A.S. Shaik Fathima and ors. Vs. Omer Cloth Store and ors.

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Court : Chennai

Decided On : Jan-27-1984

Reported in : AIR1986Mad90

Judge : Ramanujam, J.

Acts : Thailand Buildings (Lease and Rent Control) Act, 1960 - Sections 10(8); Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10, 14(1) and 25

Appeal No. : C.R.P. Nos. 1633 to 1635 and 2044 to 2060 and 3900 to 3902 of 1982

Appellant : A.S. Shaik Fathima and ors.

Respondent : Omer Cloth Store and ors.

Advocate for Def. : Narotham Jain, ;R. Jagannathan and ;S. Krishnararam Davey, Advs.

Advocate for Pet/Ap. : Adv. General for ;A.J. Abdul Razak and ;R.M.D. Hithayathullah, Adv.

Judgement :
ORDER

1. Since all these matters arise out of eviction petitions filed in respect of one and the same building which has been let out to different tenants and they are interconnected and also involve the same issues, they are dealt with together.

2. The petitioners in all the above civil revision petitions are the same and they are the landlords who have sought eviction of each of the respondents in these petitions who are tenants under them. Since the defence taken by all the respondents herein in each of the eviction petitions is substantially the same, it is unnecessary to consider their defence separately. The respondents in each of these petitions will hereinafter be compendiously called, as tenants and their defence will be considered in common.

3. The petitioners are the owners of premises bearing door No. 22 Veerappan St, Madras, in which the respondents are the tenants in respect of various portions of the said premises. The petitioners filed petitions for eviction against the tenants under S. 14(l)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 hereinafter called the Act, stating that they have decided to demolish the existing building bearing premises No. 22. Veerappan St, Madras, in order to construct a new building thereon, that they have necessary financial resources to carry out the work of demolition and reconstruction, that their requirement of though premises for demolition and reconstruction is bona fide that in spite of the notice issued to the tenants they have not vacated the Promises and that, therefore, they are constrained to file the eviction petitions under 14(l)(b) of the Act.

3A. The tenants resisted the eviction petitions filed by the petitioners on the ground that the building is in a good condition, that it was built only about 25 years back, that it is not in a dangerous or dilapidated condition so as to warrant demolition immediately, that the requirement of the landlords for demolition and reconstruction is riot at all bona fide, the applications for eviction have been filed only to compile tenants to pay enhanced rents that the landlords have no sufficient funds to undertake the alleged work of demolition end reconstruction and that in any event, the eviction petitions having been filed by the power agents of the landlords they cannot legally be maintained.

4. On the above pleadings and after consideration of the oral evidence adduced by the parties, the Rent Controller held that though the landlords have sufficient funds to undertake the work of demolition and reconstruction of the building, that by itself is not sufficient to hold that their requirement is bona fide, that though the landlords have obtained the necessary permission and sanctioned plan for demolition of the existing structure, that by itself does not indicate that the requirement of the landlords is bona fide and that the investment which the landlords propose to make by demolishing and reconstructing the existing building to get an income of Rs.3000 per month as against the existing rent of Rs.1500 per month cannot be taken to be a prudent investment kind therefore, the requirement of the landlords cannot be taken to be bona fide. The Rent Controller also held that the building is just 31 years old and its condition is such that it does not call for immediate demolition and reconstruction. In that view, the Rent Controller dismissed the eviction petitions filed by the landlords.

5. The landlords thereafter filed appeals to the Appellate Authority and all the appeals were heard together and a common judgment had been rendered on 14th April, 1981, wherein it has been held that the requirement of the building by the landlords for demolition and reconstruction is not bona fide, that the building is only 31 years old and the condition of the building is such that there is no immediate necessity for demolition and reconstruction, that notwithstanding the fact that the landlords have sufficient means to undertake the. Demolition and reconstruction of the building the investments proposed for the purpose of which eviction of the tenants has been sought is not a prudent investment, and, therefore, their requirement cannot be taken to be bona fide. In this view, the Appellate Authority affirmed the order of the Rent Controller dismissing the eviction petitions. In these revision petitions the order of the appellate authority confirming the order of the Rent Controller has been challenged.

6. Before we go into the merits of the claim of the landlords for eviction on the ground of their requirement of the building for the immediate purpose of demolition and reconstruction, it is necessary to consider a preliminary contention urged on behalf of the tenants, which goes to the root of the ratter. In these cases, eviction petitions have been filed by the power of attorney agent of the 1andlords.'The

contentions advanced on behalf of the tenants is that the eviction petitions filed by the power of attorney agent cannot legally be maintained and therefore the dismissal of the eviction petitions by the Rent Controller as well as the Appellate Authority' cannot be interfered with by this Court. In these cases, it cannot be disputed that the eviction petitions have been filed by Messrs. Wavoo Real Estate Corporation as power agents of the three landlords, A. S. Shaik Fathima, W, S. Syed.Asia Umrna and M. E. Nafeesa, and the petitions have been filed by W.S.M. Sulaiman as partner of Wavoo Real Estate Corporation. The point urged hay the tenants is that the eviction petitions having been filed by the power of attorney agent without any specific letter of authorisation as contemplated by S. 10(8) of the Act cannot be maintained. This point has been considered and rejected by the appellate authority. The Appellate Authority has found that the power of attorney given to Messrs Wavoo Real Estate Corporation empowers the power agents among other grounds, 4o file applications for eviction of tenants on the grounds mentioned in the Rent Control Act and to demolish and reconstruct the building belonging to the principals and therefore, there is no necessity for a separate authorisation under S. 10(8) to be issued in favour of the power agents by the landlords. I am inclined to agree with the appellate Authority that when there is a recital in the power of attorney specifically enabling the power agent to file eviction petitions on the ground of demolition and reconstruction, there is no necessity for a separate authorisation authorsing the power agent to file eviction petitions against the tenets. Therefore, there is no necessity for a separate authorisation escorted plated by S. 16(8) of the Act. Three separate general powers have beery given by the three landlords to the power alien arid all the three deeds tinder clause 4 enables the power agent to file suits, eviction petitions, ejectment suits, distress proceedings and all other law fid proceedings in all courts, Tribunals, or in are other appropriate for urns for recover of arrear of rents, licence fees or damages for use and occupation arid for recovery of possession of the properties. Clause 25 enables 1he power agent to give undertaking in their names and on their behalf to all courts, public or municipal authorities in respect of demolition alteration improvements and reconstruction of properties. Thus from the above clauses in the powers of attorney, the power agent has been given the power to file eviction petitions inter alia on the ground of bona fide requirement of the building for

demolition and reconstruction. In the face of the specific power given to the power agent to it the eviction petitions on the ground of demolition and reconstruction, the objection taken by the tenants in this case that the eviction petitions filed by the power agent should be dismissed cannot be sustained.

7. It is then contended by the learned counsel for the tenants that the general power given by the three co-owners separately in favour of the power agent cannot be taken to enable the power agent to file a joint petition for eviction by all the co-owners, According to the learned counsel for the tenants, there should be a consensus of all the three owners to demolish arid reconstruct the building and eviction of the tenants can be sought only after such a consensus is arrived at between the co-owners and in this case, at the time when all the three owners executed separate powers such a consensus is ruled out. It is no doubt true that the three co-owners have given three different powers of attorney, to the same power went. However having regard to the fact that in each of the power of attorney a specific power has been conferred on the agent to file eviction petitions arid to give an undertaking to the Court to demolish and reconstruct die building on behind of each of them, virtue of that power given by each all the co-owners the power agent can proceed on the basis I hat, he has been authorised by each of them to file eviction petitions with fence to the share of each, and merely because of single document has not been taken from all the co-owners the agent to file an eviction petition that to itself cannot make the power given ineffective. I have to therefore grace with the appellate authority the it the eviction petitions filed by the power agent on behalf of all the three, co-owners of the premises in question cannot he related on the ground that they are not maintainable.

8. Coming to the question as to whether the petitioners have made out the alleged requirement of the building for immediate purpose of demolition arid reconstruction, as already stated, both the authorities below have taken the view that the requirement is mix bona fide. For such a conclusion both the Rent Controller and the appellate authority have given the following reasons, though they have specifically held that the petitioners have sufficient means to demolish and reconstruct the building. (1) the petitioners have merely obtained and filed the sanctioned plans for demolition and they have not even applied for a sanctioned

plan for reconstruction so far, (2) The proposed investment of funds for demolition and reconstruction of the building in question so as to derive an income of Rs.3000 per month as against the sum of Rs.1500 which they are. now getting by way of rent from the building is not a prudent investment. (3) The buildings not old and the nature of the building is also not such as to warrant I immediate demolition and reconstruction. The finding that the petitioners have sufficient means to undertake the work of demolition and reconstruction is a concurrent finding of fact, which cannot be successfully cushioned by the tenants in these petitions. Therefore we have to proceed on the basis that the petitioners herein have got sufficient means to undertake the work of demolition and reconstruction.

9. So far as the first reason given by the appellate authority that no sanctioned plan for reconstruction has been obtained is concerned, the petitioners have explained that if they obtain permission to reconstruct and also a sanctioned plan for that purpose, the construction should be commented within six months from the date of issue of the permit and the construction should be completed within two years from the date of the permit. Otherwise, fresh permission has to be obtained on payment 'again' of the necessary building licence fees before proceeding with further work. According to the petitioners as the ultimate decision in the eviction petitions will take some time they thought that they can apply for permission to reconstruct and obtain the sanction plan, after the Court orders eviction as otherwise any delay in the disposal of the eviction petitions will result in the petitioners paying the licence fee every time when the permission lapses for purpose of getting renewal of the permission or for getting fresh sanction of the plan. According to the petitioners if they had obtained the permission as also the sanctioned plan for reconstruction even before the filing of eviction petitions and the eviction proceedings are dragged on, they will have to pay the renewal fees time and again and that will involve them in huge expenses which they wanted to avoid by merely applying for permission to demolish and obtaining a sanctioned plan for demolition. I am inclined to accept the explanation given by the petitioners for not getting the requisite permission for reconstruction and get sanctioned plan for reconstruction. Admittedly, in this case, the petitioners have applied for permission to demolish the building and they have filed the sanctioned plan for that purpose. It cannot be disputed that in all such cases where eviction is sought

on the ground of the landlord's requirement for demolition and reconstruction the main question to be considered by the Court is whether the requirement is bona fide or not. Even if the plan for reconstruction has not been obtained, if there are other materials to indicate that the requirement is bona fide, the fact that the petitioners have not applied for sanction for reconstruction or not got the plan sanctioned for that purpose, that by itself cannot be taken to be a ground for holding that the requirement is not bona fide. As already stated, the Rent Controller as well as the appellate authority have held that the petitioners have sufficient means to undertake the work of demolition and reconstruction. They have also proved by producing the plan for demolition and the permission granted by the Corporation for that purpose, their intention to demolish and reconstruct the building. Therefore, merely because a plan for reconstruction has not been obtained in addition to the sanctioned plan for demolition it is not possible to say that the petitioners' requirement is not bona fide.

10. Coming to the second reason that the demolition and reconstruction of the existing building is not a prudent investment, it appears that both the Rent Controller and the Appellate Authority were of the view that when without any investment the petitioners are getting an aggregate income of Rs.1500 per month, they expect to get an income of only Rs.3000 per month by reconstructing the existing building after investing a sum of Rs. 3 lakhs and therefore they expect to realise only an additional income of Rs.1500 after spending 3 lakhs and that, therefore, the investment of Rs. 3 lakhs, for the construction of the new building cannot be said to be a prudent investment and the petitioners who undertake to make such an imprudent investment cannot be taken to have acted bona fide. It is no doubt true, in the evidence P.W. I the partner of the firm, Wavoo Real Estate Corporation has deposed that after construction of the new building at a cost of Rs. 3 lakhs the petitioners will be able to realise the rent of Rs.3000 per month. But that is only their estimate of the income and that cannot be taken to be conclusive on the quantum of income, which the petitioners may derive by demolishing and reconstructing the building. Merely because the authorities below feel that the return expected from the investment of Rs. 3 lakhs is poor, it cannot be said that the requirement of the petitioners is not bona fide. It may be that the petitioners want to put up a new and modern building in the place of the existing

building, which will appreciate in value in course of time, and, therefore, they decided to demolish the existing building and to construct a new and modern building. The test whether the investment undertaken by the owners of buildings is prudent or not cannot be taken to be germane for considering the bona fides of the owners' requirement; nor can it be taken to be conclusive or decisive. Further, in these cases the eviction petitions have been filed in 1976 and the income, which the petitioners estimated to receive from the reconstructed building on the date of the filing of the petitions, is naturally a low figure. Since the filing of the petition it is common knowledge that rents in the locality have considerably increased. Therefore, the petitioners might have thought that there is possibility of getting a higher income from the property as reconstructed as against the income from the building as on date. Therefore, in my view, the authorities below are not justified in going into the question as to whether the proposed demolition and reconstruction is a prudent investment or not so long as it is shown that the petitioners had bona fide intended and taken suitable preliminary steps for the demolition of the existing building and for the reconstruction of a new building. It is not, therefore, possible for this Court to agree with the second reason also.

11. Coming to the third reason that the age and condition of the building are such as not to call for demolition and reconstruction ' it is seen that the Appellate Authority appointed a Commissioner (Thiru A. E. Santhappan B.E.. Superintending Engineer, P.W.D. (retired)) to inspect the building for the purpose of determining the age and condition of the building and to submit a report. The Commissioner has found the age of the building to be at least 70 to 80 years, and that the building though on outward appearance is not in an alarming condition it cannot be considered to be quite sound without extensive and expensive repairs being carried out. The Appellate Authority has not chosen to accept the Commissioner's report but has proceeded to accept the evidence of R.W. I who is said to have inspected the building at the instance of the tenants and who has stated in his deposition that the building is only 25 years old and it is not dilapidated and is quite habitable. The learned Advocate-General appearing for the petitioners herein contends that the finding of the authorities below that the building is only 25 years old and the condition is not that bad cannot legally be sustained especially when the sanctioned plan of the building issued by the Corporation of Madras in the year

1928 had been produced at the appellate stage. It is no doubt true that the plan was not produced before the Rent Controller but it was produced only at the appellate stage along with an application to file the documents and the appellate Court has also permitted the documents to be filed and has considered its relevancy in its judgment. According to the learned counsel for the tenants the appellate Authority should not have permitted the petitioners to file additional evidence at the appellate stage and that the appellate authority has erred in doing so in spite of the objections raised by the tenants that no document should be received at the appellate stage. In this case, it appears that the application for filing the additional evidence filed before the appellate authority was opposed by the tenant who contended that no documents should be received at the appellate stage. However, the appellate authority, after considering the objections permitted the petitioner 3 to file the additional documents as evidence at the appellate stage. That order has become final. It is not disputed that the appellate authority has got discretion to admit evidence at the appellate stage. It is not possible for this Court to say that the appellate authority has not properly exercised its discretion to admit the documents as additional evidence. One of the issues involved in these cases is as to what is the age of the building. Both the authorities below have proceeded on the basis that the building was constructed in 1948, as these letters found a place in the front of the building. But the explanation given by the petitioners is that in the year 1948 there was a change in the ownership of the building and that the new owner had made certain improvements in the front portion of the building and put the year 1948 in the outside frontage of the building so as to make it appear that the building is quite new for purposes of his own. The sanctioned plan of the year 1928 has been received by the appellate authority and marked and it is a relevant document to determine the age of the building. Therefore, even if there is any lapse on the part of the petitioners in not filing this document at the trial stage, since the document is essential for deciding the dispute between the parties as to the age of the building, the appellate authority is justified in exercising its discretion to permit the document to be filed as additional evidence. In this case, there is no controversy that the building in question was originally owned by the person whose name finds a place in the sanctioned plan of the year 1928, and thereafter it has changed hands once in the year 1948, and thereafter by a sledded dated 5-

1-1963. Even some of the tenants who have examined themselves as witnesses have dt, posed that the entire building had not been built in the year 1948 and that the front portion alone was repaired in the year 1948 and the year was noted in the front portion only thereafter by the then owner, As a matter of fact, none of the learned counsel appearing for the tenants is able to explain how the year 1948 came to be inscribed in the front portion of the wall when the sanctioned plan of the building bears the date 20-9-1928. It is not the case of the men ants that the building sanctioned in 1928 and constructed as per sanctioned plan was it any time demolished and a new. Building put up in its place in the year 1948. Thus, so long as the sanctioned plan of the budding is available and it bears the year 1928, it is not possible to go on the vague deposition of some of the tenants that the building was erected only in the year 1948 because coexistence of the inscription of the year 14 in the front partitions of the building. As a matter of fact, a perusal of the order of the appellate authority will clearly indicate that lie has not given any justifiable reason to ignore the sanctioned plan of the year 1928 which the appellate authority itself admitted as additional evidence at the appellate stage. Apart from the ipse digit of the witnesses examined on behalf of the tenants there is no document to prove that the building in question was nut up in 19418. If really the building was put tip in 1948, the respondents herein could have caused the production of the sanctioned plan of the year 1948. In the absence of any sanctioned plan of the year 1948, the earlier plan of the year 1928 should be taken to be the plan with reference to the existing building. Since the appellate authority has ignored the approved plan which is of the year 1928 without. Justification and has merely relied on the vague and unsupported evidence of some of the tenants that the building was put up only in the year 1948, its finding should be taken to be perverse. Therefore, on the materials on record the building in question should be taken to have been constructed in the year 1928 as per the sanctioned plan dated 20-9-1928.

12. Next we come to the condition of the budding .The Commissioner who has inspected the building has stated that the building cannot be used surly for habitation unless some substantial repairs are affected. He has also stated that the tear portion of the second floor is not in safe condition, that the hatched portion in the plan over the first floor does not appear to be in safe condition for tire reason

that the joists are projected and the joists act as cantilever, that at the end of the cantilevered petitioner walls, reconstructed for the room and the parapet is also constructed for the passage, that the timber inside masonry is likely to rot and it may collapse without any warning. According to him though the building appears to be not in an alarming condition, it cannot positively be stated that the building is safe, and since the teakwood Joists are inside in masonry no one can know whether the portion of the joists inside the masonry is in sound and safe condition unless the entire portion of the embedded joists is opened out and examined and therefore the building is not safe unless extensive and expensive repairs are carried out. As already stated, relying on the evidence of R.W. 1,a private engineer employed by the tenants themselves to make an inspection of the building, the appellate authority has proceeded to hold. That the building is in a sound connection. He has not given any reason its to why the report of the Commissioner appointed by the Court who is a retired Super in tending Engineer of the P.W.D. should not be accepted. Further, the appellate authority has not given any reason for not accepting the Commissioner's report, which clearly states that unless. Extensive and expensive repairs are made to the building, the building cannot be said to be in a sound condition. In this view, it is not possible to accept the finding of the appellate authority that the building is in a safe and sound condition. Though the petitioners are entitled to succeed on the basis of the above view expressed by this Court on the question of age and condition of the building, as the learned counsel on both sides argued on the question as to whether the are and condition of the building are relevant circumstances or not in an application for eviction on the ground of demotion and reconstruction, I proceed to deal with their respective contentions.

13. The learned counsel for the tenants contended that in all cases wherein an application for eviction on the ground that the owner requires the building for demolition and reconstruction has been filed, the age and condition of the building will be the primary consideration, while according to the learned Advocate General appearing for the petitioners the age and condition of the building may not be decisive in all cases and that only in cases where the landlords requirement for demolition and reconstruction is based on the allegation that the building is old and dilapidated, the evidence relating to the age and condition of the building will be

quite material and decisive and not in all cases. The learned Advocate General point out that there may be a building which is quite recent in a good condition but the owner of the building may, with the intention to improve his income and raise his economic status, think of pulling down that building and reconstruct a modern building which is capable of fetching a higher income by way of rentals and if the age and 'There is nothing in the object of the condition of the building are relevant and enactment or in the language of S. 14(l)(b), decisive factors, he cannot invoke the which compels or necessarily warrants the provisions of S. 14(1)(b) of the Act and file an view that once a building is let out, the landlord application for eviction on the ground of the can never obtain possession of the property owner's requirement for demolition and either for better investment or for reconstruction. I am inclined to agree with improvement, in the sense that the tenant the learned Advocate General when he says acquires a permanent right, as it were, subject that the age and condition of the building only to the dilapidated condition of the cannot be taken to be decisive in cases where building. The condition of the building is the landlord does not approach the Court on obviously an objective test to be established the ground that the building is old and by evidence and capable of, verification by dilapidated and, therefore, he requires it for personal local inspection. If the crux of the demolition and reconstruction. The learned question centers round the physical state or counsel for the tenants rely on the decision of condition of the building, there will be very the Supreme Court in Metal ware and CO, v. little scope for the notion of bona fide Bansilat Sharma, : [1979]3SCR1107 . But a perusal of the said the words' building bona fide required by the judgment of the Supreme Court shows that in landlord' in S. 14(l)(b) as equivalent to' building that case eviction petition was filed under bona fide required demolition. But it is not S. 14(1)(b) specifically alleging that the age possible to have occupation of a building bona and condition of the building are such that it fide requiring demolition, A decrepit building requires immediate demolition and no doubt may call for immediate demolition reconstruction. It is on these facts the Supreme and without anything mote the landlord could Court went into the question as to how far the be said to have satisfied the requirement or age and condition of the building will be condition of his bona fide requiring the building relevant in an application filed under for immediate demolition. But the terms of S. 14(1)(b). If as

contended by the learned the section are wide enough to cover cases couples for the tenants the age and condition of' where the landlord bona fide requires a of the building should be taken to be the building for the expansion of his own business primary and conclusive criteria, then the scope. or for legitimate purposes. A concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income yielding one, cannot by any means be said to be mala fide. The proper view to take of of S. 14(l)(b) will be very much curtailed and only in respect of old and dilapidated buildings that section could be invoked and it cannot be invoked in cases where the buildings are not old or dilapidated. I am not therefore inclined to accept the contention of the learned counsel for the tenants that in all cases coming under S. 14(l)(b) the age and condition of the budding are relevant circumstances. See. 14(l)(b) does not contain an exception to the effect that it can be invoked only in the case of old and dilapidated buildings and not in respect of other buildings. I am not therefore in a position to restrict the operation of S. 14(l)(b) only to old and dilapidated buildings, as contended for by the learned counsel for the tenants. As a matter of fact, this question as to how far the age and condition of the building are relevant criteria has come up for consideration before this Court in Bharat Trading Co. v. Shantnugha Sundaram : (1982)1MLJ94 and Sengottuvelan J. with reference to this question expressed the view thus

'There is nothing in the object of the enactment or in the language of S. 14(l)(b), which compels or necessarily warrants the view that once a building is let out, the landlord can never obtain possession of the property either for better investment or for improvement, in the sense hat the tenant acquires a permanent right, as it were, subject only to the dilapidated condition of the building. The condition of the building is obviously an objective test to be established by evidence and capable if verification by personal local inspection. If the crux of the question centers round the physical state or condition of the building, there will be very little scope for he nation of bona fide the words 'building bona fide required by the landlord' in S. 14(l)(b) as equivalent to 'building bone fide required demolition'. But it is not possible to have occupation of a building no doubt may call for immediate demolition and without anything more the requirement or condition of his bona fide requiring the building for immediate demolition. But the terms of the section are

wide enough to cover cases where the landlord bona fide requires as building for the expansion of his own business or for legitimate purposes. A concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income yielding one, cannot by any means be said to be mala fide. The proper view to take of S. 14(l)(b) would be that whenever the condition of the building is not such as to require immediate demolition the case of the landlords should be scrutinised to find out whether he bona fide intends to immediately demolish the building or whether the provision is invoked merely with a view to evict the tenant. In that context the plans or schemes of the landlord, his resources, his getting sanction from the Municipal authorities for the reconstruction etc., would have a bearing as tending to establish the bona fide requirement of the landlord. Sec. 14(l)(b) is not rendered inapplicable merely because the building is not old or dilapidated but is in a good condition. In other words, if the intention of the landlord for demolition and reconstruction is proved to be genuine and not spurious or specious, he will be entitled to obtain an order for eviction under S. 14(l)(b) whether or not the notation of the building is such as to require is a Tate demolition, the age and dilapidated condition of the building not being a sine qua non for such eviction'.

Singaravelu J. in Arumugam v. Srinivasan, : (1982)2MLJ298 has expressed the view that where a landlord does not base his case on the age and condition of the budding, the decision of the Supreme Court in Metalware and Co. v., Bansilal Sharma, : [1979]3SCR1107 will not apply and that if the landlord wanted to pull down a relatively recent construction and put up a multistoried buildings according to modern requirements, the law does not prevent him from doing so provided it was bona fide and that the above decision of the Supreme Court will come into play only when the landlord relies on the age and condition of the building for the purpose of S. 14(l)(b). In a recent decision in Sivalingam v. Guruswami, : (1983)2MLJ85 , Nainar Sundaram J. has taken the same view as in the earlier two decisions and held that though age and existing condition of the building far from being totally irrelevant is a vital factor in considering the bona fide requirement under S. 14(l)(b) of the Act, it is not possible to insist that the condition of the budding must be such that there is an imminent threat of the same crumbling down in the near future and say that only in such a contingency the landlord could

resort to the process under S. 14(l)(b) of the Act, that there is no warrant for applying such stringent tests to discountenance the plea of the landlord for requiring the building for demolition and reconstruction of a better structure either to gets better return or to accommodate himself comfortably.

14. I am inclined to agree with the view, expressed by the learned Judges in the cases referred to above. Though normally the age and condition of the building will be a material factor for considering the bona fides of the landlord, age and condition of the building cease to have any significance though relevant if the landlord invokes S. 14(l)(b) on the ground that the building though of recent construction and is in a good condition it should be pulled down for the purpose of bringing into existence a more modern structure for getting a better income. In this case, in the petition for eviction the petitioners have not alleged that the building is old and dilapidated and therefore there is immediate necessity for demolition and reconstruction. They have made a general statement that the building is required for demolition and reconstruction, It is only at the stage of the evidence the petitioners had adduced evidence with regard to the age and condition of the building as also the intention of the owners to demolish and reconstruct a new building in its place for the purpose of earning a higher income. Therefore the eviction petitions cannot be taken to be based purely on the bad condition of the building as is sought to be made out by the learned counsel appearing for the tenants.

15. The learned counsel for the tenants lastly contended that this court cannot interfere with the findings of fact rendered by the Rent Controller as well as the appellate authority that the requirement of the building by the landlord for the immediate purpose of demolition and reconstruction is not bona fide, in exercise of its provisional jurisdiction. It is no doubt true that this court's power of revision under S. 25 of the Act is limited. However, if there is an omission on the part of the appellate auth6rity to apply the law to the admitted set of facts then that will amount to a perverse decision and it will come within the norms of irregularity or in off etches, illegality or impropriety as contemplated under S. 25 of the Act, as has been pointed out by Nainar Sundaram J. in Sivalingam v. Guruswami, : (1983)2MLJ85 . In this case, as already pointed out, the finding that the

requirement of the landlord for demolition and reconstruction is not bona fide is based on an irrelevant circumstance such as the absence of the sanctioned plan for reconstruction and the nature of investment and not taking into account the relevant consideration such as the sanctioned plan of the building of the year 1928.Therefore, this Court is justified in setting aside the order of the appellate authority in exercise of its revisional jurisdiction under S. 25 of the Act.

16.Thus all the contentions urged on behalf of the respondents are not tenable. The revision petitions are, therefore, allowed and the orders of the authorities below are set aside, and the eviction petitions filed by the petitioners against the respondents will stand allowed. There will be no order as to costs. The tenants (respondents) will have six months time to vacate.

17. Revision allowed.