

Reserved on : 11.02.2019

Pronounced on : 19.02.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.4490 of 2013 &

M.P.No.1 of 2013

Mr.S.Sundararajan

.. Petitioner

Vs.

Mrs.A.Mary Josephine

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree in R.C.A.No.415 of 2009 dated 27.09.2013 passed by the learned Judge of VII Court of Small Causes Chennai confirming the Order in R..O.P.No.1983 of 2005 dated 27.08.2009 passed by the learned Judge of X Court of Small Causes, Chennai, so far as it relates to ground under Section 14(1)(b) of the Tamil Nadu Act XVIII o 1960.

For Petitioner : Mr.Dorairajan

for M/s.Surana & Surana

For Respondent : Mr.A.Palaniappan

ORDER

Aggrieved over the concurrent finding of the Courts below in ordering eviction of the petition mentioned property on the ground of demolition and reconstruction under section 14(1)(b) of Tamilnadu Buildings (Lease and Rent Control) Act 1960, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows :

The respondent/landlady is the owner of the petition mentioned property. The revision petitioner is a tenant under the respondent on a monthly rent of Rs.1200/-. He has committed default in payment of rent from March 2004 to August 2005 amounting to Rs.21,600/-. Similarly, the petition premises is more than 50 years old and it is in dilapidated condition and the building is not fit for human occupation and it may collapse any time. Hence, she require the petition mentioned property for demolition and reconstruction.

3. The revision petitioner/respondent denied the contention of willful default and has submitted that the building is not an old and in dilapidated

condition. The building was allotted by the Tamilnadu Housing Board in the year 1976 only. There are no huge cracks and cervices in the walls as well as in the slabs. The building is in good and stable condition. The respondent is not doing periodical white wash. The appearance of the building looks old. The petition is not a bonafide one. Hence, prayed for dismissal of this petition.

4. The trial Court ordered eviction only on the ground of immediate demolition and reconstruction. However, dismissed the application under willful default clause. Both the revision petitioner and the respondent had filed appeal before the appellate authority. The Rent Control Appellate Tribunal confirmed the finding of the trial Court and dismissed the application under section 10(2) (1) of Tamilnadu Buildings (Lease and Rent Control) Act 1960 for willful default. However, Ordered eviction under section 14(1)(b) of Tamilnadu Buildings (Lease and Rent Control) Act 1960. The land lady has not challenged the Order of dismissal under section 10 (2) (1) of Tamilnadu Buildings (Lease and Rent Control) Act 1960. The revision petitioner challenged the Order of the first appellate Court Ordering eviction under section 14(1)(b) of Tamilnadu Buildings (Lease and Rent Control) Act 1960.

5. The learned counsel appearing for the revision petitioner submitted that the petition filed by the landlady is not a bonafide. There is no pleading with regard to demolition and reconstruction and the application has been filed only to

evict the tenant. There were nexus between the present owner and previous owner. The previous owner tried to dispossess the tenant which can be seen from Ex.R.1 to Ex.R.8. It is the further contention of the learned counsel that Ex.P.1 shows that the age of the building is 32 years at the time of purchase by the landlady. The above fact has been suppressed and it is pleaded as if the building is more than 50 years old. Further, the appellate authority has not considered the entire evidence and simply confirmed the finding of the Rent Controller. The Rent Controller has also ignored the report of the Building Engineer, R.W.2 and wrongfully concluded that the petition mentioned property is old and in dilapidated condition. Hence, submitted that the judgment of the trial Court need interference.

6. In this regard, the learned counsel for the petitioner relied on the following judgments:

(i) In *Vijay Sing and others Vs. Vijaylakshmi Ammal* reported in AIR 1997 – SC – 47 it has been held that

“It appear from the facts of the present appeal that the building in question was an old one and was situated in a very busy locality of the down where a number of buildings in and around the building in question had been demolished and shopping complex had been constructed with modern amenities. The respondent also wanted to demolish the entire

building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the respondent that she had sufficient financial resources for constructions for the new building. An undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of the three months from the date the said respondent recovered possession of the building. Taking all the circumstances into consideration, the Controller had passed an order in terms of Section 14 (1)(b) for the Act directing the appellants who were tenants in the building in question to deliver possession of the building to the respondent. According to us, all relevant factors have been taken into consideration and there is not scope for any interference by this Court. As such we are left with no option but to dismiss these appeals.”

(ii) In *S.M.Ispahani and another Vs. Harrington House School* by its Hon Secretary reported in 2000(2) MLJ 38 it has been held that

“It has been held in *S. Raju v. K. Nathamani*, 1998 (3)

LW 214 that for the purpose of proving his bonafides the landlord need only to show that he has got capacity to raise necessary funds. The capacity in the instant case of the revision petitioners cannot at all be doubted particularly paying regard to the location of the property and the extensive properties owned by them. So far as the production of plan and licence is concerned, it has already been noticed that non-production cannot be put against the landlords and the Court, can take Judicial notice of the fact that even if a plan is filed in the Court at the time of eviction petition, that cannot remain Valid till the possession of the building is obtained by the landlords. The second petitioner as P.W.1, has also spoken to the fact that for getting sanction from M.M.D.A. a sum of Rs.2 to 2.5 lakhs and a similar sum to the Corporation would be necessary and the sanction if obtained would be valid to only for two years and they may have to shell out again for the plan and permits. As regards the contention that the building regulations would not permit putting up of 1 + 3, it is for the petitioners to satisfy the authorities on this aspect and if warranted to reduce the number of floors. The claim under [Section 14\(1\)\(b\)](#) cannot be rejected on this score.

(iii) In an appeal preferred in the above case, in

Harrington House School Vs. S.M.Ispahani and another reported in 2002 (2) Supreme Court Cases 229 the Honourable Supreme Court has upheld the judgment of the Apex Court by holding that

“In view of what has been stated hereinabove we do not find any ground for interfering with the judgment of the High Court holding the tenant liable to be evicted under [Section 14\(1\)\(b\)](#) of the Act. However, there is only one aspect that needs to be taken care of and that we propose to deal with at the end and now. In the city of Tirupur a building cannot be constructed except on the plans of proposed construction being approved by the local authority. Though the plan of proposed reconstruction is ready with the landlords but the same has not been submitted to the Municipal Authority till now. For this omission the explanation given by the landlords through S.A. Ispahani, PW1 is that a substantial amount is charged by the local authority by way of fee for sanctioning the plans for reconstruction and if the reconstruction is not carried out within a limited time the sanction has to be kept renewed periodically for which the local authority again charges a substantial amount by way of renewal fee. The phenomenal delay in disposal of litigation entails heavy financial burden on

the landlord and that is why they have not submitted the plans for approval though ready. There appears to be some substance in the plea inasmuch as we find that this litigation itself has taken about 14 years by this time in achieving a finality. A procedure can be devised to protect the interests of both the tenant and the landlord, specially by taking care of the apprehension expressed by the tenant that the property may remain lying unconstructed in spite of being vacated by the tenant and followed by demolition if the plans for proposed reconstruction are not sanctioned by the local authority. The decree as passed by the High Court is sustained but it is directed that the landlords shall submit the plans of reconstruction for the approval of the local authority. Only on the plans being sanctioned by the local authority the decree for eviction shall be available for execution. Such sanctioned or approved plans shall be produced before the Executing Court whereupon the Executing Court shall allow a reasonable time to the tenant for vacating the property and delivering possession to the landlord-decree holders. Till then the tenant shall remain liable to pay charges for use and occupation of the suit premises at the same rate at which they are being paid. Along with the plans the landlords shall also file an

undertaking before the Executing Court as required by clause (b) of sub-Section (2) of [Section 14](#) of the Act. Subject to the said modification the decree as passed by the High Court is maintained.”

(iv) In *P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited* reported in 1990 (1) SCC 312 the Honourable Supreme has held that

“The requisite circumstances warranting repairs under clause (a) or demolition under clause (b) of section 14(1) are matters for determination by the competent authority on the basis of relevant evidence and the applicable provisions of the law. In proceedings for judicial review, the Court does not sit in judgment over appreciation of evidence and finding of facts by the authority empowered by the statute. He is the final judge of facts, and so long as he has taken into account all relevant facts and has eschewed from his mind all irrelevant circumstances and has correctly understood and applied the law. including the rules of natural justice, his judgment is generally regarded as final and not open to challenge. On the other hand, where he has acted in excess of his jurisdiction or asked himself the wrong questions or misunderstood or

misapplied the law or failed to consider the relevant circumstances, his conclusions are liable to be reversed as perverse by a court exercising judicial review. Any repository of power must act in accordance with the law and on the basis of relevant evidence. He must be guided by reason and justice and not by private opinion. [629D-F]

8. In the present case the Rent Controller asked himself the wrong question. He did not think that the condition of building was relevant. He disregarded the clear admission of the landlord and other evidence as regards the sound condition of the building. The crucial condition for demolition was thus absent. The Controller was totally misguided as to the conclusions which he reached. So were the appellate authority and the High Court.”

(v) In Jagat Pal Dhawas Vs. Kahan Singh (Dead) by Lrs and ors. reported in 2002 (49) AIR 822 the Honourable Supreme has held that

“So far as the funds are concerned, the plaintiff-appellant had deposed that he had the requisite financial capacity to undertake the proposed reconstruction and this

part of the testimony was not challenged in cross examination by the tenant-respondent. However, documents have been filed in this Court showing availability of an amount of Rs. 1,20,000 invested by appellant in Indira Vikas Patra of five years duration on 24.9.1988 having a value of Rs. 2,40,000 on maturity. So also there are six years National Saving Certificates of Rs. 30,000 purchased on 30th March, 1983 with a value Rs. 60,450 on maturity. The appellant has Rs. 25,000 in FDR and Rs. 6,247 in savings bank. The proposed construction, according to the appellant, would need about ? lakh of rupees. Thus, the availability of funds with the appellant to cover the cost of proposed construction cannot also be doubted.

In the above said circumstances we are clearly of the opinion that relief of eviction as sought for could not have been denied to the appellant. There is no material available to hold that the landlord has something else in his mind such as getting rid of the tenant without raising construction. Sub-Section (5) of Section 14 of the Act protects the interest of the tenant by guarding against malafide evictions. It provides that where a landlord has obtained possession of the building or rented land for the purpose of building or rebuilding and puts

the building to any other use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly. This provision would not permit the building from which the tenant is being evicted being subjected to any other user or misuse. The appeal deserves to be allowed. The orders of the High Court and the Courts below are set aside. Instead the tenant-respondent is directed to vacate the tenancy premises as the same are required bona fide by the landlord-appellant for carrying out building or rebuilding under [Section 14 \(1\)\(c\)](#) of the Act which cannot be carried out without the building being vacated. The tenant is allowed four months time for vacating the premises subject to his filing the usual undertaking within a period of three weeks from today before the executing Court undertaking to deliver vacant and peaceful possession over the suit premises to the landlord-appellant on the expiry of the time granted and in between clearing and continuing to clear all the arrears of rent and not creating any third party interest.

7. The learned counsel appearing for the respondent submitted that the landlady is a staff nurse and she has the capacity to mobilize funds to construct a new building and the building is in a dilapidated condition which has been clearly established in the Commissioner Report. The Rent Controller and the first appellate Court had properly appreciated the evidence and submitted that bonafide has also been established on the side of the respondent and hence, submitted that the judgment of the Courts below does not require any interference. In support of the above contentions, he has also relied on the judgment in **State of A.P. Vs. S.Rayappa and others reported in 2006 (4) Supreme Court Cases 507.**

8. Admittedly, one of the ground under which the eviction was sought was negated by the Courts below, i.e., eviction under section 10 (2) (1) of Tamilnadu Buildings (Lease and Rent Control) Act 1960 for willful default committed by the tenant. Whereas, an Order of eviction has been ordered under section 14(1) (b) of Tamilnadu Buildings (Lease and Rent Control) Act 1960. It is the specific case of the respondent that the building is more than 50 years old and it is bad and in dilapidated condition and developed huge cracks and any time it may fall down and it will endanger the respondent and her family and it require demolition and reconstruction.

9. An Advocate Commissioner has been appointed to note down the physical features of the building. Ex.P.7 and Ex.P.18 photographs pertain to the petition building and a report has also been submitted by the Building Engineer, who accompanied with the Advocate Commissioner. Though the photographs were objected by the tenant from being marked, the Rent Controller took note of the fact that at the time of photographs taken by the Advocate Commissioner, the tenant made an attempt to prevent the photographs being taken. However, R.W.2, the Engineer, who gave the report in support of the tenant has admitted the photographs. The Commissioner Report has been relied by the trial Court and the Commissioner Report also indicate that the building is in bad condition.

10. The Engineer, who gave the report has been examined as P.W.3. He accompanied the Court Commissioner and also testified before the Court that the building immediately require demolition. The Building Engineer has been examined as R.W.2 and filed his report Ex.R.14. Ex.R.14 in fact is in support of the tenant and the trial Court has rightly rejected the above evidence.

11. It is to be noted that the trial Court had weighed the evidence of P.W.3 and R.W.2 and accepted the evidence of P.W.3 and his report. It is also to be noted that R.W.3 was engaged by the tenant and a report supporting him was obtained. Whereas, P.W.3 has given a report during the inspection made by the Commissioner appointed by the Court. The Commissioner appointed by

the Court is the Officer of the Court. In his presence, P.W.3 has examined the building and filed a report. Therefore, its evidentiary value is more. Therefore, the trial Court relying upon the evidence of P.W.3 and appreciated the facts. The above report clearly indicate that the building is not fit for habitation and require immediate demolition and reconstruction.

12. It is now well settled that the building need not be in dilapidated condition. This aspect has been settled by the Supreme Court that any building need not be in dilapidated or dangerous for human occupation. What is required to be seen is whether the requirement of the landlord is a bonafide or not and it has to be seen whether the intention of the landlord is fair and his object is not to get rid of the tenant.

13. Of course, in Ex.P.1, at the time of purchase by the landlady, the building is shown as aged about 32 years. At the time of filing RCOP, it appears that the building is more than 35 years old. Whereas, it is stated in the petition that the building is more than 50 years old. Merely because the petitioner has stated that the building is more than 50 years old, this Court is of the view that the same will not affect the case of the landlady, when the evidence, particularly, the Commissioner Report clearly establish the fact that the building is in dilapidated condition and it requires immediate demolition and reconstruction.

14. Yet another ground raised by the revision petitioner is that the respondent is not having financial capacity to reconstruct the building. Raising or mobilizing funds is not difficult to anybody. There are many ways to raise funds and one can raise funds from the financial institutions and bank. Admittedly, at the relevant point of time, the respondent was working as a staff nurse. Hence, raising or mobilizing funds is not difficult for her. She can easily raise funds to put up new construction. Therefore, one need not have ready cash in their hand, he should have only capacity to mobilize funds.

15. In this regard, the Honourable Supreme Court in a judgment reported in 2006 (4) Supreme Court Cases 507 has held as follows :

Raising funds for erecting a structure in a commercial centre is not at all difficult when a large number of builders, financiers as well as banks are willing to advance funds to erect new structures in commercial areas. This is apart from the fact that the landlord has himself indicated that he was willing to invest a sum of Rs. one and a half lakhs of his and he owns properties and jeweller worth a few lakhs.”

16. P.W.1 also in her evidence has clearly stated her means to raise funds and she has also stated that after demolishing she will construct a house for herself. The above evidence is not seriously disputed in the cross examination of P.W.1. Similarly it is also well settled that when the property is in a prime locality, the building need not be in a dilapidated condition. Even if the property is not in a dilapidated condition, increase in commercial value of the location which will fetch higher returns from the property at the very serving is also a relevant fact to be taken note of. Therefore, merely because plan has not been submitted that itself cannot be a ground for eviction under section 14(1)(b) of Tamilnadu Buildings (Lease and Rent Control) Act.

17. From the evidence adduced on both sides, this Court finds that the landlady has established her bonafide. Merely because, the previous owner filed some complaint and made some attempt to evict the tenants as could be seen from Ex.R.1 to Ex.R.8, the same cannot be a ground to hold that this application has been filed by the subsequent owner is not bonafide. Hence, this Court does not find any infirmity in the Order passed by the first appellate Court. In fact, the first appellate Court in its findings has also taken note of the evidence of the parties and bonafide intention of the petitioner seeking demolition and reconstruction and the appellate Court has also taken note of the fact that if the property is in a commercial locality and if the requirement and intention of the petitioner is established, it is suffice to prove the bonafide. Therefore, merely

because the appellate authority has not discussed the entire evidence, this Court is of the view that the same will not help the tenant. The Rent Controller had threadbare analysis and considered the matter. This Court has also considered the entire evidence of the parties and found that the requirement of the landlady is a bonafide one. Hence, the Order passed by the Courts below does not need any interference.

18. Accordingly, this Civil Revision Petition is are dismissed and the Order of the Courts below is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

19.02.2019

vrc

To

1. The Judge,
VII Court of Small Causes,
Chennai.

2. The Judge,
X Court of Small Causes,
Chennai.

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N.SATHISH KUMAR, J.

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Order in

CRP.(NPD) No.4490 of 2013

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