

Harrington House School Vs. S.M. Ispahani and anr.

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Court : Supreme Court of India

Decided On : May-09-2002

Reported in : AIR2002SC2268; JT2002(4)SC639; (2002)3MLJ130(SC); 2002(4)SCALE521; (2002)5SCC229; [2002]3SCR929

Judge : R.C. Lahoti and; B.N. Agrawal, JJ.

Acts : Tamil Nadu Buildings (Lease and Control) Act, 1960 - Sections 14(1) and 14(2)

Appellant : Harrington House School

Respondent : S.M. Ispahani and anr.

Advocate for Def. : S. Sivasubramaniam, Sr. Adv. and ; V. Ramasubramanian, Adv.

Advocate for Pet/Ap. : S. Aravindh, Adv. for; Rakesh K. Sharma, Adv

Judgement :

R.C. Lahoti, J.

1. A suit for eviction of the tenant-appellant filed by the landlord-respondent on the ground available under Clause (d) of Sub-section(1) of Section 14 of the Tamil Nadu Buildings(Lease and Control) Act 1960 was decreed by the Rent Controller. However, the Appellate Authority reversed the order of eviction. In a revision

preferred by the landlord-respondent, the High Court has restored the order of the Rent Controller. Feeling aggrieved thereby the tenant has filed this appeal by special leave.

2. The relevant facts are not in controversy and may be summed up briefly as follows. The suit premises consist of a total area of 53800 square feet out of which 6823 square feet is built up while 46977 square feet is lying as open land. The property is identified as Door No. 64-B and is situated in Easwarankoil Street in the city of Tirupur. The building was about 50 years old in the year 1982, i.e., about 70 years old by this time. Exchange of letters between the parties reveals that the tenant had informed the landlord that some part of the building needed urgent repairs and any further delay could prove to be dangerous. Some imminent repairs were carried out by the tenant itself. The premises are being utilized by the tenant for the purpose of running a school wherein there are about 200 students with 15 members of teaching staff and 8 members of non-teaching staff. However, the school is unrecognized and mainly caters to the need of children of non-resident Indians.

3. The landlords are builders by profession and need the suit premises for the immediate purpose of demolition so as to construct a multi-storeyed complex thereat. According to the statement on oath of S.A. Ispahani -- one of landlords, several multi-storeyed buildings have come up in the vicinity of this property and this part of the statement has not been challenged in cross-examination. The plans of the proposed construction are ready and have been tendered in evidence though the plans have not been submitted to the local authority for approval. This aspect we shall advert to a little later.

4. The learned counsel for the tenant has urged that the High Court in exercise of its revisional jurisdiction ought not to have interfered with the finding of fact arrived at by the Appellate Authority. He further submitted that the age and condition of the building is one of the relevant considerations while testing the availability of ground under Section 14(1)(b) of the Act but the landlords do not rely on this factor; rather S.A. Ispahani, PW1, has admitted in his deposition that the landlords were not depending upon the condition of the building for demolition and

reconstruction. Their purpose was only to construct a multi-storeyed building so as to earn more and put the property to the best profitable utilization to their own advantage. A perusal of the judgments of the Rent Controller, the Appellate Authority and the High Court shows all of them having arrived at a finding that the building was an old dilapidated building and needed to be reconstructed. However, the Appellate Court denied eviction solely on the ground that on the own admission of the landlords, the landlords were not relying on the condition of the building for the purpose of demolition and reconstruction and, therefore, they were lacking in bona fides and not entitled to invoke Section 14(1)(b) of the Act.

5. 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 decision of this Court in *R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors.* . Three-judge Bench decision of this Court in *P.Orr and Sons (P) Ltd. v. Associated Publishers (Madras) Ltd.*, : (1991)1SCC301 : (1991)1SCC301 , 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. v. Vijayalakshmi Ammal -* : AIR 1997 SC47 : AIR 1997 SC47 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 bonafides of requirement for demolition could be found out by taking into account (i) bona fide intention of 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 there 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 requirements. 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-storeyed 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 and Ors. case. It is true that the landlords have not pleaded and relied on the age and condition of the building as one of the components of their bona fides but that is immaterial. The age and condition of the building has been determined and is available for assessing the bona fides of the landlords' need.

6. It cannot be doubted that the landlords are men of means. They have placed documentary evidence on record to show that they are income-tax and wealth-tax assesseees. S.A. Ispahani, PW1 has explained in his statement how the landlords proposed to arrange for the funds required for reconstruction as per their plans and there is nothing to doubt the truthfulness of the statement so made.

7. The learned counsel for the appellant faintly urged at the end that a school is running in the tenancy premises and it will not be in public interest to order eviction resulting in closure of school only to serve the private interest of the landlords. Such a plea aims at touching the emotions and not the law yet we may quickly dispose it of as of no consequence by exploding the myth in it. The school is an unrecognized private school run by the tenant catering to the need of non-resident Indians who have to leave their children behind in the country. Indeed, the school

is being run not for a social service, but for the private earnings of the tenant. The proposed reconstruction would put the property to optimum utility and would be able to provide roof over the head of and shelter for many a families hitherto deprived of the same and may also provide additional space for business and commerce if a part of the proposed construction will be commercial. We do not think that in such circumstances eviction under Section 14(1)(b) can be denied in the name of public interest.

8. 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 Execution Court shall

allow a reasonable time to the tenant for vacating the property and delivering possession to the landlord-decreeholders. 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. The appeal stands disposed of. No order as to the costs.

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