

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.06.2021
Pronounced on	13.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.4234 of 2012
and M.P.No.1 of 2013

1.P.R.Ravikumar

2.P.R.Sukumar

... Petitioners

Vs.

Kandan Metals
Rep. by its Prop.
Swamidoss Augustin
No.5, New No.9/2,
Peddu Naicker Street,
P.T.Madras.

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 23 (1)(b) of the Tamil Nadu Building (Lease & Rent Control) Act, 1960 and as amended by Act 23 of 1973, against the fair and decretal Order passed by the learned Appellate VII Judge, Court of Small Causes at Madras in R.C.A.No.729 of 2011 dated 02.08.2012.

For Petitioners : Mr.R.Bharanidharan
for Ms.S.Revathy Dhamodharan

For Respondent : Dr.C.Ravichandran

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the Order of the learned Appellate VII Judge, Court of Small Causes, Chennai, dated 02.08.2012 in R.C.A.No.729 of 2011 in R.C.O.P.No.2604 of 2008.

2. The petitioners are the landlords and the respondent is the tenant. The demised premise has been leased out to the respondent by the petitioner on rent for the purpose of running his metal shop.

3. The petitioners/landlords have filed a petition against the respondent for eviction on the ground of wilful default in payment of rent and demolition and reconstruction. The learned Rent Controller has dismissed the petition on the ground of wilful default. However, he allowed the petition for eviction on the ground of demolition and reconstruction. When the respondent/tenant challenged the said Order of eviction before the Rent Control Authority, the Appellate Authority set aside the Order of the Rent Controller and allowed the First Appeal. Aggrieved over that, the landlords have filed this present Civil Revision Petition.

4. Despite the Eviction Petition got dismissed on the ground of wilful default, it was allowed on the ground of demolition and reconstruction. The petitioners/landlords did not prefer any cross appeal before the First Appellate Authority by asserting the ground of wilful default. So it has to be taken now that the ground on which the landlords claims eviction is only on the ground of demolition and reconstruction.

5. The respondent is a long standing tenant of the petitioners who is running a ever silver vessel shop in the demised premises from the year 1975. The above said facts were not denied by the parties themselves. The petitioners have submitted that they are in *bonafide* requirement of the building for the purpose of demolition and reconstruction. It is not in dispute that the building is very old and the said fact was observed by the Commissioner himself when he inspected the property. Certain observations made by the Commissioner after inspecting the property would glaringly show that the condition of the building is very bad. The report of the Commissioner on this aspect reads as below:-

"5. It is further humbly submitted that the western side outer wall is running in Thirumalai lane, where the lane is about 5 feet width. The outer wall is a very old wall may be of 70 to 80 years old. Where plastering has been fell down in many of the places and where roots of peepal tree had

developed in the wall making a small plant in some of the places in the wall.

6. *It is further submitted that this schedule property is a double storeyed building where the second floor is partly constructed and it was closely by asbestos sheet. The western and southern wall running from top to bottom from ground floor to 2nd floor in to an extent of about 90 feet approximate in length wise running in Thirumalai lane.*

7. *It is further humbly submitted that from top to bottom there is a continuation of the western outside wall where one ventilation is seen in the ground floor and 5 ventilators seen in the 1st floor."*

6. The learned counsel for the respondent also admitted that the building is more than 50 years old. However, it is contended on behalf of the respondent that even though the building is old, it is fit for occupation and hence, it need not be demolished. It is further submitted that the property in occupation of the respondent is a part of a bigger unit which is comprised of the portions occupied by another person also and hence, the demised premises cannot be demolished separately and hence, there is no *bonafideness* in the petition filed on the ground of demolition and reconstruction.

7. The short points which have to be taken up for consideration in this Revision Petition is:-

Whether the requirement of the petitioners could still be bonafide,

when the portion in occupation of the building is a part of a bigger unit, where another occupant also occupies the other portion?

8. In view of the above said limited point for consideration, the evidence of P.W.2 – Engineer is very significant. He has stated in his evidence that he has the expertise in handling such kind of buildings and renovated them by using modern building techniques. The respondent has filed a report of another Engineer who was examined as R.W.2 and he has stated that demolition is not possible without affecting the other portion. But the fact remains that yet another person who owns a share on the backside of the unit has reconstructed his portion without affecting the other's occupation. And the said fact could not be denied by R.W.2. No doubt a portion measuring 360 sq.ft was sold to one Jaya Agencies by the father of the petitioners and in view of that sale this respondent himself does not have the direct access to the first floor and he has been going to the first floor with the permission of Jaya Agencies, through their stairs.

9. It is submitted by the petitioners that he got the demised property allotted to him in a family partition. The demised premises is a commercial

unit and is in a very busy locality. The respondent is running his vessel shop by name 'Kandan Metals' and it is very familiar in the town. The learned counsel for the petitioners submitted that by virtue of the latest technology developed in the construction works, the demolition and reconstruction of one portion of the building is still be possible, even though it forms part of an unit of a common wall. For seeking an Order of Eviction on the ground of demolition, it is not necessary that the building should be old and in a dilapidated state. If the landlord intends to demolish the building and renovate it in a full fledged manner and for better appreciation, the ground can still be valid and *bonafide*. In fact the demised premises which is in occupation of the respondent does not even has steps of its own to reach the first floor. And the respondent is using the stairs of Jaya Agencies to reach his first floor. In such a situation, it cannot be unnatural or ingenuine on the part of the landlord to think in terms of demolishing his old building and reconstruct it with a better plan and improve its structure for convenient enjoyment and better value appreciation.

10. The learned counsel for the petitioners cited the following citations in order to impress the Court that even if structures have common wall,

demolition and reconstruction is possible by keeping the common wall unaffected:-

<i>S.No.</i>	<i>Date</i>	<i>Judgement Cause Title</i>	<i>Citation</i>
1.	30.01.1984	Madras High Court - Meyyappa Chettiar and Anr. Vs. K.N.Balakrishnan and Anr.	<i>AIR 1984 Mad 135, (1984) 1 MLJ 314</i>
2.	10.10.1996	Supreme Court of India – Vijay Singh Etc. Etc Vs. Vijayalakshmi Ammal	<i>AIR 1997 SC 47</i>
3.	28.04.2000	Madras High Court – S.P. Kasi Viswanathan Chettiar Vs. S.Kalyanaraman	<i>2001(1) CTC 42</i>
4.	09.05.2002	Supreme Court – Harrington House School Vs. S.M.Ispahani	<i>Appeal Spl. No.770/2000</i>
5.	06.03.2004	Madras High Court – Habibullah Vs. Mohamed Sultan	<i>2004(2) CTC 270, (2004) 2 MLJ 153</i>
6.	25.11.2009	Madras High Court – R.Dayananda Gupta Vs. Smt. Lakshmi Venkatadri	<i>2010(2)MWN (Civil)</i>
7.	29.07.2013	Madras High Court – G.S.Dhandapani Vs. G.D.Selvaraj	<i>CRP.(NPD).Nos.521 1 to 5214 of 2011</i>
8.	07.08.2013	Madras High Court – Nirmala Daga Vs. Loknath Rao	-

11. In the case of *Meyyappa Chettiar and Anr. Vs. K.N.Balakrishnan and Anr* reported in *AIR 1984 Mad 135, (1984) 1 MLJ 314*”, it is held as under:-

“.... 14. Considerable stress was laid by the learned counsel for the petitioners on the evidence of P. W. 1 in the course of his cross-examination that the wall east of shop No. 3 being a common wall was to be kept intact and that only the other three walls were to be demolished in order to carry out the reconstruction. There is no dispute that the wall east of shop No. 3 in Ex. A-5 is a common wall, common to the respondent in C.R.P. 1253 of 1982 and the

adjacent eastern owner. Merely because one of the walls happens to be common wall, the premises does not cease to be a building for purposes Of S.14(1)(b) of the Act. In cases where a person is the absolute owner of all the four walls, the building, inclusive of the four walls, can certainly be demolished and reconstructed. In a case like the present where one wall is a common wall, it may be that one common owner of that wall may not be entitled to Pull down that wall in its entirety as it would affect the rights of the neighboring co-owner. But if it is still possible to undertake demolition and reconstruction retaining such a common wall comprised in a building as defined under the Act, then it cannot be stated that in such case there is no demolition and reconstruction at all. In K. Krishnan, v. munuswamy, it has been held that demolished must obliterate substantially the old building and by the process of erection, a new building must be brought into existence. Merely by the retention of a common wall, it cannot be stated that the old buildings in this case had not been substantially obliterated or by the proposed reconstruction, a new could not be brought into existence."

12. The Full Bench of the Hon'ble Supreme Court has clarified in the case of *P.Orr and sons (P) Ltd. Vs. Associated Publisher (Madras) Limited (1991) 1 SCC 301*, that an imminent danger in the condition of the building is not always a requisite for demolition and reconstruction. So, the immediate purpose of demolition as seen in Section 14(1)(b) should not be read as an urgent need. In the case of *Vijay Singh Etc. Etc. Vs Vijayalakshmi Ammal*, the position of law has been made more clear that apart from the condition of the building all other factor should also be taken into consideration and that

each case has to be decided on its facts. In the said judgement, the three Judges Bench of this Court has held as below:

"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 Law 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 denoted 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"

In this background it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted.

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

13. In *Harrington House School Vs. S.M.Ispahani and Anr.*, it is held as

under:-

".... The judicial opinion centering around [Section 14\(1\)\(b\)](#) of the Act, as it has travelled through the passage of times has been noticed in a recent deci-

sion of this Court in *R.V.E. Venkatachala Gounder Vs. Venkatesha Gupta & Ors.* JT 2002 (3) SC 591. Three-judge Bench decision of this Court in *P.Orr and Sons (P) Ltd. Vs. Associated Publishers (Madras) Ltd.,* (1991) 1 SCC 301, held the field up to the year 1996. The view taken therein was that it was the condition of the building which was determinative of the degree of urgency warranting demolition followed by reconstruction of the building and on such finding depended the bona fides of the requirement within the meaning of Section 14(1)(b) of the Act. However, the Constitution Bench decision in *Vijay Singh and Ors. Vs. Vijayalakshmi Ammal* (1996) 6 SCC 475 watered down the effect of holding of this Court in *P.Orr and Sons* (supra) and held that the age and condition of the building was only one of the relevant factors, and certainly not the sole determinative factor, for testing the bona fides of the landlord. The Constitution Bench held that the bona fides of requirement for demolition could be found out by taking into account (i) bona fide intention of the landlord far from the sole object only to get rid of the tenants, (ii) the age and condition of the building, (iii) the financial position of the landlord to demolish and erect a new building. However, the Constitution Bench added that these were only some of the illustrative factors to be taken into consideration before an order is passed under Section 14(1)(b). In *R.V.E. Venkatachala Gounder* (supra) this Court has held that apart from the age and condition of the building the capacity of the landlord to demolish and reconstruct, the useful utilization of the property which would on demolition and reconstruction make available more space to be occupied by human beings for residential/non-residential purposes and the genuine desire of the landlord to earn economic advantage are relevant factors pointing to the bona fides of the requirement. In the present case it has been found that the building is an old construction requiring demolition and reconstruction. Out of the total area of the property only a part is built up and substantial portion is lying open and vacant. There is pressure of

population on the developing city and several multi-storey complexes have come up in the vicinity of the property. There is nothing to cast a shadow of doubt on the bona fides of the landlords pleading an immediate need for demolition followed by reconstruction. No fault can be found with the finding of fact arrived at by the High Court. The decision by the Appellate Court was rendered on 25th February, 1994 when three-Judge Bench decision of this Court in P.Orr & Sons (supra) was holding the field and in view of the construction placed by this Court in P.Orr & Sons the Appellate Court was persuaded to deny eviction in spite of the finding of facts being for the landlord. The High Court has rightly set aside the judgment of the Appellate Authority and ordered eviction following the law laid down by the Constitution Bench in Vijay Singh & Ors. case."

14. Though it is not necessary that the building in question should be very old, the age of the building can be an added circumstance or merit in a case for eviction on the ground of demolition and reconstruction. Admittedly, in this case, the building is very old and it is also in a damaged condition. There is no dispute about the financial wherewithal of the landlords. The poor and unhealthy condition of the building as shown in P.W.2 – Engineer's report coupled with the financial ability of the landlords would show that there is nothing to suspect about the genuine intention of the landlords in seeking an order for eviction on the ground of demolition and reconstruction.

15. It is further submitted by the learned counsel for the respondent that the other occupant Jaya Agency has filed a suit against the petitioners, for restraining them from demolishing the building. It is submitted by the petitioners that the said Jaya Agency has filed the suit only at the instigation of this respondent. In the existing condition of the building, the respondent does not even have a direct access to the first floor and he manages to go there by using the stairs of Jaya Agencies. So the possibility of the collusiveness of the respondent with the other occupant namely Jaya Agency is more.

16. In the recent technological developments in the building Industry, one portion can be renovated by mildly removing the old structures without bothering the other occupant. The multi-complex commercial buildings have become the order of the day in cities. If one single tenant or a joint owner occupying a small portion does not vacate and co-operate in order to undertake a major work in other areas of the said floor or building, that will affect the harmonious enjoyment among the joint owners. When a person purchases a portion in a larger unit, he knows very well that he cannot keep

aloof and indifferent to the necessity of renovation by the other owners who has a larger portion or interest in the building. If some of the owners/occupants colludes between themselves or one instigates the other to file a litigation, then the owner whose interest is affected can even file suit for mandatory injunction and save his interest. In these type of situations, only technological advancement can mitigate and solve the problem. P.W.2 has stated in his evidence about his expertise and confidence in undertaking such works. He has stated how he has undertaken such works in a narrow and busy streets where co-ownership or joint-ownership over the premises is common. The petitioners' witness P.W.2 has also stated in his evidence that he has undertaken such renovations on buildings situated in narrow streets like Linghi Chetty Street in Chennai. Now-a days it is a common sight where numerous shops are housed in big complexes and the reconstruction in one portion is carried out by erecting pillars or other supporting features, without affecting the other features or portions of the building.

17. It is further submitted by the learned counsel for the respondent that petitioners has not produced a valid building plan. Even if the petitioner got approval for his plan, that might have lapsed due to passage of time. It is

further submitted that the petitioner has not given the mandatory undertaking as contemplated under Section 14(2)(b). It has been held in various decisions of the Courts that it is sufficient if the landlord gives the said undertaking and produces the plan before an Order of Eviction and that can be ordered to be given during the appeal/revision proceedings or even before the Executing Court.

18. The learned counsel for the petitioners also submitted that he is always ready to give the undertaking and comply with the conditions. He has further submitted that in order to prove his *bonafideness*, he has submitted the plan before the learned Rent Controller and he is ready to produce the fresh one. The position of law on this procedural aspect has been laid down by this Court in the judgment rendered in *K.Sanjeev Kumar Vs. P.Somasundaram* (2006 2 MLJ 524).

“..... 19. Without going into the effect of the mandatory provision under Sec.14(2)(b) which seem to be hyper-technical, as and when there is opportunity for an erring landlord to correct himself and file an undertaking before ever an eviction is implemented, then there is no prejudice or harm caused in permitting him to oblige the mandate of Sec.14(2)(b). It is in that view of the matter the apex Court in the case law in *Harrington House School v. S.M. Ispahani* *Harrington House School v. S.M. Ispahani* (2002)2 C.T.C.

549, at the end of the judgment observed as follows: "Along with the plans the landlords shall also file an undertaking before the Executing Court as required by Clause (b) of Sub-sec.2 of the Sec.14 of the Act."

20. From the above judgment of the apex Court it is made clear that even erring landlord in not filing an undertaking can be given an opportunity to rectify the error and file an undertaking before ever an order of eviction is passed and that same can be done in appeal or revisional stage."

19. The learned counsel for the respondent produced the following citations to canvass his point that just because the building is old, eviction cannot be ordered on the ground of demolition and reconstruction; and that the mandatory requirement of giving the undertaking by the landlord also not complied.

S.No.	Date	Judgement Cause Title	Citation
1.	09.05.2002	<i>Harrington House School Vs. S.M.Ispahani & Anr.</i>	CDJ 2002 SC 736
2.	18.07.2005	<i>M. Abu Tahir Vs. M. Rahamathulla</i>	2005 (5) CTC 585
3.	09.04.2002	<i>R.V.E. Venkatachala Gounder Vs. Venkatesha Gupta & Others</i>	CDJ 2002 SC 293
4.	30.10.2015	<i>S.Ramesh & Others Vs. A. Ramakichenane</i>	CRP.(NPD).Nos.14 72, 1487 & 1567 of 2015

20. In *Harrington House's* case, the Hon'ble Supreme Court has given the liberty to the landlord to produce the plan also along with the undertaking before the Executing Court. The other citations produced by the respondent

as shown above do not apply to the facts of this case and the subsequent evolution of law as seen from the citations relied by the petitioner places him in a favourable position. Since the reconstruction of the demised premises after carrying out demolition without affecting the other occupant is still be possible in the growing technology in the building industry, I feel that the prayer of the landlords should be considered favourably.

21. Once an Order of Eviction is ordered, it is the responsibility of the landlords to demolish the building by using any modern/hyper-technology which would come to his rescue and see his undertaking is honoured. If he fails to do so, the tenant is always at liberty to seek for re-occupation. The learned Rent Controller First Appellate Authority without taking into consideration of the modern building technologies and other possibilities and the latest position of law, has chosen to appreciate the matter with a conservative outlook and rejected the prayer for eviction. Hence, the point for consideration is answered in favour of the petitioners.

In the result, this Civil Revision Petition is allowed and the Order dated 02.08.2012 passed by the learned Appellate VII Judge, Court of Small

Causes, Chennai, in R.C.A.No.729 of 2011 in R.C.O.P.No.2604 of 2008 is set aside. The petitioners shall execute the statutory undertaking and produce other essential documents like building plan etc., before the Rent Controller/Executing Court. The respondent shall vacate the premises within a period of three months from the date of receipt of a copy of this Order. No costs. Connected miscellaneous petition is closed.

13.07.2021

Speaking/Non-speaking
Index: Yes/No

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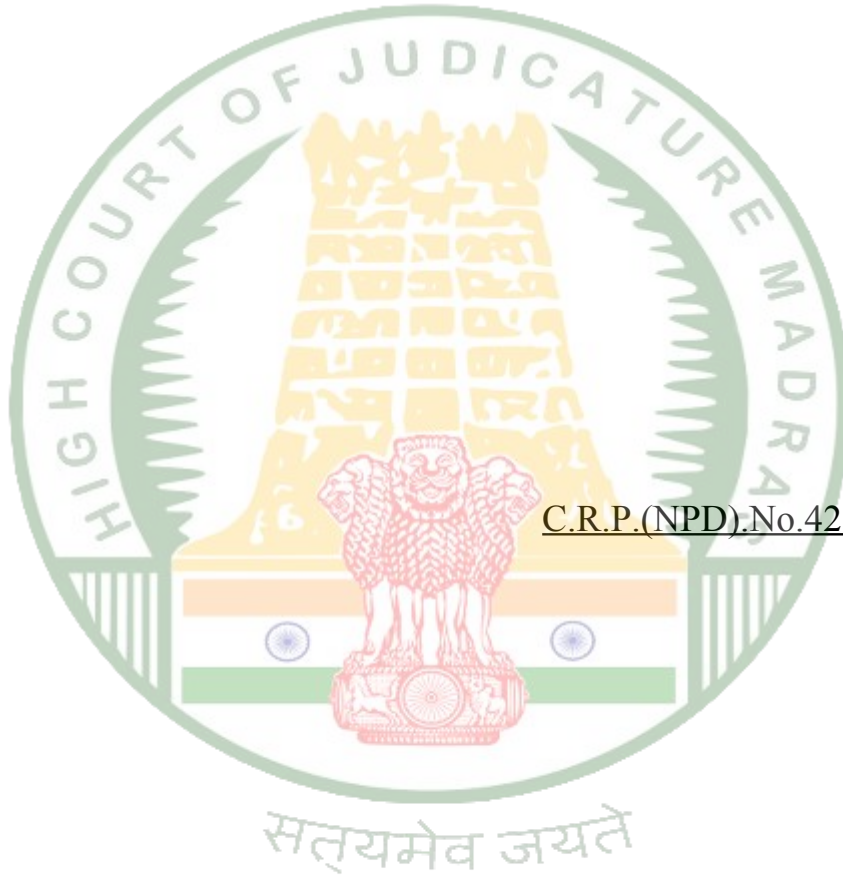
- 1.The Appellate VII Judge,
Court of Small Causes,
Chennai.

- 2.The Section Officer,
V.R.Section,
High Court, Madras.

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R.N.MANJULA,J.

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