

Kanakavali Ammal and ors. Vs. V.S. Sundaram and ors.

Kanakavali Ammal and ors. Vs. V.S. Sundaram and ors.

SooperKanoon Citation : sooperkanoon.com/800012

Court : Chennai

Decided On : Jan-05-1984

Reported in : (1984)1MLJ310

Appellant : Kanakavali Ammal and ors.

Respondent : V.S. Sundaram and ors.

Judgement :

ORDER

G. Ramanujam, J.

1. This revision is directed against the order of the learned Subordinate Judge, Nagercoil in H.R.A. No. 2 of 1981 setting aside the order of the Rent Controller and allowing the eviction petition filed by the respondent herein. The circumstances under which this revision came to be filed may be briefly stated. The first respondent herein filed an application under Section 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for demolition and reconstruction of the building in the occupation of : the petitioner herein. His case was that the building in question bearing Door No. 17 of 1948 stands in the north western corner of a plot of land having an extent of 29 cents and this land with the building is in the occupation of the petitioners herein, that the building and the vacant site was purchased by him for the purpose of locating an oil mill, that in pursuance of the object for which the land and the building had been purchased,

necessary machinery had been purchased, that thereafter sanction of the plan for the rice-mill has been obtained and that therefore the, building in the occupation of the tenants is required for demolition and reconstruction. The said application for eviction was resisted] by the petitioners on the ground : (1) that) the requirement of the landlord is not 'bona fide and the filing of an earlier application for the same purpose and its dismissal would indicate that the present attempt of the landlord is not bona fide; (2) In any event the building in the occupation of the petitioners is not old and dilapidated and therefore there is no necessity for demolition and reconstruction of the, building. The Rent -Controller : taking into account the filing of an earlier application for eviction on the same ground and the absence of any evidence that the building sought to be demolished is old and dilapidated requiring immediate demolition, held that the landlord has not made out a case for eviction under Section 14(1) (b) of the Act. In that view, he dismissed the eviction petition filed by the landlord. On appeal, to the appellate authority, the Sub-Court, Nagercoil, the appellate authority has held that the requirement of the landlord of the premises for demolition and reconstruction for establishing an oil mill is bona fide and the fact that there are other open spaces; for erection of the oil mill is not a ground to reject the claim of the landlord for seeking the building for demolition and reconstruction, The appellate authority has also held the fact that the landlord filed an earlier application for eviction and failed does not mean that the present application could be taken as not bona fide. In that view, the appellate Court set aside the order of the Rent Controller dismissing the eviction petition and directed the eviction of the tenant. Aggrieved against the order of the appellate authority directing eviction, the tenants have come he-fore this Court.

2. Before me three substantial contentions have been advanced by the learned Counsel for the petitioners. One is that there is no evidence regarding the age and condition of the building and that without such evidence the appellate authority is not justified in ordering eviction. In support of this contention the learned Counsel refers to the decision of the Supreme Court in *Metalware and Company v. Bansilal Sarrna* : [1979]3SCR1107 , that in all cases where an application is filed under Section 14(1) (5) the age of the building is a relevant criterion and in the absence of any evidence an this matter, eviction cannot be ordered. In that case, the Supreme Court has held that 'the existing condition of a building far fro in being

totally irrelevant is a vital factor while considering the bona fide requirement. The age and existing condition of a building are relevant forming part of the circumstances that are to be considered while determining the bona fide requirement'. But the Court has made those observations in the light of the allegation made in the eviction petition. In that case, the eviction was sought under Section 14 '(1) (6) of the Act by the landlord alleging that the building being old and dilapidated required immediate demolition and reconstruction and therefore they bona fide required it for the said purpose. It is in the light of these allegations in the eviction petition, the Supreme Court observed : that the age and existing condition of the building in respect of which eviction is sought for on the ground that it required demolition and reconstruction are relevant matters! to be considered. According to the learned Counsel, the principle laid down by the Supreme Court will apply to all cases where applications have been made under Section 14(1) (b). It is (b) possible for me to agree with the said contention of the learned Counsel. What are the matters to be considered will always depend on the nature of the pleadings in the case and the controversy between the parties. If the landlord alleges that the building is old and dilapidated and therefore it requires demolition and reconstruction and that fact is denied by the tenant, then the landlord has to adduce evidence as to the age and existing condition of the building. But where the landlord seeks eviction of the tenant under Section 14(1) (b) on the ground that though the building is fairly recent, and is not old and dilapidated he requires, the building for demolition and for putting up a more modern and bigger building in the same site, there will be no controversy as to whether the building is old or dilapidated because that is not the case of the landlord himself. In such a case to say that the age and existing condition of the building is a relevant consideration is to say that except when the building is old and dilapidated resort cannot be had to Section 14(1) (b). Such construction will not a reasonable construction of Section 14(1) (b) for that section does not say that the old and dilapidated buildings alone will come under that section and eviction of buildings other than old and dilapidated cannot be sought for under that section. In this view, it is not possible to say that in all cases where applications are filed under Section 14(1) (b) evidence of age and existing conditions had to be adduced by the landlord. Such evidence has to be adduced only when the landlord files the application under

Section 14(1) (b) alleging that the buildings are old and dilapidated which require demolition and reconstruction.

3. In this case, eviction has not been sought under Section 14(1) (b) on the ground that the building is old and dilapidated and therefore it requires demolition. The evidence of the building has been sought on the ground that the building has to be demolished for the purpose of starting an oil mill in the premises. Therefore, the second contention that has to be considered is that the requirement of the landlord for demolition and reconstruction for the purpose of establishing- an oil mill is not bona fide. Though the Rent Controller, based on the earlier dismissal of a similar eviction petition, held that the present petition for eviction is not bona fide, the appellate authority after considering all the relevant materials held that the requirement is bona fide. The appellate authority has taken into account the purchase of machinery and the other necessary steps taken by him in pursuance to his intention to demolish the oil mill. The appellate authority has also expressed the view that for the oblique purpose -of evicting the tenant from the building, the landlord would not have purchased machineries at a cost of Rs. 25,000 even before the filing of the eviction petition. It is not possible for me to say that the various circumstances referred to and relied upon by the appellate authority for holding that the requirement of the landlord is bona fide are either irrelevant or not germane. On, the facts it has been found by the appellate authority that the machinery has already been purchased and permission has been obtained from the municipality for demolition and reconstruction of the building and also the necessary licence for starting the oil mill from the concerned authorities. All this the landlord would not have done only for the oblique purpose of evicting the tenant from the building in question. In this view, I have to uphold the findings of the appellate authority that the landlord has established the bona fide requirement of the building.

4. The third contention of the learned Counsel for the petitioner is that there are other vacant areas in which the new construction for establishing the oil mill can be put up and it is not necessary for demolishing the building occupied by the petitioners. On this aspect the lower appellate authority has held that it is not for the tenant to decide about the location of the oil mill and that it is open to the

landlord to select the area for locating the sheds for installing the machinery. On this aspect, the learned Counsel for the petitioner refers to the decision of the Supreme Court in M.M. Quasin v. Mawher Lal : [1981]3SCR367 , wherein the Supreme Court has observed that, when there are two premises available for the occupation of the landlord, if the landlord selects one premises occupied by a particular tenant he must give reasons as to why he has selected the particular building. But that principle will not apply to the facts of this case, for there is no other building for demolition and reconstruction which could be usefully utilised as an oil mill. The learned Counsel for the petitioner would say that there are other small structures within the same compound and those structures are in the possession of the landlord and the new constructions could be erected thereon. But according to the landlord the other portions within the same compound are required for various other purposes such as dying yard etc., which is essential for locating the oil mill. It cannot be said that they are available for putting up construction. Thus, all the three contentions put forth by the learned Counsel for the petitioner are not tenable and there is no reason to disagree with the finding of the appellate authority in this case. The petition is therefore dismissed, No costs.

5. The petitioners are granted three months' time to vacate the premises.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com