

L. Sethuraman Vs. Karunakaran

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Court : Chennai

Decided On : Mar-12-1997

Reported in : 1997(2)CTC765

Judge : S.S. Subramani, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 2(7), 14(1) and 14(2)

Appeal No. : C.R.P. No. 1362 of 1995 in C.M.P. No. 15963 of 1995

Appellant : L. Sethuraman

Respondent : Karunakaran

Advocate for Def. : T.R. Rajaraman, Adv.

Advocate for Pet/Ap. : Bhuvaneswari, Adv. for ;K. Sudha, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.S. Subramani, J.

1. Tenant in R.C.O.P.No. 23 of 1991, on the file of Rent Controller (District Munsif). Vellore is the revision petitioner.

2. Eviction was sought on the ground that the building requires major repairs, and without dispossessing the tenant, petitioner herein, those repairs cannot be effected.

3. Both the Authorities below concurrently found that the building requires repairs and for effecting the repairs the occupation of the building by the tenant will be hindrance, and, therefore, the tenant was directed to handover possession to the landlord temporarily.

4. Learned counsel for the petitioner submitted that the claim of the landlord is lacking in good faith. Even in case of repairs, there must be bona fide on the part of the landlord in filing the petition and if that is lacking, an order should not be passed in favour of the eviction petitioner, i.e., landlord.

5. A further contention is raised that originally the landlord himself wanted the building to be demolished and reconstructed. But subsequently he changed his mind and filed the petition as one for repairs. That also shows that the requirement is lacking in good faith. Finally it was contended that roof-changing which is one of the works to be carried out in the building will not come either under reconstruction or repairs and, therefore, the landlord is not entitled to get an order for eviction.

6. The question whether the building requires repair or not is a finding of fact. Both the Authorities below have held that the against the tenant.'

7. Nainar Sundaram, J., as he then was, has held in Panchali Ammal v. Muthulakshmi Ammal 91 L.W 204 that the test of bona fides for the purpose of repair is not the same as that required for the purpose of demolition and reconstruction. The stringent standards that are applied Under Section 14(1)(b) of the Act are not to be applied in the case of Section 14(1)(a). In paragraph 2 of the judgment, the learned Judge held thus:-

'It is needless to point out that the bona fides Under Section 14 of the act has been held (sic) as not to be tested by stringent standards when an application for eviction is filed under that provision. While laying down the test regarding bona fides Under Section 14(1)(b) of the Act, a Division Bench of our High Court in

Selvaraj v. Narasimha Rao has laid down as follows:-

'The quality and content of the expression bonafide 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. Section 16 of the Act affords a statutory right to the tenant to reclaim possession of a building secured by the landlord Under Section 14(1)(b) if he does not substantially demolish the building and attempt at reconstruction as proposed. This controlling provision provides, as it were, a key to the interpretation of the expression bonafide appearing in Section 14(1)(b) of the Act. It appears to us that 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 he is entitled to an order of eviction in the ordinary course, subject, however, to the tribunals, constituted under the Act being satisfied that the other relevant conditions required and prescribed under the Act are complied with.' I find that Section 14(2)(a) of the Act reads as follows:-

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

(a) On the ground specified in Clause (a) of Sub-section (1). Unless the landlord gives an undertaking that the building shall, on completion of the repairs, be offered to the tenant, who delivered possession, in pursuance of an order under Sub-section (1) for his re-occupation before the expiry of three months from the date of recovery of possession by the landlord before the expiry of such further period as the controller may for reasons to be recorded in writing allow.'

Here is a safeguard given to the tenant that after the completion of the repairs the building shall be offered to the tenant. If we keep this in the background, we find that the question of bonafide pales into loss significance, and it cannot be put against the landlord by applying the test stringently.'

8. Both the Authorities below have rightly approached the question and as fact-finding Authorities have come to the conclusion that the petition was filed in good faith. Except for stating that originally the claim was for reconstruction and

thereafter it was for repairs, no other legal argument was put forward by learned counsel for the petitioner, persuading this court to interfere in provision.

9. Merely because the landlord sought eviction for demolition and reconstruction, the subsequent statement that repair will be sufficient will not show that there was no good faith. Physical condition of the building is one of the facts to be considered. While effecting repairs, to a certain extent, that has got some relevance. By stating that the building requires major repairs, it can be said that it is not dilapidated and it can stand for some more years if some more strength is given to the building. By that way, some more life is infused into the building, by effecting the necessary repairs, and the landlord is only postponing the demolition to a future date.

10. The further contention of the petitioner is that roof-changing is neither demolition or reconstruction nor repairs. Section 14 of the Rent Control Act will not be applicable in such case, is the contention of learned counsel for the petitioner. According to her, the landlord is not, therefore, entitled to get an order for eviction.

11. Repairs is defined Under Section 2(7) of the Act thus:-

'Repairs' means the restoration of a building to a sound or good state after decay or injury but does not include additions, improvements or alterations except in so far as they are necessary to carry out such restoration.'

12. On the basis of this definition, it was argued that the roof-changing is an improvement or alteration and it is not a restoration of a building to its original position after removing the decay or injury. Roof-changing by itself may not amount to demolition of a building. A judgment of this Court reported in K. Krishnan v. Munuswamy 91 L.W 454 concludes the matter. In that case, a Division Bench of this court said thus:-

'A change of the roof of a building will not by itself amount to demolishing a building and putting up a new building on the site of the old building, and to such a case, Section 14(1)(b) will not be attracted.

13. An argument is put forward by learned counsel that the roof-changing will not come within the definition of repairs and relief on the every same definition. For that purpose, she placed reliance on paragraph 10 of the judgment of the Division Bench referred to above.

'..It is perhaps true that some changes in a building which would not fall under the expression 'repairs' as defined in the would not amount to demolishing and creating a new building on the site and if they fall out of the ambit of Section 14(1)(b) of the Act, eviction for those purpose may not be possible. We cannot rectify any lacuna, even if that be.'

I do not think the said decision will have any application to the facts of this case. Their Lordships only said that the roof-change alone will not amount to demolishing a building. In fact, there is no finding that the roof-changing will not come within the definition of 'repairs' and the same is clear by the words 'even if that be', as emphasised above.

14. In fact, their Lordships were considering the decision of Ramamurti, J., reported in S.A. Henry v. J.V.K. Rao, : AIR1972 Mad64 wherein the learned judge has discussed as to what is meant by roof-changing and 'structural alterations' in paragraphs 24 and 25 at page 305 of the Reports. That was the matter in issue or challenge before the Division Bench. Their Lordships did not accept the finding in paragraph 24. Only for that purpose, the word repairs also came for consideration. In fact, the only question that came for consideration before the Division Bench was, whether the building requires demolition and reconstruction, and what is meant by 'demolition of the building.'

15. In this case, for the purpose of keeping the building in a sound state, certain alteration have to be made, and evidence that was let in was that the alteration was for the purpose of restoring the building to its original position. If, for the said purpose, some improvement or alteration is made, which includes roof-change also, it will squarely come within the definition of Section 2(7) of the Act. The concurrent findings of the Authorities below are, therefore, confirmed, and the Revision Petition is dismissed, however, without any order as to costs. C.M.P.No. 15963 of 1995 for vacating the stay is dismissed consequently.

16. After the order was pronounced, counsel for the petitioner sought time to hand over possession so as to enable the landlord to effect the repairs. He is granted the months time on the undertaking that the building will be handed over to the landlord to enable the landlord to effect repairs. Undertaking is to be filed within ten days from today. In case she fail to do so, the landlord is entitled to get possession as if no time is granted.

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