M. Pattabiraman Vs. the Accommodation Controller, Madras and anr.

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Court : Chennai

Decided On : Jun-24-1971

Reported in : AIR1972Mad102

Judge : Ramaprasada Rao, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 12, 12(1), 14(1) and 16

Appeal No. : Writ Petn. Nos. 4487 and 4488 of 1970

Appellant : M. Pattabiraman

Respondent : The Accommodation Controller, Madras and anr.

Judgement :
ORDER

1. These two writ petitions are connected. The petitioner is the owner of premises No. 33 Office Venkatachala Mudali St. Triplicane, Madras. He is living in the ground floor of the premises and the first floor is in the occupation of the second respondent, who is a Government allottee. The portion in the occupation of the second respondent consists of a hall verandah, kudam, living room, bed room etc. The petitioner with the intention of demolishing the first floor and reconstructing it has sought for permission from the Corporation of Madras to effect such alterations and ultimately obtained sanction therefor under building plan No. P. 2597 of 1970 dated 28-7-1970. But as the second respondent was an allottee of

the premises through the Government the petitioner applied to the first respondent for delivery of possession of the same and effectively asked for a release of the first floor from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. In fact, the application was made under Section 12(1)(b) of the Act. The Accommodation Controller is said to have inspected the plan and enquired the petitioner and ultimately was of the view that the petitioner's request for release could not be granted. The order of the first respondent reads thus:--

'With reference to your petition cited, you are informed that your request for release of the premises under Section 12(1)(b) of the Act has not been complied with. The corporation sanctioned plan bearing No. B. A. 2597/70 dated 21-5-1970 is returned herewith.'

The petitioner is aggrieved as against the said order of the 1st respondent and has come up to this court to quash the same. The case of the petitioner is that as the repairs to be undertaken by the petitioner are not to be barely characterised as repairs and alterations, but would tant-amount to a demolition of a portion of the building and reconstruction of the same resulting in the identity of the original building being lost and instead a new building being set up. It is urged that the cubicle contents of the room also get enhanced and the roofing will be completely changed from tiled roofing to Madras terrace roofing and the real purpose of the proposed alterations are effectively for demolishing and reconstructing the building and not with any other oblique purposes. Many contentions were raised by the petitioner in support of his application for the rule amongst which the main contentions are as follows. The first respondent who is dealing with rights of parties and who is indeed a quasi-judicial tribunal ought to have given reasons for rejecting the petition of the petitioner and ought not have summarily rejected the same without making it known to others including this court as to what prompted him to reject the application.

The second objection which is formidable on facts is that on a casual inspection of the sanctioned plan and the nature of the alterations contemplated, the work to be undertaken by the petitioner is to demolish and reconstruct a building which includes a part of the building under the Act and that therefore the first respondent

has no option in such cases except to grant the request, as a private tenant placed under such similar circumstances has practically no remedy in law if such an application filed for eviction before the appropriate authority is bona fide and not oblique. Reliance is placed on Selvaraj v. Narasimha Rao. : (1969)1MLJ587 . Reference is also made to the decision in Ramachandran v. Kasim Khaleeli, 1965 1 MLJ 78, for the proposition that the removing of roof of a building and putting up another roof in substitution thereof amounts to demolition of the building. Learned Government Pleader would state that, no doubt, the order is non-speaking, but, in the circumstances it should be presumed that the first respondent went into the question of bona fide as well and the order has to be sustained on the ground that the Accommodation Controller was not satisfied about the bona fides of the requisition.

2. I am unable to agree with the contentions of the learned Government Pleader. In a case where quasi-judicial tribunals adjudicate upon rights of parties after hearing them it is but elementary that they should give demonstrable reasons so that when it is scrutinised by any one in the higher hierarchy exercising visitorial powers he should be in a position to appreciate as to what was the real reason behind the order impugned or passed. It is now well settled that such judicial authorities ought not to lightly reject petitions by passing a non-speaking order which is totally bereft of any reasoning. Such reasons ought to form part and parcel of the order itself so that the order could be demonstrated to be one which is sustainable or otherwise by the superior court or authority when it has the occasion to refer to it and consider whether such an order is proper or regular. This view is accepted by the Supreme Court in one of its latest pronouncements in Travancore Rayons v. Union of India : 1978(2)ELT378(SC) . The Supreme Court said:--

'When judicial power is exercised by an authority normal performing executive or administrative functions, the Supreme Court insists upon disclosure of reasons in support of the order on two grounds; one,. that the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against

possible arbitrary action by the executive authority invested with the judicial power.'

3. On the ground that the first respondent failed to give any satisfactory reasons and indeed no reason at all to justify the challenged order, the writ petition should succeed.

4. But as arguments have been addressed at length on the scope of what is demolition, it is necessary for me to consider the merits as well as the law on the subject. As already stated, the plan produced clearly makes out the situation that the first floor is sought to be interfered with materially and in many respects by the petitioner when he reconstructs the building in accordance with the sanctioned plan. The cubicle content of enclosed space is increased or altered, the walls are changed and above all the roof of the premises is removed and substituted by another. In a case where the roof of a premises is removed and is substituted and this is followed up by a variation of the space content of the quondam building, then undoubtedly the entire process involves not only demolition but also reconstruction. In such cases, where a landlord intends to demolish and reconstruct his premises and for that purpose seeks eviction of the tenant in occupation of the old building, this court in 1968 1 MLJ 587 observed after considering the import of Sections 14(1)(b) and 16 which are the relevant sections to be notices. 'The quality and content of the expression bona fide appearing in the various sections of the Act and for purposes therein enumerated have to be weighed and construed in different lines under different circumstances having regard to the context in which the expression appears. In cases where the claim of the landlord is not per se dishonest and has not been found to be oblique or for any designed purpose to evict the tenant then it follows that the petitioner is entitled to an order of eviction in the ordinary course, subject of course, to the other conditions prescribed by the Act being satisfied.'

The court further observed that reading the two sections in conjunction with one another, the real content of the word bona fide appearing in sub-section (1)(b) of S. 14 has to be understood in a limited sense. The safeguard provided under Section 16 acts as a pivot to tilt matters one way or the other and in effect a

microscopic scrutiny into the subjective content of the expression bona fide appearing under Section 14(1)(b) becomes absolutely unnecessary. These observations are apposite while considering the similar applications for release made by landlords in cases where the tenant is a Government allottee. As a matter of fact, Section 12 deals with recovery of possession by landlord for reconstruction of the building in respect of which the Government shall be deemed to be the tenant. Section 12(1)(b) provides that on an application made by the landlord in such circumstances the Authorised Officer if he is satisfied 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 allottee to deliver possession of the building to the landlord before a specified date.

The conjunction in Section 12(1)(b) connecting the subjective content as to bona fides of the landlord and the objective reality of the erection of a new building need not create an impression that this sub-section is in any way far different from Section 14(1)(b). As a matter of fact, both the support and the literature of both the sub-sections are almost the same. The ratio in : (1969)1MLJ587 has to be borne in mind by the Authorised Officer while dealing with applications under Section 12(1)(b). If, therefore, the landlord seeks for release of the building for the immediate purpose of demolishing and reconstructing a building which includes a part of the building then factually he has to verify whether the alteration or the modification sought would amount to demolition. I have already expressed the view that the work to be undertaken by the petitioner is effectively to change the entire phase of the building, its cubicle content and its size. More than anything else the roof is sought to be removed and substituted by another of a different variety altogether. Kailasam, J., in 1965 1 MLJ 78 while considering the import of Sec. 14(1)(b) observed on the facts and particularly on the above aspect as follows:--

'The contention of the learned counsel that the demolition intended, should be total, is not supported by any authority. In this case the roof of the premises that is in the occupation of the petitioner is to be demolished and a staircase put,

retaining only the walls. This, in my opinion, would amount to demolition.'

A fortiori, in a case like the one before me where a material change is being effected in the structure and the identity and contents of the building, the work undertaken by the petitioner as disclosed in the sanctioned plan would certainly amount to demolition and reconstruction of the building. In this view of the matter justice has not been rendered to the petitioner since the first respondent did not consider all the aspects of law and facts arising in the application disposed of by him in such a summary fashion.

5. On these grounds also the rule nisi is to be made absolute.

6. Rule nisi in W. P. No. 4487 of 1970 is made absolute.

7. In W.P. 4488 of 1970 a writ of Mandamus is sought directing the first respondent to dispose of the petitioner's application dated 2-9-1970 for release of the building under Section 12 of the Act. It is not necessary to make the rule absolute in the instant case. Instead, certain directions which would serve the purpose can be made. The first respondent is directed to dispose of the petitioner's application for release under Section 12 of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 within six weeks from this date bearing in mind the principles of law and taking into consideration the observations made by me in W. P. 4487 of 1970. There will be no order as to costs in both the writ petitions.

8. Rule nisi made absolute.