

Krishnan and Two Others Vs. Ravindranath

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Court : Chennai

Decided On : Dec-18-1998

Reported in : 1999(1)CTC657; (1999)3MLJ43

Judge : K. Govindarajan, J.

Acts : Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 -- Sections 12, 13
14(1)(2), Rent 10(2)

Appeal No. : C.R.P. Nos. 3675 and 3676 of 1998 and C.M.P. Nos. 18542 and
18543 of 1998

Appellant : Krishnan and Two Others

Respondent : Ravindranath

Advocate for Def. : Mr. K.N. Thambi, Adv.

Advocate for Pet/Ap. : Mr. V. Raghavachari, Adv.

Judgement :

ORDER

1. The respondent/landlord filed eviction petition against the petitioners under sections 10(2)(i) and 14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act 18 of 1960 on the grounds that the tenants had committed wilful default in payment of rent and that requires the premises in 1question for demolition and

reconstruction. The learned Rent controller ordered eviction on the ground that the landlord requires the premises for demolition and reconstruction. Aggrieved, the petitioners/tenants filed appeals before the learned Appellate Authority/sub-Judge, Nagerkoil, in R.C.A.Nos.3 and 4 of 1997. Pending the appeals, the landlord filed applications in I.A.Nos.117 and 118 of 1998 to accept the undertaking which has to be given under section 14(2)(b) of the said Act, and they had been ordered by the appellate authority. Aggrieved, the tenants have filed the above revisions.

2. To appreciate the submission of the learned counsel appearing for the petitioners and respondent, with respect to the scope of the undertaking, which has to be given under section 14(2)(b) of the said Act, it is necessary to extract the said section itself, which is as follows:-

'14. Recovery of possession by landlord for repairs or for reconstruction:-

(1) Notwithstanding anything contained in this Act, but subject to the provisions of sections 12 and 13, on an application made by a landlord, the controller shall, if he is satisfied:-

(a)

(b) that the building is bona fide required by the landlord for the immediate purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to delivery possession of the building to the landlord before a specified date.

(2) No order directing the tenant to deliver possession of the building under this section shall be passed:-

(a)

(b) On the ground specified in clause. (b)_ of sub-section (1), unless the landlord gives an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the

controller may, for reasons to be recorded in writing allow.

Thus it is clear from the said provisions, a direction cannot be given to the tenant to deliver possession unless the landlord gives an undertaking as contemplated under section 14(2)(b) of the Act. Admittedly, in this case, no such undertaking was given before the Rent Controller, and without even such an undertaking the Rent Controller has directed the tenants to deliver vacant possession of the portion of the building in question by allowing the Rent Control Original petitions. Only to rectify the said mistake, the respondent has come forward with the present applications to accept the undertakings, pending the appeals filed by the tenants against the eviction orders.

3. There cannot be any doubt that such an undertaking need not be given only in the eviction petition itself filed before the Rent Controller. It can be by way of a separate affidavit or in the evidence. I seek support to come to such a conclusion from the decision in *Thayammal v.K.Subramaniam*, 1989 (1) L.W. 228 wherein it has been held as follows:-

'In my view, that statement in the deposition is an undertaking sufficient to satisfy the requirements of S.14(2)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 23 of 1973. Neither in the Act nor in the rules any form is prescribed for the undertaking mentioned in the section. When the party gives an evidence On oath and particularly when he signs the deposition, that will be a sufficient undertaking within the meaning of the section. There is no necessity to file a separate undertaking apart from such evidence. Under the section, the undertaking has to be given before the passing of the order of the eviction. In this case, apart from the affidavit filed at the time of the filing of the eviction petition, the landlord has also made the statement in his deposition in the course of the trial. That is certainly prior to the passing of the order of eviction. Hence, the contention that there was no undertaking as required by the section has to be rejected'.

following the abovesaid decision, *Somasundaram, J.* as he then was, has taken the similar view in the decision in *Radhakrishnan And Two Others v. Rajasekaran @ Rajee and two others*, 1990 T.L.N.J. 204.

4. Now, the question is if no such undertaking is available before the Rent Controller, whether the landlord can file such an undertaking, pending the appeal filed by the tenant, aggrieved against the order of eviction, which was passed while there was no undertaking, as contemplated under section 14(2)(b) of the Act. While considering the similar fact, Ismail,J., as he then was, in *Alamelu v. Visalakshi*, 91 L.W. 423 has held as follows:-

'Here again, we are concerned only with S.14(2)(b). Thus, it is clear that S.14(2) prescribes a condition precedent to be satisfied before the Rent Controller could pass an order directing the tenant to deliver possession of the building under S.14. These conditions are two in number, the one referable to the ground under S.14(1)(a) and the other referable to the ground under S.14(1)(b). The very language of S.14(2) will indicate that before passing an order directing the tenant to deliver the possession of the building under S.14. the landlord should give an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovered possession of the entire building, or before the expiry of such further period as the controller may, for reasons to be recorded in writing allow. The use of the expression 'unless the landlord gives an undertaking' occurring in S.14(2)(b) clearly indicates that the giving of such an undertaking is a condition precedent to the controller passing an order directing the tenant to deliver the possession of the building, and if no such undertaking is given, the controller had no jurisdiction to pass any such order of eviction. In a particular case it may happen that the Rent Controller comes to the conclusion that the ground under S.14(1)(b), namely, that the landlord bona fide required the premises in question for the immediate purpose of demolition and reconstruction, had not been established, then on that ground itself the petition of the landlord was bound to fail, and therefore there would be no need for the Rent Controller to go into the question whether an undertaking as contemplated in S.14(2)(b) has been given or not. However, in such a case, on an appeal preferred by the landlord, if the Appellate Authority reverses the conclusion of the Rent Controller with regard to the requirement of the landlord under S.14(1)(b), then the question of directing the tenant to deliver possession of the building would arise and at that stage certainly the landlord can give an

undertaking before the Appellate Authority and on the basis of that undertaking the Appellate Authority could pass an order. However, if no undertaking has been given before the Rent Controller and on that ground the Rent Controller dismisses the petition notwithstanding the finding in favour of the landlord under S.14(1)(b), such an order cannot be assailed before the Appellate Authority because the Rent Controller has no jurisdiction to pass an order of the landlord even if the requirements of S.14(1)(b) were satisfied, if the landlord had not given the undertaking as contemplated in S.14(2)(b). It may also be possible that in a petition filed by the landlord under S.14(1)(b) of the Act, the Rent Controller may first proceed to find whether the requirement of the landlord is bona fide or not, and having rendered a finding that the requirement of the landlord is bona fide he may adjourn the matter to enable the landlord to give undertaking as required in S.14(2)(b) and then dispose of the petition finally after the landlord gives or does not give the undertaking. All that I am interested in pointing out is that simply as a matter of construction of the relevant statutory provision, it follows that if the Rent Controller finds that the requirements of S.14(1)(b) are satisfied and orders a petition in favour of the landlord without the landlord having given an undertaking as contemplated by S.14(1)(b), then the Appellate Authority, even if he agrees with the conclusion of the Rent Controller on the requirement of the landlord under S.14(1)(b), is bound to set aside the order for non-compliance with the requirements of S.14(1)(b)'.

from the abovesaid decision it is very clear that either before the Rent Controller or the Appellate Authority, before directing the tenant to deliver possession of the building by ordering petition for eviction the landlord can give undertaking, which means, in an appeal filed by the landlord, aggrieved against the order of the Rent Controller rejecting his petition, the landlord can give such undertaking before allowing the petition for eviction and directing the tenant to deliver possession to the landlord. In this case such an undertaking was not given before the Rent Controller and no such undertaking is available before the Rent Controller, while the order of eviction was passed. In other words, there is no undertaking available before the Rent Controller in compliance with section 14(2)(b) of the Act so as to enable the Rent Controller to direct the tenants to deliver the possession. If no order of eviction is passed by the Rent Controller, since the appeal is a

continuation of the proceedings, the landlord can file such an undertaking before the Appellate Authority and get the order of eviction. But the landlord cannot be permitted to file such an undertaking which should be filed before ordering the eviction as specifically contemplated under the provision, pending the appeal filed by the tenants, aggrieved against the order of eviction, only to avoid the objection of the tenants. Since the abovesaid provision clearly contemplates of filing such undertaking before ordering eviction, the landlord cannot be allowed to file such undertaking after the order of eviction passed in the proceedings.

5. The learned counsel appearing for the respondent relying on the decision in *Leena Lalitchand v. The Sub-Collector and another*, 1997 (2) L.W. 631, has submitted that the landlord can file the undertaking pending the appeals. There cannot be any doubt about the same. As stated earlier, the landlord can file such undertaking pending the appeals, only if there is no eviction order passed earlier against the tenants, as the provision requires such undertaking should be filed before passing the eviction order and in view of the fact that section 14(2) of the Act prohibits the Rent Controller from passing an order of eviction without such undertaking. Even in the abovesaid decision, the accommodation Controller has rejected the application filed by the landlady and the landlady filed appeal and in that appeal such undertaking was given. So, admittedly there was no order of eviction. In that circumstances, the learned judge has held that such undertaking is permissible. So, the said decision cannot have any help to the respondent. The lower court without even appreciating the facts of that case had allowed that application.

6. From the above discussion, it is clear that the respondent cannot be allowed to file such undertaking, which will not help him to sustain the order of eviction, which had been passed contrary to the section 14(2)(b) of the Act.

7. If at all, the landlord can be allowed to withdraw the eviction petition and file fresh one after giving necessary undertaking if he is otherwise unable to establish in this proceedings that he has given such undertaking in the oral evidence. With the above observations, these revisions are allowed accordingly. No costs. Consequently, the connected C.M.Ps. are closed.

