

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 30-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.NPD.No.2196 OF 2017

1.P.Shanthilal
2.Shantha Kavar
3.S.Ashok Kumar

Petitioners

...
-vs-
...

N.Janakiraman

Respondent

Petition against the judgment and decree, dated 03.02.2017, passed in R.C.A.No.79 of 2014, on the file of Principal Subordinate Court, Coimbatore, as against the order, dated 15.09.2014, passed in R.C.O.P.No.205 of 2006, on the file of Principal District Munsif Court, Coimbatore.

For petitioners : Mr.R.Parthasarathy

For respondent : Mr.M.S.Krishnan,
Senior Counsel,
for M/s.S.Rajmakesh.

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ORDER

The unsuccessful tenants are the revision petitioners before this Court. The landlord/respondent filed a petition for eviction against the tenants/petitioners under

Section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in short, "the Act", on the file of the Rent Controller, for demolition and reconstruction, which was ordered. The said order was challenged before the Rent Control Appellate Authority and the same was confirmed. The finding of the Court below has been assailed by the tenants, on the ground that the prayer sought for in the eviction petition is only for demolition of first floor, second floor and third floor of the building, and not the ground floor; the plan obtained from the local authority is only for alteration and renovation of first floor, second floor and third floor, and not for demolition and reconstruction; the landlord has no intention to demolish and reconstruct the ground floor, which is in their occupation; hence, the ground floor portion need not be vacated; even assuming that the landlord requires the building for alteration of first floor, second floor and third floor, he should have filed a petition under Section 14 (1) (a), and, therefore, the petition filed under Section 14 (1) (b) is not maintainable; without evicting the tenants in the third floor, the claim made by the respondent/landlord is not bona fide; and, therefore, the orders passed by the Courts below are liable to be set aside.

2. The respondent/landlord is the owner of the petition premises.

Admittedly, there was a fire accident in the first floor portion of the building. Pursuant to the fire accident, an F.I.R. was lodged and it was found that the building was in weak condition. Thereafter, the landlord obtained permission from Coimbatore Municipal

Corporation for demolition and reconstruction of the building and filed a petition for eviction against the revision petitioners, who are in occupation of the ground floor.

3. To prove his case, the landlord got examined himself as P.W.1; his son as P.W.2; a Civil Engineer as P.W.3; and the tenant in the third floor as P.W.4. The landlord has clearly let in evidence, that, by virtue of the fire accident, the entire first floor portion is damaged beyond repair and the roof of the ground floor is in a dilapidated condition and would collapse at any time. P.W.2 would also depose in the same lines as that of P.W.1, and prove the means, by producing the bank statements. P.W.3, Civil Engineer, would clearly depose about the strength and physical features of the building, which is likely to be collapsed at any time. P.W.4, the tenant in occupation of the third floor portion, would depose about the factum of stability of the building as well as his willingness to deliver the vacant portion at any time, for the purpose of demolition and reconstruction.

4. On the side of tenants, they themselves got examined as R.Ws.1 and 2; the Advocate Commissioner as R.W.3; and the Officer of the Municipal Corporation as R.W.4.

5. Even though the tenants would state that the ground floor portion need not be demolished and the condition of the building is stable, they would admit that the

building is 43 years old and they themselves are tenants for more than 42 years. They would also admit the fire accident and the registration of F.I.R. They would further admit that the plan approval vide Ex.P-5 specifies the ground floor, first floor, second floor and third floor, for demolition and reconstruction; they have not examined any engineer to prove the stability of the building; the business is run in the name of wife of R.W.1 and others; R.W.1 has his own building in the same street, and, in that building, he is running his own business; and that he has let out a portion of the building for HDFC Bank for a higher rate of rent. R.W.3, Advocate Commissioner, has spoken about the physical features of the building, but he is unable to speak about the stability of the building. He would admit that the building is affected by the fire accident and a wall fell down on the western side due to fire. Crucially, R.W.4, employee of the Municipal Corporation, which gave plan approval, has categorically admitted that approval has been given only for demolition and reconstruction and not for alteration and renovation of the building. Plan approval and payment of fee for the same are also admitted by him.

6. In the above background, this revision petition needs to be examined.

7. The contention of the learned Senior Counsel for the revision petitioners that plan was obtained only for alteration and renovation of first floor, second floor and third floor and not for ground floor portion, has been demolished by his own witnesses

R.Ws.1 and 4. Both of them categorically admit that plan approval is obtained for the purpose of demolition of ground floor, first floor, second floor and third floor of the building and necessary fee has been paid. The respondent/landlord has categorically proved that the building is 43 years old and it is in dilapidated condition due to the fire accident; the roof of the ground floor portion is likely to collapse at any time and that the tenants/revision petitioners refuse to undertake the risk and consequences of such incident. Therefore, it can be safely inferred that the building is old and it is in a weak condition and is likely to collapse at any point of time. The financial capacity of the landlord is also proved by way of filing bank statements and oral evidence. In such circumstances, the requirement of the building for demolition and reconstruction is found to be bona fide by both the Courts below. Even though the reason stated in the eviction petition is demolition and reconstruction of first floor, second floor and third floor, will it disentitle the landlord for seeking the eviction of the tenants, who are in occupation of the ground floor ? In similar circumstances, this Court, by a decision in National Studios, rep.by its Partners. v. Mrs.Prema Kalyanasundaram, reported in 1997-3-L.W.269, has categorically held, following an earlier decision of this Court in Ramachandran v. Kasim Khaleeli, 1965 (1) M.L.J.78, that even partial demolition is demolition, as contemplated under Section 14 (1) (b) of the Act. In this connection, it is relevant to extract Paragraph 38 of the said decision, wherein, it is held as under :

"38. This Court in the decision reported in 1965-I-M.J.J.78 = (1964) 77 L.W.632 (Ramachandran v. Kasim Khaleeli), said that even partial demolition is demolition as contemplated under Sec.14 (1) (b) of the Act. In that case, it was stated that demolition may be in respect of part of the building, i.e., (1) entire ground floor, entire first floor, or entire second floor. (2) There can be demolition work in the ground floor even when the first floor is left undisturbed. (3) The demolition can be in portion of the ground floor or in a portion of the first floor. It need not be of the entire ground floor or of the entire first floor. (4) In such a case, the building, after the fresh work is finished, would comprise partly the old building and partly the new building. (5) The fresh work may be outside in the exterior or inside in the interior. If the work undertaken, though in a portion of the building and in the interior, is such that the contemplated work involved demolition and also substantial structural alteration so as to change the identity and give a new look altogether, Sec.14 ((1) (b) would clearly apply to such a case. (6) The words "rebuilding" "reconstruction" and "erecting a new building" have the same meaning. (7) Erection of a new building may be by the use of brick and mortar or by steel or even by wood work or may be by the use of all the materials. The crucial test is; Is it not erecting a new building or reconstructing or remodelling ? In view of the settled position of law, and also on the basis of Ex.A-3 plan, the contention of learned senior counsel for the petitioners has to fall. It may be noted that the said decision was followed by our High Court again in the decision reported in 1971-II-M.L.J. 297 = 84 L.W.523 (S.A.Henry v. J.V.K.Rao) wherein K.S.Ramamurthy,J. said that "all that Sec.14 (1) (b) requires is a demolition followed by structural alterations by way of reconstruction so as to give a new face to the form and structure of the premises." In that case, the learned judge further followed an earlier decision of this Court reported in 1965-2-M.L.J.144 = 78 L.W.363 (Kannappa Pillai v. Venkataratnam, wherein it was held thus :

"...In Kannappa Pillai v. Venkataratnam, Venkatadri,J. had to deal with the question as to when the building can be said to be a new building taking the place of the old building. In the discussion he has referred to the relevant English and Indian

decisions from which he has enunciated the principle that in order to hold that the fresh work undertaken amounts to the construction of a new building, the structural alterations in the premises should be such that the original building has completely lost its identity...."

If the original building completely loses its identity, that will amount to demolition and reconstruction for the purpose of the Act."

This Court further went on to observe, whether the building was sought for demolition and reconstruction or for alteration and remodelling was not the concern of the tenant. Section 14 (1) (b) requires only bona fide requirement of the landlord for the purpose of demolishing and for construction/erecting a new building and it is not necessary that the entire building must be levelled to the ground for the purpose of demolition and reconstruction. Even partial demolition is demolition, as contemplated under Section 14 (1) (b) of the Act. The crucial test is, is it not erecting a new building, or reconstructing or remodelling ? On this aspect, both the Courts below have concurrently found that the requirement of the landlord is bona fide and he wants his own building for demolition and reconstruction and for his betterment. It is well proved by the evidence of the revision petitioners themselves that the locality is a commercial locality and putting up a new building will fetch more income and better business prospects. The means of the landlord have also been proved. In such circumstances, the contention that the prayer is only for demolition of first floor, second floor and third floor portions and it is for partial demolition is not sustainable.

8. Both the Courts below have concurrently found that the requirement of

landlord of the building for demolition and reconstruction is well established and bona fide. The Courts below have also found that the building, ground floor and first floor are inseparable and construction cannot be made without demolishing the ground floor portion. The findings of fact rendered by the Courts below cannot be interfered with, as this Court cannot reassess or reappraise the evidence in the revisional jurisdiction under Section 25 of the Act. Also, while examining the correctness of findings of fact, it is not open for this Court to reassess the evidence. The regularity of the proceedings, the correctness and legality or propriety of the decision taken by the Courts below can only be looked into by this Court. On this aspect also, the categorical findings of the Courts below are based on proper evidence, which do not suffer from any irregularity or infirmity. Therefore, the contentions raised by the revision petitioners merit no consideration and the orders of eviction passed by the Courts below are confirmed. Two months' time is granted for eviction.

9. Civil Revision Petition is dismissed. No costs. Consequently, the connected C.M.P.No.10488 of 2017 also stands dismissed.

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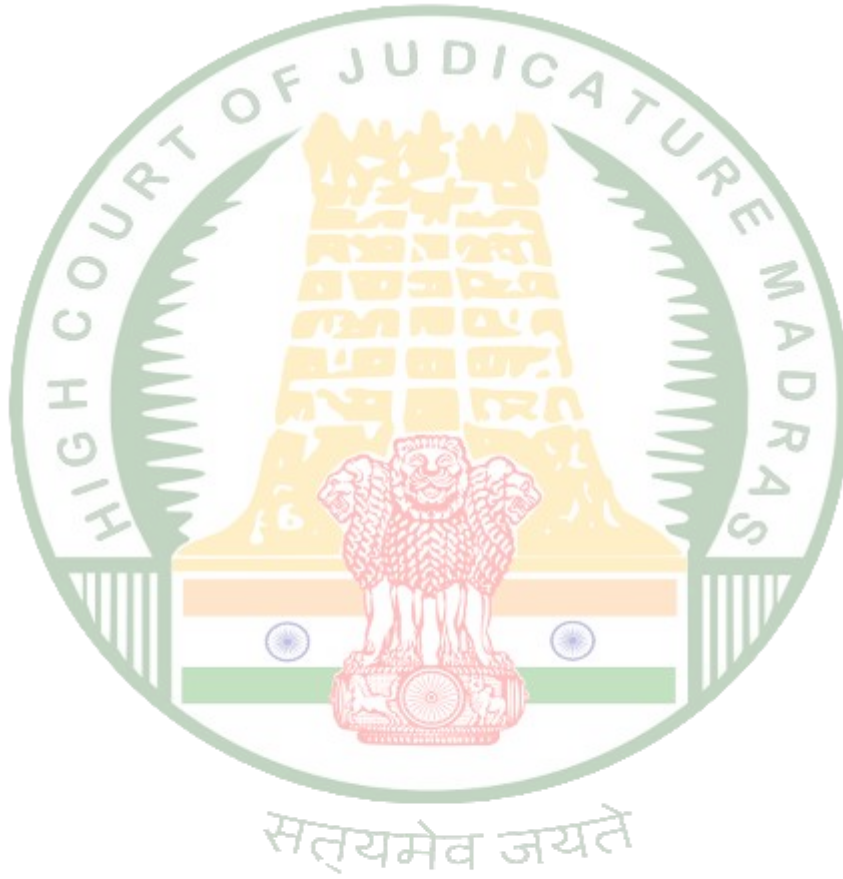
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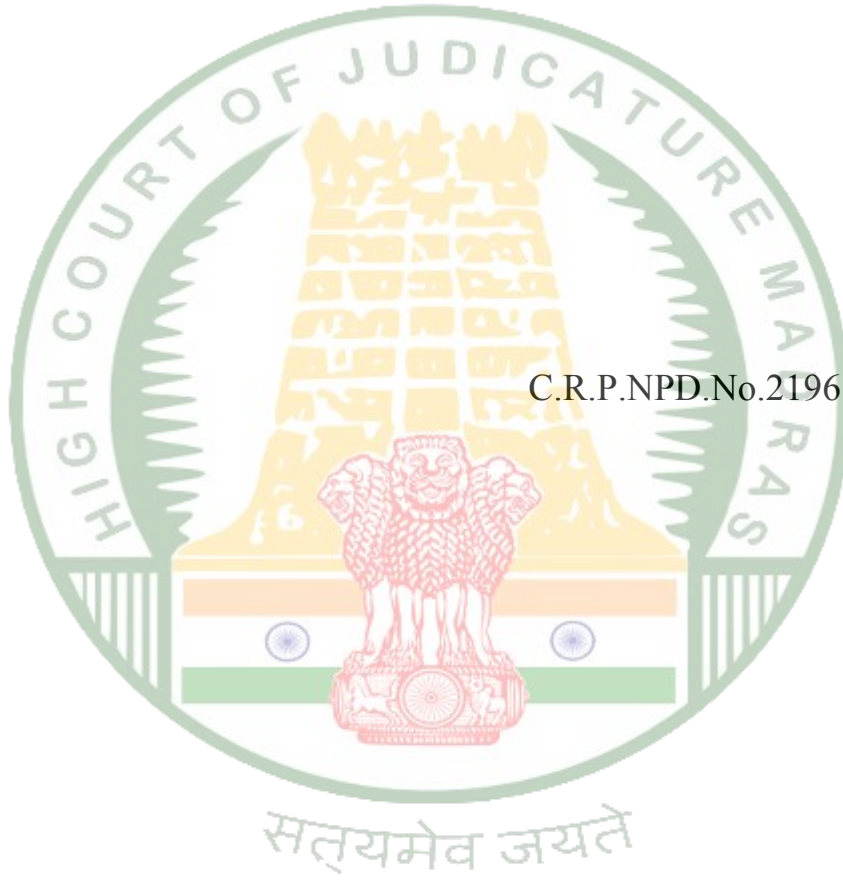
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