

**Sharma Vs. Fenivard Represented by Power Agent R. Ramadoss**

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**Court :** Chennai

**Decided On :** Jan-14-1988

**Reported in :** (1988)2MLJ428

**Appellant :** Sharma

**Respondent :** Fenivard Represented by Power Agent R. Ramadoss

**Judgement :**

ORDER

**Sivasubramaniam, J.**

1. unsuccessful tenant in the appeal in M.A.No. 19 of 1986 on the file of the Appellate Authority. Pondicherry is the petitioner in this revision petition and the respondent is the landlady.

2. The respondent/landlady represented by her Power-of-Attorney Agent R. Ramadoss filed the petition in H.R.C.O.P.No. 124 of 1985 on the file of the learned Rent Controller (Principal District Munsif) Pondicherry for eviction of the petitioner/tenant under Section 14(1)(b) of the Pondicherry Buildings (Lease and Rent Control) Act which shall hereinafter be referred to as the Act on the ground of demolition and reconstruction on the following averments: According to her, the revision petitioner became a tenant in the year 1972 on a monthly rent of Rs. 200 and that the petition building is more than 50 years old. The tenant had unauthorisedly installed shuttles and has been dumping raw materials thus

weakening the floor and other parts of the old building. Further, he had unauthorisedly closed the front floor and also opened a passage by demolishing the side wall on the northern side. She wants to demolish the premises and reconstruct a building thereon. She has already applied to the Pondicherry Town Planning Authorities for sanction of the plan and permission was obtained from the said authorities as per the order dated 5-10-1984. She is possessed of necessary funds to the tune of Rs. 3 lakhs in her account with United Commercial Bank, Pondicherry Main Branch for the purpose of construction.

3. The tenant resisted the application and raised the following contentions:- According to him, the building is not 50 years old and that he had not unauthorisedly installed shuttles and dumped raw materials. He has not caused any damage to the building. The landlady is a French citizen and she is not entitled to invest any money without the permission of the Reserve Bank of India. She has no funds to meet demolition and reconstruction. She had filed another eviction petition in H.R.C.O.P.No. 40 of 1983 which was dismissed. The petition building is in a sound condition and that it does not require demolition and reconstruction. The eviction petition has been filed with an oblique motive to evict him and to lease the same for higher rent.

4. The learned Rent Controller came to the conclusion that the power of attorney Agent of the landlady is not competent to file the present eviction petition on the basis of Ex.P.1 and that there is no bona fides in her requirement of the building or demolition and reconstruction. Consequently, he dismissed the eviction petition. As against the said order, the landlady preferred the appeal in M.A.No. 19 of 1986 and the appellate authority took a different view and allowed the appeal. It held that Ex.P.1 empowers the power of Attorney Agent to initiate the eviction petition and, therefore, the petition is maintainable. Further, it was held that the building is one of an old type of construction with clay and lime and that the requirement of the landlady is bona fide. Consequently, eviction was ordered. Aggrieved against the said judgment, the tenant has preferred the above civil revision petition.

5. The learned Advocate-General appearing for the petitioner/tenant repeated the same objection regarding the maintainability of the eviction petition on the ground

that the power of Attorney Agent is not authorised to initiate these proceedings. A perusal of Ex.P.1, the deed of power of attorney, clearly shows that the power of Attorney Agent is authorised to institute, commence, prosecute, carry on or defend, resist all suits and other action and proceedings before the court and other authorities. He has also been authorised under the said document to sign and verify all plaints written statements, accounts, inventories etc. Therefore, the appellate authority has rightly held that the eviction petition is maintainable. I do not find any infirmity in the said finding and the power of Attorney Agent is certainly entitled to maintain the petition.

6. The learned Advocate General submitted that the landlady has not established her bona fides in the requirement of the petition building for demolition and reconstruction. She is a French National residing in French for a long time and, therefore she is not going to come and live in the building. It was further submitted that she had filed the eviction petition earlier in H.R.O.No. 40 of 1983 wherein the ground projected for eviction was, bona fide requirement for personal occupation. In the said petition there was no mention that the demised premises was old and that it is in a dilapidated condition. Therefore, it was submitted that the so called requirement for demolition and reconstruction has been invented for the purpose of evicting the tenant and there is absolutely no bona fides in her requirement. The stand taken is that the ground for requirement in the earlier petition was for personal occupation and that the very same ground now repeated in a different form, namely, for personal occupation after demolition and reconstruction. Therefore, the learned Advocate-General seriously contended that the bar contained in Section 19 of the Act would be attracted. The motive imported under Section 19 of the Act would come into operation only when the second petition raises between the same parties or between the parties under whom they or any one of them claim, substantially the same issue as have been finally decided in the earlier petition. Here, it is not in dispute that the ground of demolition and reconstruction was not raised in the earlier petition, and therefore, the said principles cannot be applied to the facts of the present case.

7. In answer to the said contentions: Mr. G. Masilamani, Learned Counsel appearing for the respondent/landlady submitted that the earlier Petition was

dismissed as the landlady was not able to attend the hearings. Even otherwise, the dismissal of the earlier petition is no bar for maintaining the present application since it was filed on a different ground. In support of his contentions, learned Counsel relied on the decision of this Court in Ramadas Kishanadas and Ors. v. M. Varadaraja Pillai and Ors. 1973 T.L.N.J. 80 wherein it was held that since the Legislature intended to give all the benefits both the tenants and to landlords through the sections of the enactment, if a tenant or a landlord avails himself of certain provisions of this enactment, it will not preclude him on a future date from invoking the provisions of different sections of the enactment to get appropriate relief. Therefore, the mere fact that in an earlier petition the landlady failed to get an order of eviction does not mean that he is precluded from invoking the other provisions of the Act on the principles contained in Section 19 of the Act. Further, it has to be noted that this objection was not taken before the learned Rent Controller, but it was raised only before the appellate authority.

8. As regards the bona fide of the landlady and learned Advocate-General submitted that the age and condition of the building show that it is not very old. It was submitted that in the case of requirement for demolition and reconstruction, the age and condition of the building is a very important factor to be considered by the authorities before ordering eviction. In this case, the authorities have not rendered a finding regarding the condition of the building and that there is no averment by the landlady that demolition and reconstruction is going to be done for augmenting her income. In the absence of such a finding, no order of eviction can be passed.

9. The learned Advocate-General further submitted that the landlady is not authorised to spend any money for demolition and reconstruction in India without the specific sanction from the Reserve Bank of India. As there has been no attempt to get such a sanction or permission till now, it must be taken she has no financial capacity to put up construction as alleged in the petition. Learned Counsel for the respondent invited my attention to Article 17 of the Treaty entered into between the Government of India and France which gives a right of a residence to all French Nationals who were residing in Pondicherry and in such cases, no prior permission is necessary from the Reserve Bank of India, it is not

indispute that the landlady has got sufficient funds in her Bank accounts in Pondicherry and that she can command further amounts for construction. Therefore, there is no substance in the contentions raised regarding the financial capacity of the landlady.

10. In so far as the contentions raised by the learned Advocate-General regarding the bona fides of the landlord are concerned the main basis of attack was on the ground that there is no proof that the building is old and dilapidated. It is seen that Section 14(1)(b) of the Act does not contain any exhaustive definition and, therefore, the Courts have given certain interpretation to the meaning of the language employed therein. The leading decision on this aspect was rendered by the Supreme Court in *Metalware & Co. v. Bansilal Sharma* : [1979]3SCR1107 where in it was held that the existing condition, of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction are relevant factors and they must enter the verdict of the Rent Controller on the question of bona fide requirement of the landlord. What the Supreme Court has held in the said case was that a landlord cannot ask for demolition and reconstruction merely by showing that the buildings is old and that the age of the buildings and its condition are relevant factors which have to be taken into consideration by the authorities while deciding the question of bona fides. It has not been held by the Supreme Court that a landlord cannot ask for possession of the building for demolition and reconstruction unless the building is old and dilapidated requiring immediate demolition. On the other hand, the Supreme Court has categorically stated that the requirement in terms is not that the building showed need for immediate demolition and reconstruction. What is laid down is that the condition of the building has to be taken into account as one of the relevant circumstances for deciding the bona fides of the landlord. It was further observed by the Supreme Court that the phrase 'the building is bona fide required by the landlord' for the immediate purpose of demolition reconstruction occurring in Section 14(1)(b) of the Act refers to the bona fide requirement of the landlord and not that the building requires demolition and reconstruction. Therefore, it is not always necessary that the building should be old and dilapidated requiring immediate demolition. There may be ever so many other circumstances under which a landlord can ask for demolition and reconstruction.

This aspect of the matter has been considered by Ramanujam, J. in *Kanakavalli Ammal v. Sundaram* : (1984)1MLJ310 wherein it was held as follows:

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 the 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 it 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 is not reasonable. That section does not say that old and dilapidated buildings alone will come under that section and eviction from buildings other than the 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 existing condition had to be adduced by the landlord. Such evidence has to be adduced only when the landlord filed the application under Section 14(1)(b) alleging that the buildings are old and dilapidated which require demolition and reconstruction. A similar view was taken by Singaravelu, J. in *Arumugam v. Srinivasan* (1982) 11 M.L.J. 298 and Sengottuvelan, J. in *Abdul Hameed v. Ajeetha Ammal* (1981) 2 M.L.J.346 and in *Bharat Trading Co. v. K. Shanmugasundaram* 85 L.W. 259. In a latest decision *Mrs.Padmini Jesudurai, J.*, also has taken the same view in *Faras Devi v. Messrs Vijaya Auto Parts* : (1987)1MLJ482 .

11. Applying the above said principles, we have to find out whether the landlady has made out a case for eviction under Section 14(1)(b) of the Act. It cannot be disputed that the building is at least 50 years old. In support of the contentions, the landlady has produced the extract of the Register of Transcriptions to show that her house bearing Door No. 34, Suffrent Street, Pondicherry was purchased on

22-12-949. It is seen that title is traced in this deed to an earlier. Notarial sale deed executed in the office of Varadarajulu on 16-12-1941. Therefore, there is evidence to show that the building was in existence even in the year 1941. In so far as the condition of the building is concerned, the tenant himself, who has been examined as R.W.1 has categorically stated in his cross examination that the building is constructed by bricks, clay, and lime and that he had effected repairs to the building. It was further admitted by him that when he took the premises in the year 1971, it was not in a good condition. Therefore, the said statement will amply prove that when he took the building on lease in the year 1971, it was not in a good condition and, therefore, he had to repair the same. On the basis of these admissions, the appellate authority came to the right conclusion that the building is one of an old type of construction with clay and lime and that the same has become out-moded. Therefore, there is no difficulty in holding that the building is an old one requiring demolition and reconstruction. Apart from that, as already noticed, it is not necessary that the landlord could ask possession for demolition and reconstruction. The landlady has come forward with a specific plea that it is an old building and that she wants to demolish the same and put up a modern structure therein in the place of the existing building. Even though there is no averment that the same is being done with a view to augment her income, it goes without saying that when a modern structure is put up in the place of old and weak building, it would result in financial benefit to the landlady. It will certainly enable the landlady to put it for more profitable use. Therefore, I do not find any infirmity in the findings of the appellate authority.

12. In the result, this civil revision petition is dismissed. No costs. However, considering the hardships of the tenant, in securing an alternative accommodation, he is given four months' time from this date, with the consent of the learned Counsel for the respondent, to vacate the petition premises and put the landlady in possession of the same.