Vs. Prottam Singh, 1979 (2) MLJ 19.***

7.The words, viz., the same issues as have been finally decided, employed by the legislature under Section 19 of the Act would clearly indicate not merely the cause of action viz., as relied upon by the learned counsel for the petitioners, the lease deed dated 09.12.1968, but "the issues" raised in the two proceedings, and such issues should have been formerly adjudicated and finally decided between the parties and these basic principles, on which the doctrine of res judicata rests, cannot be lightly disregarded while exercising the powers conferred under Section 19 of the Act, even though Section 19 of the Act was incorporated and enacted to prevent frivolous litigations."

(ix)2001 (1) CTC 42 [S.P.Kasi Viswanathan Chettiar Vs.

S.Kalyanaraman] wherein this Court held as follows:

"...

9.I have considered the evidence in the context of the landlord's claim for demolition and reconstruction. In the face of the following admission by the tenant/respondent himself as

R.W.1, a case for demolition and reconstruction is clearly made out.

“Mk; giHa fl;olk;. gGjile;Js;sJ”

The above admission is in addition to the positive evidence filed by the landlord both oral and documentary as regards the age and condition of the building. The finding of the appellate Court rendered after detailed analysis of the evidence and coupled with the categoric admission by the tenant himself as regards the nature of the building, has to be affirmed and there is absolutely no difficulty in coming to the conclusion that the building is old enough to justify demolition and reconstruction. Exs.P.3 to P.5 reveals the steps taken by the landlord for obtaining sanction of the plan. The decisions cited by learned Counsel for the petitioner cannot have any relevance to the facts of the present case. In fact, in the decision of the Supreme Court cited by learned counsel for the petitioner himself in *Vijay Singh v. Vijayalakshmi Ammal, 1996 (II) CTC 586*, the Supreme Court has held that the building need not be dilapidated to the extent of being dangerous for human habitation. All that requires to be considered is the bona fide intention of the landlord, the age and condition of the building and the financial position of the landlord to demolish and erect new building.

10. A further judgment relied on by learned counsel for the petitioner himself namely, in *P.Orr & Sons (P) Ltd. v. Associated Publishers (Madras) Limited, 1991 (I) SCC 301*, it has been held that the condition of the building need not be in the state of deterioration and crumbling. The condition must be

such that a reasonable and prudent landlord is would regard demolition and reconstruction to be economically more preferable than to repair the building.”

(x)1999-2-L.W. 269 [P.Prakasamurthy Vs. R.Rajendran] wherein this Court held that Section 19 of the Act cannot have application if there is change in the circumstances between the prior proceedings and the later proceedings and the later proceedings shall not operate as res judicata.

(xi)(2000) II M.L.J. 38 [S.M.Ispahani and another VS. Harrington House School by its Honorary Secretary, Madras] wherein this Court held as follows:

“...

34.In **Venugopal Vs. Fathima Beevi, (1996) 2 L.W. 772**, an identical view has been taken.

...

38.In **S.Raju Vs. K.Nathamani, (1998) 3 L.W. 214**, after an exhaustive analysis of the case law on the subject, **S.S.Subramani, J.** has observed as follows:

“Eviction to be ordered not only if the building is dilapidated and dangerous, but also where the building is old and unsuitable to the surroundings of the schedule building. Keeping the building in the old condition is a burden for ever to landlord. Tenants may be satisfied with the present state of the building since they pay only

nominal rent, but Rent Control Legislation is beneficial to both landlord and tenant. It is enough if the landlord shows his capacity to raise the necessary funds and that he has other properties which he can sell to raise necessary funds. If these statutory conditions are satisfied, the landlord is entitled to an order under Sec.14(1)(b).”

...

42. On a conspectus of the several decisions referred to above, the present position, with regard to Section 14(1)(b) of the Act is as follows:

(1) There must be a bona fide intention of the landlord and the intention should be far from the sole object only to get rid of the tenants.

(2) The age and the condition of the building should be such as to warrant demolition and reconstruction, and (3) The financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. The factor relating to the age and the condition of the building has to be taken into consideration alongwith the other factors and a conclusion has to be reached by the Rent Controller.”

(xii) 2001 (4) CTC 449 [M.M.Nagalinga Nadar Sons rep. by its Partner D.Kanagasabai Vs. Sri Lakshmi Family Trust, rep by its Trustees K.P.Subbaiyan and K.P.Manian] wherein this Court held as follows:

“...

44. The only question remaining for consideration is as regards the merits of the claim whether a case has been made out for demolition and reconstruction. On this both the authorities below have concurrently held that the building is in a dilapidated condition and it requires immediate demolition and reconstruction. In coming to that conclusion, the authorities below relied on the report and the plan of the Advocate Commissioner and the report of the Engineer as also the oral evidence let in on behalf of the petitioner concern itself. This aspect has been very elaborately dealt with by both the authorities. In the report of the Advocate Commissioner, it is stated that there were a few cracks on the wall, that there was a wooden roofing on the northwestern side portion and it was supported by a bamboo post and that on the ceiling there were a few holes found on the western side. In the wooden steps there were cracks in few places. The relevant portion of the report of the Advocate Commissioner runs as follows:

"The wooden rafters had fallen down. It was a terraced building with Madras tiles roofing. The staircase had been decayed. It may fall at any time. The electric connection was even without covering in some places. It was very dangerous for the occupants. The age of the building was about 60 years. The terrace was constructed with mud mortar and it gave way at four places and sun light goes inside through those holes. The building may collapse at any time".

It is also seen that the corporation has served notice on the respondent that the building is in dilapidated condition and it

has to be demolished as otherwise it would endanger the life of the inhabitants and the neighbours. No exception can be taken to the finding reached by the authorities below regarding the condition of the building that it requires immediate demolition and reconstruction. Equally no exception can be taken to the finding reached by the authorities below that the requirement of the trust for demolition and reconstruction is bona fide. The criteria laid down by the Supreme Court in *Vijay Singh v. Vijayalakshmi Ammal* , 1996 (2) CTC 586 : 1997 (1) M.L.J. (S.C.) 98 : 1997 (1) L.W. 218, are fully satisfied in the present case. The ratio in *Vijay Singh's case* , has been followed by this Court in several subsequent decisions.”

(xiii) 2007 (1) CTC 617 [Parasmal, Prop. Mehta Stores Vastralaya, No.137, Mint Street, Chennai - 600 079 and another Vs. R.Mohan, No.5/1, Natesan Street, T.Nagar, Chennai-17] wherein this Court held as follows:

“...

11.To maintain a Petition under Section 14(1)(b) of the Act, the Landlord should establish the bona fide intention. As held by the Supreme Court in its decision reported in *Sabura Begum Vs. Thangavelu*, 1997 (1) CTC 95 : 1997 (1) MLJ 418, the Rent Controller has to take into account (1) bona fide intention of the landlord. It should not be solely to get rid of the tenant; (2) the age and condition of the building; and (3) the financial position of the landlord to demolish and erect a new building.

...

14. In view of Vijay Singh's case and other decisions of this Court, it is not necessary for the landlord to prove that the condition of the building is such that it is dilapidated and dangerous and has to be demolished immediately. But, there are facts and ample evidence to show that the condition of the building is not sound. The specific stand of the landlord is the building is more than 90 years old. But, the tenants would contend that the building is not so aged and that the building is strong. Ex.P.1 dated 02.03.1925 is the Original Lease Deed executed by the Father of the Landlord in respect of the demised premises in favour of Mylapore Hindu Permanent Fund. Leasing out the building in 1925 clearly shows that the demised premises was in existence even prior to 1925 (i.e.) more than 73 years at the time of filing R.C.O.Ps."

10. Countering the submissions made by the learned counsel for the petitioner, Mr.B.Kumar, learned senior counsel appearing for the respondent/tenant submitted that the Lower Appellate Court has rightly reversed the order of eviction passed by the Rent Controller on strong grounds. The learned senior counsel submitted that under Section 19 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the petitioner/landlord cannot maintain the present Rent Control Original Petition in view of the order dated 28.09.1989 passed by the Hon'ble Supreme Court of India. Further, the learned senior counsel submitted that in the absence of any

evidence to show that the building is in a dilapidated condition, the Appellate Authority has rightly reversed the order passed by the Rent Controller. The learned senior counsel also submitted that the petitioner/landlord had failed to establish that the building is in a dilapidated condition, requiring demolition and re-construction. Further, the learned senior counsel submitted that the petition filed by the petitioner/landlord lacks bonafide.

11. In support of his contentions, the learned senior counsel relied upon the following judgments:

(i)(2014) 6 MLJ 597 (SC) [Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh] wherein a Constitution Bench of the Hon'ble Supreme Court held as follows:

“...

25. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the ‘appellate jurisdiction’ and ‘revisional jurisdiction’ is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the

case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a fullfledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

...

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappraisal of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A

finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

(ii)(2016) 3 Supreme Court Cases 343 [Boorugu Mahadev and Sons and another Vs. Sirigiri Narasing Rao and others] wherein the Hon'ble Supreme Court held as follows:

“...

20. Likewise, when we peruse the impugned order (Sirigiri Narasing Rao Vs. Boorugu Mahadev & Sons, Civil Revision Petition No.5228 of 2002, decided on 06.09.2005 (AP)), we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723*) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”

(iii)(2010) 15 Supreme Court Cases 711 [Irene Vs. V.S.Venkataraman and another] wherein the Hon'ble Supreme Court held as follows:

“...

10. While exercising the revisional jurisdiction under Section 25 of the Act, the High Court may call for and examine the record of the appellate authority and satisfy itself as to the regularity of such proceedings or the correctness, legality and propriety of any decision or order passed therein. It has been the consistent view of this Court that the power of revision conferred on the High Court is not so limited in its scope as it is under Section 115 CPC, but it is also not as wide as the power of an appellate court.”

(iv)(2008) 10 SCC 1 [Official Liquidator Vs. Dayanand and others]

wherein the Hon'ble Supreme Court held as follows:

“...

75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *Secretary, State of Karnataka vs. Umadevi* (3) (2006) 4 SCC 1 : 2006 SCC (L & S) 753 is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - *Indian Drugs and Pharmaceuticals Ltd. vs. Workmen*, (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270, *Gangadhar Pillai vs. Siemens Ltd.*, (2007) 1 SCC 533 : (2007) 1 SCC (L&S) 346, *Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara*, (2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143,

Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh, (2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441. However, in *U.P. SEB vs. Pooran Chand Pandey*, (2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736 on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in *Maneka Gandhi vs. Union of India*, (1978) 1 SCC 248.”

...

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the

judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is *sine qua non* for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in *U.P. State Electricity Board vs. Pooran Chandra Pandey*, (2007) 11 SCC 92 : (2008) 1 SCC (L & S) 736, should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.”

(v)(2002) 4 Supreme Court Cases 437 [R.V.E.Venkatachala Gounder Vs. Venkatesha Gupta and others] wherein the Apex Court held as follows:

“ ...

11. We may refer to two decisions of Madras High Court. In *S. Raju and others Vs. K. Nathamani*, (1998) 3 LW 214, the Constitution Bench decision has been followed and it has been held that when new buildings with modern amenities have come up in that locality, naturally the building in question may become unsuitable to the surroundings and a liability, in its present condition, to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden for ever. Tenants may be satisfied with the present state of the building since they have to pay only a nominal rent but the Rent Control Legislation, beneficial to the landlord and the tenant both, should be interpreted in that way. For the purpose of proving his bona fides the landlord need only show that he has got the capacity to raise the necessary funds. In *A.N. Srinivasa Thevar Vs. Sundarambal*, (1995) 2 LW 14, even before the decision by Constitution Bench in *Vijay Singh Vs. Vijaylakshmi Ammal*, (1996) 6 SCC 475 was available, it was held in the light of the decision in *P. Orr & Sons (P) Ltd. Vs. Associated Publishers (Madras) Ltd.*, (1991) 1 SCC 301 that the availability of the following factors was sufficient to make out a case of bona fide requirement under Section 14(1)(b):

"(a) Capacity of the landlord to demolish and to reconstruct is undisputed and also proved satisfactorily; (b) The size of the existing building occupies only one third of the site, leaving two third behind vacant and unutilized; (c) Demand for additional space: The demised premises is situated in a busy locality. Therefore, there is a great demand for additional space in the locality which could be met by demolishing the existing small building and putting up a larger building providing for future development vertically also, by building pucca terraced building; (d) The economic advantage: A modern construction of a larger building shall certainly yield better revenue and also appreciate in value, when compared to the asbestos sheet roofed old building."

In that case, it was observed that the existing building was an old, out-model asbestos sheet building proposed to be replaced with better and modern building which would provide for better quality accommodation to the needs of the present days as the preservation of such building in a busy locality of a town shall not only be an eyesore but also against the souring public demand for additional space. Viewed from the angle of general interest of the public which, according to the decision in *P.Orr & Sons (P) Ltd. Vs. Associated Publishers (Madras) Ltd.*, (1991) 1 SCC 301 is one of the considerations, it was observed that a big site should yield to a larger modern building with an increased and enlarged accommodation having better facilities to solve the ever increasing demand for more space. Stalling

growth and development for the sake of one tenant who is in occupation of an old model building constructed with mud and mortar and asbestos sheets occupying only one third of the site was held to be not conducive to public interest. We approve the statement of law and the approach adopted by Madras High Court in both the abovesaid decisions. The structural and physical features and the nature of the construction of the building cannot be ignored. Even in *P.Orr & Sons (P) Ltd. Vs. Associated Publishers (Madras) Ltd.*, (1991) 1 SCC 301, this Court was of opinion that various circumstances, such as the capacity of the landlord, size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors, justifying investment of capital on reconstruction may be taken into account by the concerned authorities, while considering the requirement for reconstruction of the building as the essential and overriding consideration in the general interest of the public and for the protection of the tenant from unreasonable eviction.

(vi)(2000) 5 Supreme Court Cases 369 [K.M.Abdul Razzak Vs.

Damodharan] wherein the Apex Court held as follows:

“...

5.At the time when the High Court came to decide the revision filed by the landlord, the position of law was that the Rent Controller was required to decide an application keeping

in view the aforesaid illustrative principles. The principles of law laid down in Vijay Singh's case (supra), were that the landlord was not only required to show that the building is in a dilapidated condition, but he was also to establish his bona fide intention for demolition and reconstruction as well as his financial position to reconstruct the building. Unless findings to that effect are recorded in favour of the landlord, an application under Section 14(l)(b) does not deserve to succeed. Here we find that the Rent Controller and the appellate authority both recorded concurrent finding of fact in favour of the tenant that the building was not in a dilapidated condition. If there was a change in position of law what was required by the High Court was to send the case back to the appellate authority to record a finding in respect of other illustrative elements which were required to be considered for grant of application under Section 14(l)(b) of the Act. Instead of remanding the matter to the appellate authority, the High Court has taken up the exercise to record findings on the aforesaid illustrative elements after re-appreciating the evidence which we think was not permissible under Section 25 of the Act. It is not permissible for the High Court, in exercise of its reversionary jurisdiction to act as an appellate court to reappraise or reassess the evidence afresh as an appellate court and come to a different finding contrary to the finding recorded by the court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it under Section 25 of the Act."

(vii)(1999) 7 Supreme Court Cases 280 [State of H.P. Vs. Jai Lal and others] wherein the Apex Court held as follows:

“...

19.The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of *Hazi Mohammad Ekramul Haq v. State of West Bengal*, AIR 1959 SC 488 : 1959 Supp (1) SCR 922 concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

(viii)AIR 1989 SC 2027 [N.Meera Rani Vs. State of T.N. and another] wherein the Apex Court held as follows:

“...

We may now refer to the decisions on the basis of which this point is to be decided. The starting point is the decision of a Constitution Bench in *Rameshwar Shaw v. District Magistrate, Burdwan*, (1964) 4 SCR 921 : (AIR 1964 SC 334). All subsequent decisions which are cited have to be read in the light of this Constitution Bench decision since they are decisions by Benches comprised of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in *Rameshwar Shaw's* case (supra).”

(ix)AIR 1977 Supreme Court 47 [Vijay Singh Vs. Vijayalakshmi

Ammal] wherein the Apex Court held as follows:

“...

4. On a plain reading of clause (a) of sub-section (1) of Section 14 it appears that it is applicable when the landlord requires possession of the building of carrying out repairs which cannot be carried out without the building being vacated. so far clause (b) of sub-section (1) of Section 14 is concerned it contemplates a situation where there is a bonafide requirement of the building by the landlord 'for the immediate purpose of demolishing it' and 'such demolition is to be made for purpose of erecting a new building on the site'. It may be pointed out that in view of clause (a) of sub-section (2) of Section 14, where the building by the landlord 'for the immediate purpose of erecting a new building on the site'. It may be pointed out that in view of clause (a) of a sub-section (2) of section 14, where the building has been vacated for repairs the building has to be ordered to the tenant who had delivered possession in pursuance of an order of the Rent Controller for re-occupation. No such condition has been prescribed where order of eviction has been passed under clause (a) of sub-section (1) of Section 14. i.e.. for immediate purpose of demolishing it in order to erect a new building on the site. In other words, once the Rent Controller is satisfied that the requirement of the landlord of the building for immediate purpose of demolition and reconstruction was bonafide, there is no scope for passing an

order directing the landlord to allow any portion of the constructed building to be re-occupied by the tenant who had been evicted. In this background, the question which falls for consideration is an to whether for eviction of the tenant of the building under section 14(1)(b) the landlord has to satisfy the Rent Controller that the condition of the building is such that it is immediately required to be demolished. whether the expression 'immediate purpose of demolishing' has any nexus with the age and condition of the building or it indicates only the immediate need and urgency of the landlord to demolish such building in order to reconstruct a new one on the same site. It it is held that section 14 (1)(b) vest power in the Rent Controller to direct the tenant to deliver possession of the building to the landlord no sooner the Rent Controller is satisfied that the landlord is in a position to immediately demolish the building in question in order to construct a new building on the said site, it will go against the fundamental concept of statutory regulation of the landlord-tenant relationship in urban areas, where special provision have been made different from the rights and obligations of the landlord and tenant number the Transfer of Properties Act. With the Population explosion and cry for a roof in the urban areas a situation was created where the legislatures of different States had to enact Acts regulating the conditions on which premises in such areas are to be let out and tenants are to be evicted. By and large there is no uniformity in the provisions applicable to different States. as such from time to time this Court has to construe the scope of special provisions of a particular state

and to say what is the object behind the same. So far Section 14(1)(b) is concerned, in the case of *Metalware and Co. etc. v. Bansilal Sarma and Co. etc.* (1979) 3 SCC 398 : (AIR 1979 SC 1559) it was said:

"As stated earlier it cannot be disputed that the phrase used in Section 14(1)(b) of The Act is "the building is bona fide required by The landlord" for the immediate purpose of demolition and reconstruction and the same clearly refers to the bonafide requirement of The landlord, it is also true that the requirement in terms is not that the building should need immediate demolition and reconstruction. But we fail to appreciate how The state of condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would be a totally irrelevant factor while determining "the Rent Controller will have to take into account all The surrounding circumstances including not merely the factor of the landlord being possessed of sufficient means or funds to under take The project and step taken by him in that regard but also the existing condition of The building, its age and situation and possibility of otherwise of its being put to a more profitable use after reconstruction. All these factors being relevant must enter the verdict of the Rent Controller on the question of the bonafide requirement of The landlord under Section 14(1)(b). In a sense if the building happens to be decrepit or dilapidated it will redially make for the bona fide requirement of the

landlord though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely a landlord being possessed of sufficient means to undertake The project to demolition and reconstruction by itself may not be sufficient to establish his bonafide requirement if the building happens to be a very relevant construction in a perfectly sound condition and its situation may prevent its being put to a more profitable use after reconstruction. In any case these latter factors may cast a serious doubt on the landlord's bona fide requirement. It is, Therefore, cleared to us that the age and condition of the building would certainly be a relevant factor which will have to be taken into count while pronouncing upon the bona fide requirement of the landlord under Section 14(1)(b) of The act and the same cannot be ignored."

Again a three judges Bench in the case of P.Orr and sons (p)

Ltd. V. Associated Publisher (Madras) Limited, (1991) 1 SCC 301 said:

"Section 14(1)(b) in terms of which a tenant is evicted - and perhaps permanently speaks of the "immediate" Means "at once' without delay", "Immediate" also means "directly connected; not secondary or remote", "not separated by any intervening medium" (Black's Las Dictionary, 5th edn.) Concise Oxford Dictionary, New 7th edn.).

This clause no doubt denotes urgency. Section 14(2)(b) stipulates that the land lord should give and undertaking to substantially commence demolition of any material portion of the building within one month and complete the same within three months from the date of recovery of possession of the building or within such further time as the Controller may allow. Breach of this undertaking or a consequential order under Section 16(1)(b), however, does not require instant demolition, but demolition within the specified time. "Immediate purpose", in the context in which the expression appears, relates to directness rather than speed, although absence of the latter negatives the former. It denotes connection and timely action, but not instant action; yet delayed action is a sign of remoteness of purpose. The expression must be understood as a directly connected and timely purpose, and not a secondary or remote or premature purpose. Significantly, the clause does not say "for the purpose of immediately demolishing", which word might have dented instant demolition. What Section 14(1)(b) says is "immediate purpose of demolishing". The legislative intent is that the purpose should be immediate or direct and not mediate or remote or indirect or secondary. The condition of the building need not be such as to warrant instant demolition, but it must be grave enough to need timely action and rule out undue or protracted delay. The landlord is not expected to wait till the building is in imminent or immediate danger of crumbling down so as to

necessitate recovery of possession for instant demolition. The purpose of demolition must of course be immediately or directly connected with the requirement so as not to be separated by any intervening consideration. Demolition for the purpose of erection of a new building must be the direct, immediate, genuine and real requirement of the landlord.

The bona fide character of the requirement is proved by the appropriateness of time and the absence of any ulterior or irrelevant consideration separating the requirement from the statutory of permitted purpose. The direct and immediate nexuses between these two elements is proved by the conditions of the building and other relevant circumstances. Absence of any need for urgency by reason of the strong and sound condition of the building will negative the bonafide character of the requirement. What is the degree of urgency warranted by what extent of damage to the building that makes the requirement directly and immediately connected with the statutory purpose is a question of fact which must be decided in each case on evidence, But a building which is sound and safe does not qualify for demolition in terms of Section 14(1)(b). Any such building falls totally outside its ambit."

...

Therefore the expression 'immediate purpose for demolishing' cannot be read to mean the immediate need and

urgency of the landlord. But at the same time it cannot be linked only with the dilapidated and dangerous condition of the building. the age and condition of the buildings has to be taken note of while judging the question of bona fide requirement of the landlord under Section 14 (1)(b). But the question is as to where to draw the line? Whether it should not only be old but dilapidated at the same time being unsafe for human habitation? If that was the requirement for passing an order of eviction, then why the framer of the Act have put the other condition that such demolition is to be made for purpose of erecting a new building on the site ? There are Acts in some States where one of the grounds for eviction of the tenant is that condition of the building is such that it has to be demolished. But in those Acts there is no requirement or condition to erect a new building on the same site. But in the Present Act the condition of erecting a building on the site of the old building is a must. The Rent controller has been vested with the power to direct the tenant to deliver the possession of the building to the landlord only after he is satisfied that after demolition of the old building a new building shall be erected.”

(x)AIR 1974 Supreme Court 1596 [Mattulal Vs. Radhe Lal] wherein the Hon'ble Supreme Court held as follows:

“...

10.It is settled law that the High Court in second appeal cannot reappropriation the evidence and interfere with findings of fact reached by the lower appellate court. The lower

appellate court is final so far as findings of fact are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law. It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction in second appeal. If the finding recorded by the lower appellate court is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or %,as arbitrary, unreasonable or perverse. This position was indeed not disputed by the learned Advocate appearing on behalf of the respondent but his contention was that the. finding of the Additional District Judge in regard to the question of bona fide requirement of Lohia Bazar shop by the respondent was a mixed finding of law and fact and the High Court was, therefore, entitled to examine its correctness, and if it was found to be wrong, interfere with it even while exercising jurisdiction in second appeal. The question which, therefore, arises for consideration is whether the finding of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting the business of a dealer in iron and steel materials was a pure finding ,of fact or a mixed finding of law and fact. If it was the latter, the High Court would have a much larger freedom to interfere, but not so if it was the former, in which case only certain limited grounds would be available to the appellant to

attack the finding.

11. Now it is obvious that the issues whether the respondent required the Lohia Bazar shop for the purpose of starting a new business as a dealer in iron and steel materials and if so, whether his requirement was bona fide were both questions of fact. Their determination did not involve the application of legal principles to the facts established in the evidence. The findings of the Additional District Judge on these issues were no doubt inferences from other basic facts, but that did not alter the character of these findings and they remained findings of fact. There is, therefore, no doubt that the conclusion of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials represented a finding of fact and it could not be interfered with by the High Court in second appeal unless it was shown that in reaching it a mistake of law was committed by the Additional District Judge or it was based on no evidence or was such as no reasonable man could reach. This was precisely the ground on which a Bench of four Judges of this Court in *Sarvate T. B. v. Nemichand*, 1966 MPLJ 26 (SC) set aside the judgment of the Madhya Pradesh High Court which had interfered with the decree passed by the District Court dismissing a suit for eviction filed by the landlord against the tenant. The District Court, sitting as a court of first appeal, had taken the view, on an appreciation of the evidence, that the requirement of the premises by the landlord for his residence was not genuine, but in second appeal the Madhya Pradesh High Court reversed this

finding and passed a decree for eviction against the tenant. This Court set aside the judgment of the Madhya Pradesh High-Court on the ground that the finding reached by the District Court on an appreciation of the evidence that the landlord did not genuinely require the premises for his residence was a finding of fact and the Madhya Pradesh High Court had no jurisdiction in second appeal to disturb this finding. Shah, J., speaking on behalf of the Court, summed up the legal position in the following words :

"The District Court considered the evidence for the purpose of ascertaining whether the respondent honestly or in good faith required the premises and held that the respondent failed to establish the case pleaded by him. This finding of the District Court was based on appreciation of evidence and was binding upon the High Court and the High Court had no power to reverse that finding. The Legislature has imposed a restriction upon the jurisdiction of the Court to pass a decree against the tenant in a suit in ejectment by the landlord; and the onus of proving the conditions, on proof of which alone the protection may not be claimed, lies upon the landlord. The burden of proving that he genuinely requires non-residential accommodation within the meaning of section 4(h) therefore lies upon the landlord. Whether in a given case, that burden is discharged by the evidence on the record is a question of fact. It must however be observed that mere assertion by the landlord that he requires for his use the premises in the occupation of his tenant raises no presumption that he genuinely requires the premises for his use. The District Court held that the respondent failed to establish that he genuinely required the premises in suit primarily on two

grounds-(i) that he had in the first instance claimed that he required the premises for his residence and after the suit was remanded to the trial Court, he set up the plea that the premises were required for business purposes and abandoned his earlier case, and (ii) that the nature and extent of that business carried on by the respondent were such that no additional accommodation could have been honestly claimed by him. The inference of fact raised by the District Court was pre-eminently reasonable. In any event the High Court has no jurisdiction in second appeal to set aside the conclusion reached by the District Court based on that inference of fact."

This decision, apart from principle, should conclude the question, but we find that there is one later judgment of this Court where a different view seems to have been expressed. That is the judgment in *Smt. Kamla Soni v. Rup Lal Mehra*, C.A.No.2150 of 1966, D/- 26-9-1969 - (reported in AIR 1 1969 NSC 186). This case was decided by a Bench of three judges and the judgment was delivered by Shah,J., who was one of the, Members of the Bench. The learned Judge, speaking on behalf of the Court, observed in reference to section 39(2) of the Delhi Rent Control Act which confers an identical power on the High Court to interfere only where there is an error of law.

"The argument that the learned Judges of the High Court exceeded their jurisdiction under section 39(2)of the Delhi Rent Control Act, when they reversed the finding of bona fide requirement of the appellant, has no substance. Whether on the facts proved the requirement of the landlord is bona fide within the meaning of s.14 (1) (e) is a finding on a mixed question of law and fact. An inference

that the requirement of the appellant in the present case was bona fide could not be regarded as conclusive."

Now there can be no doubt that these observations made in Smt. Kamla Soni's case, C.A.No.2150 of 1966, D/- 26-9-1969 - (reported in AIR 1 1969 NSC 186) are plainly in contradiction of what was said by this Court earlier in Sarvate T. B.'s case, 1966 MPLJ 26. It is obvious that the decision in Sarvate T.B.'s case, 1966 MPLJ 26 was not brought to the notice of this Court while deciding Smt. Kamla Soni's case C.A.No.2150 of 1966, D/- 26-9-1969 - (reported in AIR 1 1969 NSC 186), or else this Court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gain said that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in Sarvate T.B.'s case as against the decision in Smt. Kamla Soni's case as the former is a decision of a larger Bench than the latter. Moreover, on principle, the view taken in Sarvate T.B.'S case commends itself to us and we think that is the right view. We must, therefore, hold that the finding of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials was a finding of fact and not a finding of mixed law and fact."

(xi)1979 TLNJ 73 [A.M.Batcha & another Vs. T.M.P.C.

Ramachandran] wherein this Court held as follows:

"...

In spite of all these, the question remains whether the other circumstances in this case would support the petitioners' claim as to '*bonafides*' as is popularly known. The petitioners came to Court earlier with a petition for demolition and

reconstruction but were unsuccessful. Finding that their attempts before both the Rent Controller and the Appellate Authority in the earlier proceedings were not successful, the third petitioner in the rent control petition thought of settling the property in favour of his son, so as to create a new title in a new person and thereafter, again seek for relief under Section 14(1)(b). In fact on the first occasion when this was disposed of, these matters were not brought to the notice of this Court. When a person desires to circumvent law by creating situations which may have apparent impact but is intended to achieve a design or a purpose, then such a motivated process certainly would lack bonafides in the ordinary dictionary meaning of the term. In that sense, the petitioners in this case cannot be said to have come to Court with clean hands. In fact when the petitioners were examined in Court, they did not say as to why they filed the application for demolition of the building and what was the purpose in undertaking to demolish the building. These are all circumstances which throw abundant light upon the lack of bonafides in the ordinary sense of the term but not in the sense in which it is particularly used in Sec.14(1)(b). The word 'bona fide' in Sec.14(1)(b) has a peculiar connotation which in certain circumstances also takes into its scope the meaning of that expression as understood by the community. In the earlier petition, the third petitioner lost in an application for eviction filed under Sec.14(1)(b). He, therefore, wanted to circumvent law by executing a settlement deed in favour of his son. After having settled the property, he persuaded his own son to file the present petition along with him for the same

relief. This is a sure indication that the petition lacks bona fides in the common sense point of view. It is very curious as to why the respondent did not take up in the earlier stage the objection that the petition itself was not maintainable on the ground of res judicata. This apart, I am satisfied that this is a case in which though the petitioners would satisfy the technical meaning of the word bona fides under Sec.14(1)(b), they are unable to fulfil their obligation to Court that they require the premises bona fide for the purpose of demolition and reconstruction in the ordinary sense. On the other hand, it appears to be a persistent cause undertaken by the landlords to evict the tenant willy nilly. In this view of the matter and on the ground that bonafide as is normally understood is not present in the instant case, the order of the Appellate Authority is sustained.”

(xii)(1977) 1 M.L.J. 223 [B.Yamuna Bai Vs. N.Rangaswamy]

wherein this Court held that the second application for eviction on the ground of demolition and re-construction is not maintainable under Section 19 of the Act.

12.On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel on either side, it could be seen that there is no dispute with regard to the jural

relationship of the parties. The petition premises was leased out to the respondent for non-residential purpose. The respondent has been carrying on Hotel business in the said premises. The petition premises is located just opposite to Egmore Railway Station, Chennai. The respondent is in occupation of an extent of 4,200 sq.ft. and is paying a sum of Rs.550/- per month as rent from 1984. The petitioner/landlord is also doing business in the name and style of "Hotel Chennai Gate", adjoining the leased out premises. The petitioner/landlord filed R.C.O.P.No.1083 of 2009 for eviction on the ground of demolition and re-construction and additional accommodation. The Rent Controller, ordered eviction, on the ground of demolition and re-construction and dismissed the petition with regard to additional accommodation. On appeal filed by the tenant, the Rent Control Appellate Authority reversed the order of eviction on the ground of demolition and re-construction and allowed the appeal. Against the dismissal of the Rent Control Original Petition on the ground of demolition and re-construction, the landlord has filed the above Civil Revision Petition.

13.The landlord's predecessor in title, one Periasamy, filed a petition in R.C.O.P.No.3631 of 1981 for eviction on the ground of demolition and re-construction. The order passed in the said Rent Control proceedings went upto the Supreme Court and before the Supreme Court of India, the parties

viz., Periasamy and Late A.M.Buhari entered into a compromise, whereby, the then tenant A.M.Buhari was allowed to retain the entire area on the Western side of the property measuring 105 feet North to South and 39.06 feet East to West (Frontage). The remaining portion was surrendered to the then landlord Periasamy, including the construction on the Eastern side. The said A.M.Buhari died on 09.02.1996. The said A.M.Buhari was given permission to improve the portion allotted to him by making additions and alterations to suit his business. In view of the surrender of possession by the tenant, the monthly rent of Rs.1,650/- for the entire building was reduced to Rs.550/-. Based on the memorandum of compromise entered into between the parties, the Hon'ble Supreme Court of India disposed of the Civil Appeal No.2718 of 1984 by order dated 28.09.1989. After the death of A.M.Buhari, the respondent became the tenant. The erstwhile owner Periasamy also settled the property in favour of one M.Ganesan and others and subsequently, the said M.Ganesan and others sold the property to the petitioner/landlord.

14.The learned senior counsel appearing for the tenant contended that in view of the provisions of Section 19 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the petition filed by the landlord for eviction on the ground of demolition and re-construction is not maintainable.

15. Since the issues involved in the present Civil Revision Petition revolves around the order dated 28.09.1989 passed by the Apex Court in Civil Appeal No.2718 of 1984, it would be appropriate to extract the order passed by the Apex Court, which reads as follows:

“The compromised decree passed by Hon'ble Supreme Court of India in Civil Appeal No.2718 of 1984 is as follows:

Learned counsel for the parties stated that the parties have settled their dispute amicable on the following terms:

1. The appellant Mr.A.M.Buhari is allowed to retain the entire area (marked green in the site plan attached) including the 1st floor portions situated in the Western side of the property at No.17, 18 & 19, Gandhi Irwin Road, Egmore, Madras-9, approximately measuring 105' North-South and 39.6' East-West (Fronts).
2. The appellant Mr.A.M.Buhari hereby agrees to surrender the remaining area with constructions situated at the Western side of the said premises including the construction on the 1st floor to the respondent Mr.P.Periasamy (marked red in the side plan).
3. The area retained by the appellant herein is marked in green in the plan attached on the portion hereby surrendered is marked red. The side plan showing

respective portions in the ground floor is annexed as part of this Memo.

4. The appellant Mr.A.M.Buhari is hereby permitted to continue his business in the said red portion with liberty to improve the said portion by additions, and alterations to suit his business.
5. The respondent Mr.P.Periasamy has no objection for the running of the said business by the appellant in his capacity as the Managing Director of the Appellant's Company M/s.Buhari Sons (P) Ltd., for this purpose the respondent has no objection for transferring of the said business from L.M.Buhari's sons to M/s.Buhari Sons (P) Ltd. The respondent hereby given his consent for the same and for the obtaining of license in the name of Buhari Sons (P) Ltd.
6. The appellant shall herein prior permission in writing from the respondent in case he intends to transfer the said business in the name or in favour of any members of his family or any firm or company of members of his family.
7. The appellant Mr.A.M.Buhari is permitted to develop the portion allotted to him at his own cost and he is at liberty to run the restaurant-cum-lodging business in the said property. The appellant, will however have no rights or interests in the paid additions or alterations exempt to a tenant.
8. The respondent is entitled to develop in any manner

the surrendered portion (marked red) but without interfering with the possession and enjoyment of the portion to be retained by the appellant.

9. The respondent has hereby agreed to construct a dividing wall between the respective portions at his cost. For this purpose appellant shall let the respondent to demolish any existing structures within the portion.
10. The appellant undertakes to handover vacant and peaceful possession of the portion marked red to the respondent on or before 31st January 1990.
11. The appellant agrees to pay a monthly rent of Rs.1,650/- till 31st January, 1990. Thereafter, he agrees to pay monthly rent of Rs.550/- in respect of the portion is owned by him. In the event of any conditions or alterations to the said portion, the monthly rent shall be such as may be mutually agreed upon between the parties.
12. The respondent Mr.P.Periasamy has no objection for the appellant Mr.A.M.Buhari continuing the facilities enjoyment by him in respect of electricity, water, etc, and he can apply and get separate electricity and water connection and other facilities for his portion at his cost. The respondent shall extend due assistance in this regard.
13. The respondent has authorised his brother-in-law Shri Navarathinam to act on his behalf in executing this compromise and all things necessary or

incidental for effectuating the compromise.

14. That the appellant undertake to hand over vacant and peaceful possession of the portions in their occupation, in the portion marked red in the site plan to the respondent and that he shall not indulge in any fresh litigation to frustrate this compromise.”
”

16. As per the provisions of Section 19 of the Act, any application filed under Section 3-A or Section 12 and any application under sub-section (2) or sub-section (3) or sub-section (3-A) of Section 10 or under Sections 14, 15 or 16 shall be summarily rejected by the Rent Controller, if such application raises between the same parties or between parties under whom they or any of them claim substantially the same as have been finally decided or as purport to have been finally decided in a former proceeding.

17. Since the issues were not finally adjudicated between the parties in respect of the relief sought for and fully heard, the decision cannot be termed as “finally decided” between the parties.

18. In the case on hand, the issues were not finally decided by the Hon'ble Supreme Court and the Apex Court had disposed of the Civil Appeal based on the memorandum of compromise entered into between the

parties. In other words, the Civil Appeal was disposed of in terms of the memorandum of compromise. Therefore, disposing of the Civil Appeal in terms of the compromise cannot be termed as “finally decided or as purport to have been finally decided”. Therefore, the compromise decree passed by the Hon'ble Supreme Court cannot be termed as finally decided. In these circumstances, the provisions of Section 19 of the Act is not applicable. Hence, I hold that the Rent Control Original Petition filed by the landlord on the ground of demolition and re-construction and additional accommodation is maintainable.

19.The judgment relied upon by the learned counsel for the petitioner/landlord also support the case of the petitioner.

20.Coming to the next point (i.e.) with regard to demolition and re-construction is concerned, in paragraphs - 6 & 7 of the petition, the landlord has stated as follows:

“...

6.The petitioner states that the petition premise is also in dilapidated condition. If the petitioner premise is demolished and a new construction is made, that will still the need of the petitioner to extend their existing business in Hotel in the name and style of Hotel Chennai Gate. The petitioner states that if

the petition premise is pulled down and new construction is made that will attract many customers and will in turn benefit the petitioner to augment their income. The financial strength of the petitioner will improve. The petitioner is also possessed of sufficient property to develop the property. The need of the petitioner is bonafide.

7.The petitioner undertakes that the process of demolition and reconstruction will be initiated within a period of one month from the date of attaining the vacant possession and will complete the construction expeditiously. The petitioner is a Registered Company and has sound financial sources to complete the process of demolition and raising new structure.”

21.On a reading of paragraphs - 6 & 7, it is clear that the petitioner/ landlord has not only stated that the building is in a dilapidated condition, but also stated that if the building is demolished and a new construction is made, that will still the need of the petitioner to extend their existing business in Hotel and the same would attract many customers and will in turn benefit the petitioner to augment their income. The petitioner has also stated that if new construction is made, the financial strength of the petitioner will also improve.

22.Admittedly, in Ex.P8, Engineer's report, the Engineer has stated

that the age of the building is more than 65 years. In the report, the Engineer has stated that the building is in a dilapidated condition. However, the Engineer has given a report for fixation of fair rent. The Engineer was examined as P.W.2 and in his evidence, he has re-iterated the age of the building and the condition of the building. On the side of the tenant, Ex.R19, Engineer's Report and Ex.R20, plan were marked. The Engineer, who was examined as R.W.2, stated that the age of the building is 38 years. Another Engineer was also examined as R.W.4, who, in his evidence has stated that Ex.P5 plan was approved on 16.07.2004. From the evidence of P.W.2 and report filed by him marked as Ex.P8, it is clear that the building is more than 65 years old. That apart, Late A.M.Buhari became a tenant under Periasamy in the year 1956 (i.e.) 60 years ago. Therefore, the age of the building will definitely be more than 60 years. In the petition, the landlord has stated that the building is not only in dilapidated condition, they also stated that the building has to be demolished for expanding their existing business and for attracting many customers, which will in turn benefit the petitioner to augment their income. Therefore, for evicting a tenant on the ground of demolition and re-construction, it not only require the building to be in a dilapidated condition, the same can be done for the benefit of the landlord to augment their income. On this ground also, eviction can be ordered.

23. In the case on hand, the landlord had obtained the planning permission and is also having sufficient funds for constructing a new building. The landlord cannot be expected to collect a meagre amount of Rs.550/- per month for a property measuring an extent of 4,200 sq.ft. located in a prime area (i.e.) just opposite to Egmore Railway Station, Chennai. The tenant is also comfortably occupying the premises, by paying a meagre sum of Rs.550/- per month. The condition of the building need not be dilapidated or dangerous and that the intention should be genuine and not spurious or suspicious. The tenant may be satisfied with the present state of the building, since they pay only a meagre rent, but the Rent Control Legislation is beneficial to both the landlord and tenant. It is enough if the landlord shows his capacity to raise necessary funds and that he has other properties which he can sell to raise necessary funds. If these statutory conditions are fulfilled, the landlord is entitled to an order under Section 14(1)(b). The building sought to be demolished for re-construction need not be old and dilapidated. On facts, the building was found to have existed even in 1956 and it was certainly old and the evidence adduced and documents exhibited buttressed claim that the building was old. The bonafide requirement of the landlord includes means of landlord for re-construction of building and steps taken in that regard. The evidence

adduced disclosed that the landlord had sufficient funds to undertake the task of demolition and re-construction. A landlord need not jingle coins before the Court to prove the bonafide. Obtaining licence for demolition, obtaining estimate for project, etc establish the steps taken by the landlord regarding demolition and re-construction. Further, periodical renewal of licence is not required and failure to renew would not affect the right of the landlord to seek eviction on the ground of demolition and re-construction.

24.It is settled position of law that it is not necessary in order to seek eviction of the tenant under Section 14(1)(b) of the Act, the building should be in a dangerous and dilapidated condition requiring immediate demolition on that ground. In assessing the bonafides of the landlord, existing condition and age of the building, the preparations made by the landlord are relevant factors to be considered and the fact that the landlord possess sufficient funds and he has taken steps for getting approval for planning permission itself is sufficient to show the bonafides of the landlord.

25.Since the proceeding was not decided finally by the Apex Court, the Rent Control Original Petition filed for demolition and re-construction is not barred under Section 19 of the Act.

26.The petitioner/landlord has clearly established the grounds for eviction on the ground of demolition and re-construction by adducing oral and documentary evidences. The Rent Control Appellate Authority had erroneously reversed the order of eviction passed by the Rent Controller on the ground of demolition and re-construction.

27.Though there is no dispute with regard to the ratios laid down in the judgments relied upon the learned senior counsel for the respondent/tenant, since the facts and circumstances of the present case are different, they are not applicable to the present case.

28.In these circumstances, the judgment and decree passed by the Rent Control Appellate Authority, VII Judge, Court of Small Causes, Chennai in R.C.A.No.260 of 2015 are set aside. The fair and decreetal order passed by the Rent Controller, XVI Judge, Court of Small Causes, Chennai in R.C.O.P.No.1083 of 2009 are restored. The Civil Revision Petition stands allowed. No costs.

Index : Yes/No
Internet : Yes
va

20.10.2016

To

- 1.The VII Judge,
Court of Small Causes,
Chennai.
- 2.The XVI Judge,
Court of Small Causes,
Chennai.

M.DURAIWAMY,J.
va

Order made in
C.R.P.(NPD).No.1880 of 2016

20.10.2016