

Shakeelulr Rahman Vs. Syed Mehdi Ispahani

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Court : Supreme Court of India

Decided On : Nov-29-2002

Reported in : 95(2003)CLT201(SC); JT2002(9)SC22; (2003)1MLJ189(SC); (2003)1SCC414

Judge : S.S.M. Quadri and; Arijit Pasayat, JJ.

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

Appellant : Shakeelulr Rahman

Respondent : Syed Mehdi Ispahani

Advocate for Def. : S. Sivasubramaniam, Sr. Adv., ; R. Balachander and ; V. Balac

Advocate for Pet/Ap. : Krishnamurthi Swami and; Prabha Swami, Advs

Disposition : Appeal dismissed

Judgement :

Arijit Pasayat, J.

1. Leave granted.

2. A suit for eviction by the appellant-tenant filed by the respondent-landlord on the ground available under Section 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act') was dismissed by the Rent Controller and the Appellate Authority. However, the High Court exercising revisional jurisdiction allowed the prayer for eviction. Feeling aggrieved thereby, the tenant has filed this appeal by special leave.

3. In a nutshell, the factual position about which there is no much controversy, is as follows:-

The suit premises consist of a ground floor and first floor measuring about 1 ground and 277 sq. feet. Landlord-respondent, as set out in the application R.C.O.P. No. (SIC) of 1998 on the file of Court of Small Causes at Madras claimed that the eviction was required for demolition and reconstruction of the building bearing Door No. 5, Clemens Road, Chennai. It was specifically pleaded that the property is situated in a residential-cum-commercial locality wherein multi-storied buildings have been erected and in order to utilize the property and earn better income he has decided to demolish the said building completely and desired to construct a multi-storied in the property. The appellant-tenant disputed the stand of the respondent-landlord and pleaded that the building is in a sound condition and does not require demolition at all. The Rent Controller rejected the respondent-landlord's prayer, accepting appellant-tenant's stand. Reliance was placed on this Court's decision in *P. Orr and Sons (P) Ltd. v. Associated Publishers (Madras) Limited* : (1991)1SCC301 , to hold that it was mandatory to verify whether the building in question requires immediate demolition and reconstruction. Though he accepted the respondent-landlord's case that the new building shall fetch more income and he has sufficient means to put up the construction, but these facts were held to be not much or consequence. Appellate Authority concurred with the views of Rent Controller. On being approached for revision, learned Single Judge held that notwithstanding absence of pleading regarding age and condition of the building material on record clearly established that the building was old and required demolition. Additionally it was held that the importance of the area where the building is situated has undergone a sea change and there was all around development. Reference was made to the evidence of witnesses and documents

on record which established that an agreement (P-11) had been executed for demolition of the building in question and two others earned by landlord's mother and brother, and for putting up multi-storied structures. The total extent of the property for the three buildings was 12 1/2 Grounds, while the building in question was on an area of 1 Ground and 277 sq. ft. It was also observed that law does not require that unless the landlord established beyond doubt that the building was in such a bad and dilapidated condition that it would lead to immediate crumbling down, or later, he would not be entitled to an order of eviction. Reference was made to the evidence of RW 1 (the tenant), and RW2 (the engineer examined by tenant) to state about age and condition of the building. With reference to latter's evidence it was observed that since last forty to fifty years, no construction was put up with Madras terrace. Further, brick and lime mortar was used for construction and plastering was by lime mortar. These material facts which were brought to notice of the Court by the tenant clearly established that the building was at least 50 years old and was not in good condition. In view of the aforesaid conclusions, it was held that respondent-landlord had bona fide requirements for seeking tenant's eviction.

4. In support of the appeal learned counsel submitted that the High Court has erred in exercising revisional jurisdiction when there were concurrent findings on facts recorded by the Rent Controller and the Appellate Authority that the building was not old and or its condition was not such as to warrant immediate demolition. With reference to this Court's decision in *K.M. Abdul Razzak v. Damodharan* : AIR 2000 SC2192 , it was submitted that the High Court cited in exercising revisional jurisdiction to act as an appellate Court to re-appraise or re-assess the evidence afresh as an appellate Court and come to different findings contrary to the factual findings recorded by the courts below.

5. Per contra, learned counsel for the respondent-landlord submitted that age of condition of the building are not the only criteria for bringing in application of Section 14(1)(b) of the Act. In a given case, where the demolition was intended to put up a new structure for better financial returns, it also constitute a bona fide requirement by the landlord.

6. In order to appreciate the rival submissions, it would be necessary to notice the legal position prevailing at the time the landlord filed the petition under Section 14(1)(b) of the Act. Section 14(1)(b) reads as under:-

'14.(1)...the Controller, shall, if he is satisfied- ***

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished.

pass an order directing the tenant to deliver possession of the building to the landlord before a specific date.'

7. The said provision was interpreted by this Court in P. Orr and Sons case (supra). It was observed that landlord could succeed in an application under Section 14(1)(b) only when it is established that the building is in dilapidated condition which require immediate demolition. This decision was applied by the Rent Controller for rejecting landlord's application for eviction. View in the said case was diluted by a subsequent Constitution Bench decision in Vijay Singh and Ors. v. Vijayalakshmi Ammal : AIR 1997 SC47 . Some of the relevant observations made in the said case read as follows:

'10. Permission under Section 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord that 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. Per granting permission under Section 14(1)(b) the Rent Controller to 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 bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are 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 the other has to be arrived at by the Rent Controller.

11. 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 construction of 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 three months from the date the said respondent recovered possession of the building.'

(Underlined for emphasis)

8. As observed in para 11 (supra) where the landlord wanted to demolish the building in order to construct a new shopping complex for which necessary permission (SIC) the authorities had already been obtained and sufficient financial resources were available for the construction the bona fide requirement is established. In the case at hand both the Rent Controller and the Appellate Authority held that the respondent-landlord wanted to demolish the building order to construct a new complex and had requisite financial resources for undertaking the construction. High Court has referred to Exts. P8 to P10 and the evidence of PW1 to hold that the requisite financial soundness was to put up new multi-storied complex. In addition, agreement vide P-11, to which reference has been made supra, was referred to in this context.

9. The main contention of the learned counsel for the appellant is that the High Court interfered with the concurrent finding of the lower authorities in regard to the age of the building which is illegal. No exception can be taken to the contention, but it does not alter the result. As noted above, both Rent Controller and the Appellate Authority proceeded on the basis as if age and condition of the building are the sine qua non for application of Section 14(1)(b) of the Act, based on the view expressed in P. Orr and Sons case (supra). But in view of the decision

rendered by the Constitution Bench in Vijay Singh's case (supra) though age and condition of the building sought to be demolished are relevant factors to test bona fides of the landlord, they are not determinative of the issue. Though we do not approve the High Court's approach in interfering with the concurrent findings of fact, yet we do not consider it necessary or just to interfere with the order under challenge, as on the other concurrent findings of facts recorded by the lower authorities, referred to above, a finding of bona fide requirement of the landlord has been recorded by the High Court which is affirmed by us. The finding is sufficient to sustain the order under challenge.

10. A faint attempt was made by learned counsel for the appellant that there has been no provision for re-induction of the tenant after re-construction. A rational approach would be to hold that age and condition of the building are the only relevant factors, keeping in view the beneficial context of the statute. This plea is without any substance in view what is stated in Vijay Singh's case (supra) and Prabhakaran Nair and Ors. v. State of Tamil Nadu and Ors. : [1988]1SCR1 . In the latter case, it was observed as follows:

'It has to be borne in mind that it is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodating elsewhere. This is the true purpose behind Section 14(1)(b) read with Section 14(2)(b). In the aforesaid view of the matter, we are unable to accept the submission that in providing for re-induction of the tenant in case of repairs and not providing for such re-induction in case of reconstruction, there is any unreasonable and irrational classification without any basis.'

11. The view of the re-iterated in R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors..

12. The inevitable result of this appeal is dismissed, which we direct, but without any order as to costs.