

(2006) 12 MAD CK 0017
In the Madras High Court
Case No : C.R.P. No. 2000 of 1999

C. Natarajan Gounder and Chinnathanga Gounder	APPELLANT
Vs	
G.N. Shanmugam and Others	RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1), 23, 25

Citation : (2007) 1 CTC 326 : (2007) 2 LW 306

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; A.P. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Civil Revision Petition is directed against the concurrent findings of the courts below dated 30.04.1999 in R.C.A. No. 2 of 1997 passed by the Rent Control Appellate Authority (Subordinate Court), Tirupathur (arising out of R.C.O.P. No. 2 of 1996 on the file of District Munsif Court, Ambur) ordering eviction on the ground of demolition and reconstruction u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

2.1. The shop bearing Door No. 46-A in Broad Bazar, Ambur Town belongs to Late Natesa Chettiyar. The said premises was originally let out to the Second Petitioner for doing business in puffed rice. Due to old age, his son viz., the First Petitioner is carrying on the business in the said premises and paying the monthly rent of Rs. 65/-. Natesa Chettiyar filed a Petition u/s under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (in short "Act") stating that the building is aged more than 80 years and is leaking during the rainy season and seeking to reconstruct the building with R.C.C terraced roofing. Ambur Municipality has approved the plan of demolition and reconstruction and has granted approval for the plan valid from 25.09.1986 to 24.09.1987 (Ex.P.2.). After re-construction, the Landlord requires the entire building for occupation by

his son for running general stores business in addition to the book stall business.

2.2. The Petitioners/Tenants resisted the eviction petition contending that the building is in good condition and that there is no bonafide requirement. According to the Petitioners, Late Natesa Chettiar required half of the building for his personal occupation and the Petitioner has also handed over the same, but instead of occupying the same, he has let it out and there is no bonafide requirement and the building is in good condition. According to the Petitioners, there are 13 shops in the name of the First Respondent and another 10 shops in the name of G.N.Sankaran and there is no need for the respondents to construct the shop and the requirement is not bonafide.

2.3. After filing of the Petition, Landlord Natesa Chettiar died and the Respondents were impleaded as legal representatives of late Natesa Chettiar. To substantiate their case, Landlords produced Exs.P.1 to P.5 and the Second Respondent examined himself as P.W.1. Ex.C.1 was also marked. The other tenant - Kamal Basha, who is in another portion was examined as P.W.2. Onbehalf of the Tenants, R.Ws.1 and 2 were examined.

3. In consideration of the evidence, Rent Controller as well as the Appellate Authority have concurrently found that the building is in a dilapidated condition, which is more than 70 years. The Courts below have concurrently found that the requirement is bonafide and the Respondents/Landlords have got sufficient means to put up new construction.

4. Assailing the concurrent findings of the Courts below, learned Counsel for the Petitioners has contended that what is required u/s 14(i)(b) of the Act is bonafide requirement and absolutely there is no discussion by the Appellate Authority on the bonafide requirement. Placing reliance upon 1992 (1) LW 315 [C.Shanmugam v. N.S.K.Chokkalingam Pillai], it was contended that there is a mandate on the Appellate Authority to assess the evidence and give independent findings. Drawing the attention of the Court to certain passages in the Order of the Appellate Authority, the learned Counsel for the Petitioners contended that the findings of the Appellate Authority are verbatim repetition and there is no independent assessment of evidence which calls for interference by the High Court u/s 25 of the Act. The learned Counsel has also placed reliance upon the decisions reported in P.M. Punnoose Vs. K.M. Munneruddin and Others, for the same proposition.

5. Learned Counsel for the Respondents/Landlords has submitted that the age old tiled building is situated in commercial locality - Ambur Town and the Respondent/Landlords have proved their bonafide by producing approved plan for demolition and reconstruction. It was further submitted that once the Respondents have proved the age and condition of the building and their means to put up construction, the bonafide is automatically established and the Courts below have recorded concurrent findings as to the bonafide requirement. It was further submitted that though the eviction proceedings have been initiated in the

year 1986, the same has been delayed by the Revision Petitioners for the last 20 years and by this time, the cost of construction has escalated manifold.

6. To maintain a Petition u/s 14(1)(b) of the Act, the Landlord should satisfy three conditions viz., (i) bonafide intention far from sole object to get rid of the Tenants; (ii) the aged condition of the building and (iii) the financial position to demolish and reconstruct.

7. Condition of the Building:

Admittedly, the shop premises is paved with tiles constructed with brick and mud. The building is aged more than 80 years even at the time of filing the Petition in 1986. The Commissioner, who was examined as C.W.1, in her Report has stated that the Building is constructed with mud and sunshade is damaged and the backside mud wall was also found to be damaged. The building is relatively old and is in damaged condition.

8. In the pleadings, specific plea is averred regarding the condition of the building. The Second Petitioner examined as P.W.1 and another Tenant - Kamal Basha examined as P.W.2 have consistently spoken about the condition of the building and that it is aged 70 - 80 years and that the building is in damaged condition. When the building is aged 70 - 80 years, even admittedly, the Petitioners had been tenants for a long time that by itself would show that the building is very old one. The age and condition of the building and relevant factors are to be taken into account. The Commissioner was cross-examined on the line that the building is not leaking during the rainy season. It is not possible to insist that the condition of the building must be such that there is an imminent danger of the building crumbling down and only in such a contingency, the Landlord could resort to Section 14(1)(b) of the Act.

9. In the decision reported in K.J. Sivalingam Vs. S. Guruswamy and Another, , it was held as follows:

...While the age and condition of the buildings are relevant factors to be taken into account, it is not possible to insist that the condition of the building must be such that there is an imminent threat of the same crumbling down in the near future and only in such a contingency, the landlord could resort to the process u/s 14(1)(b) of the Act. 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 get a better return or to accommodate himself comfortably....

10. In the decision reported in S. Thangaswamy Vs. R. Vinayakamurthy, , it was held thus "....In my opinion, in order to satisfy the test u/s 14(1)(b) of the Act, the condition of the building need not have deteriorated to the extent of the building being in danger of crumbling down but the condition must be such as to indicate a bonafide requirement for the timely, genuine and direct purpose of demolition and reconstruction...."

11. Referring to the above said decisions and holding that the condition of the building alone is not the only aspect and that the area and nature of development in the area are also to be taken into consideration, in the decision reported in M/s. M.M. Jaffar and Co., Coimbatore and four others Vs. M/s. Coimbatore Bearing Stores, prop., T.S. Dayalan, 51 Commercial Road, Othagamandalam and others, , K.GOVINDARAJAN, J., has held thus:

...To reach the conclusion whether the building is in such a condition that it needs reconstruction, it need not be really on the basis of looking at the building or taking into account the actual physical condition of the building alone, but having due regard to various other circumstances, namely, the area where the building is situated, the nature of development that had taken place in the area etc. In the present case, it is not in dispute that the building in question is located in a busy commercial centre. Though the building was in good condition before 31.10.1984, it had substantial damage in view of the said riot that had taken place during the relevant period. Taking advantage of the said fact, and taking into account the situation, and also the area in which the building is situated, the landlords want to put up a modern building. While considering the similar situation, S.S.SUBRAMANI, J. in S. Kattappan and Another Vs. Civil Advocates Clerks' Association, , relying on the Supreme Court decision, has held as follows:

...The recent decision of the Supreme Court has also applied the same principle. When we consider the development of the locality and importance of the same, the coming up of modern buildings and also the amenities etc., should also be taken into consideration. If this is the interpretation that has to be given for the expression condition of the building, as held by the Supreme Court, "physical condition" of the building is only one of the requirements that has to be taken into account u/s 14(1)(b) of the Act along with other factors.

In view of the above, the approach of the authorities below in this case, while deciding the bonafide intention of the landlords with respect to the question of demolition and reconstruction of the building cannot be sustained. The authorities below concurrently failed to appreciate the fact that the landlords intention is to erect a new modern building in the site taking into consideration the fact that the building suffered extensive damage in the riots. The authorities below had mainly concentrated on the nature and condition of the building only, which, as held by the Apex Court and various other decisions of this Court, is not the only ground to decide the bonafide intention of the landlords to seek eviction u/s 14(1)(b) of the Act....

12. When the building is old, constructed with mud and paved with tiles and when the building is not in good condition, the Landlord's desire to put up new construction is quite natural. The position is well settled by catena of decisions of the Supreme Court. In Shakeelulr Rahman Vs. Syed Mehdi Ispahani, , the Supreme Court following the decision of the Constitutional Bench in Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, , held thus:

...Permission u/s 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time, it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission u/s 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bonafide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account : (1) bona fide intention of the landlord far from the sole objection only to get rid of the tenants; (2) the age and condition of the building (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed u/s 14(1)(b). No Court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then conclusion one way or the other has to be arrived at by the Rent Controller....

13. The Respondent also wanted to demolish the entire building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the Respondent that she had sufficient financial resources for construction of the new building. An undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of three months from the date the said respondent recovered possession of the building.

14. Based upon the evidence on record, the Courts below have recorded concurrent findings of fact regarding the age and condition of the building and that factual finding cannot be interfered with.

15. Bonafide: The other factor to be proved by the Landlords is that their requirement of the building for demolition and reconstruction is bonafide. The term "bonafide" includes the means of the Landlord for reconstruction of the building and steps taken in this regard. The Landlords have obtained Ex.P.3 Approved Plan from Ambur Municipality for demolition and reconstruction and the approval is valid from 25.09.1986 to 24.09.1987. P.W.1 (Second Respondent) has also stated that they have sufficient means to put up construction. Though the licence or sanction of the Plan lapsed, periodically, renewal of the licence is not necessary to sustain the bonafide. Holding that the Court may not insist that every year approval plan be renewed every year, in the decision reported in Ammal Pillai and Ors. v. Varadarajulu Complex 1997 1 L.W. 364, S.S.SUBRAMANI, J has held thus:

...By merely filing a licence, the landlords cannot put up the construction. Authorities are also made known at that time that there is a building, and that

has to be demolished, and it is in the occupation of the tenant. Court can take judicial notice of pendency of Rent Control Proceedings. Every year the licence will have to be renewed, and longer the pendency of the proceedings, number of times the renewal will have to be made. By the time eviction is ordered, even the Rules for granting the licence would have changed, or there may be many changes even in the locality itself, by acquisition or taking away of the property by erosion etc. By merely filing a Plan at the time of filing of petition, no body can be sure that on the basis of that plan, the landlord is going to put up construction therein. It is only for the purpose of proving the bona fides, and to show his readiness to put up the construction, a Plan will have to be filed. By the action of the tenant, the landlord is not in a position to get possession, and he has to allow the licence to lapse. The Court may not insist that every year the landlord should get it renewed. After the eviction petition is filed, if the landlord is not taking steps for immediate demolition and reconstruction, the Act provides the legal consequences....

16. Regarding lack of bonafides: The learned Counsel for the Petitioners contended that permission cannot be granted for the mere sake of asking it and there is lack of bonafide. Earlier, eviction Petition was filed against the Petitioners, in which a compromise was arrived at and the Petitioners are said to have surrendered 50% of the building in their occupation. Onbehalf of the Petitioners it was submitted that though 50% was surrendered, the landlord did not take possession, but had let it to third party/PW-2 - Kamal Basha which clearly shows that the landlord wants to evict the Petitioners in one way or other, for letting out to third parties to get higher rent. Considering the age and condition of the building, this contention cannot be countenanced.

17. Family of the landlord owns a number of shops - five shops in Bazar street and another six shops in Liquor Shop Street and several other shops. It was submitted that though the landlords own several shops, they require only the demised premises for the purpose of running book shop and there is no bonafide requirement. The fact that the landlords own other shops cannot be the ground for doubting the bonafide of the landlords. In a Petition for eviction on the ground of demolition and reconstruction, in assessing the bonafide of the landlord, existing condition, age of the building and the preparations made by the landlord, by way of getting the plan for construction of new building, are relevant factors to be considered. The fact that the landlords own other shops cannot be the overriding consideration.

18. PW-2 - Kamal Basha is in occupation of a portion of the building. As against Kamal Basha, no eviction petition has been filed. Onbehalf of the Petitioner, it was submitted that unless Kamal Basha is evicted, entire building cannot be demolished and non-filing of Petition against Kamal Basha shows the malafide of landlords. The other Tenant/Kamal Basha, who was examined as PW-2 has agreed to vacate the premises as and when required; while so, there was no necessity to file eviction petition against PW-2.

19. The learned Counsel for the Petitioners mainly contended that the Appellate Authority has not applied its mind and most of the findings are verbatim repetition of the findings of the Rent Controller and the High Court is to interfere since the Appellate Authority has not given independent finding. The learned Counsel has placed reliance upon 1992 (1) LW 315 [cited supra], in which it was held that the Appellate Authority has not independently considered the evidence available on record and on that ground, the High Court has set aside the Order of the Appellate Authority and remanded the matter to the Appellate Authority for fresh disposal. In the said case, the Order of the Appellate Authority was set aside mainly because the Appellate Authority has passed a cryptic Order, confirming the finding of the Rent Controller, which is not in the instant case before us.

20. By a reading of the Judgment of the Appellate Authority, it seems that there is repetition of the findings of the Rent Controller. Exercising power u/s 23, the mandate of the Appellate Authority is to give reasons for the conclusion and to independently consider the evidence on record. But in the present case, such irregularities do not affect the final conclusion of the Appellate Authority.

21. Admittedly, the building is situated in a busy commercial locality. Having regard to the importance of the locality and its developing nature, it is quite natural for the landlords to demolish and reconstruct the building. Keeping the building as tiled building with damaged condition would only be a burden to the landlords. In consideration of the age and condition of the building and steps taken by the landlords, the Courts below have rightly ordered eviction on the ground of demolition and reconstruction. The concurrent findings of the Courts below do not suffer from any perversity or illegality, calling for interference.

22. In the result, the order of the Rent Control Appellate Court (Sub Court) Tirupathur, dated 30.04.1999 made in R.C.A. No. 2/1997, is confirmed and this Revision Petition is dismissed. No costs.