

(1997) 07 MAD CK 0086
In the Madras High Court

G. Sastha and Another

APPELLANT

Vs

Gomathi Ammal

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

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

Citation : (1997) 3 LW 196 : (1997) 2 MLJ 521

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—C.R.P. Nos.978 and 979 of 1994 have been filed by the landlady, and the other two Revisions are by the tenants.

2. The landlady is the owner of a lodging house which she purchased in 1978. It originally belonged to one Ganesan, and because he was not

getting good income from the property, he sold the same to the landlady in this case.

3. There are about 24 rooms in the building which are used for lodging purpose, and in the downstairs, there are some shoprooms. The landlady

filed eviction petitions against various tenants u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, i.e., for demolition and

reconstruction, and also for the purpose of additional accommodation.

4. Originally the Rent Controller dismissed the eviction petition. When the matter was taken before the appellate authority, it allowed the appeal on

both the grounds.

5. The matter was taken to this Court by one of the tenants. The same was not admitted, and the aggrieved tenant filed a SLP before the Supreme

Court. It was contended before the Supreme Court that the appellate authority

got confused itself regarding the grounds u/s 14(1)(b) of the Act and Section 10(3)(c), and since it was not separately considered, the same required interference by the Supreme Court. The Supreme Court accepted contention and held as follows:

We are not satisfied that the First Appellate Court considered the questions arising under the two-provisions separately. The discussion of the

appellate authority indicates that he considered the evidence simultaneously with reference to both the grounds which are governed by separate

and independent statutory provisions. The bona fide need mentioned u/s 10(3)(c) was examined by him with reference to the need for demolition.

The need for demolition has to be established solely with reference to Section 14(1)(b) and for that purpose the provisions of Section 10 are

irrelevant. Likewise, the need mentioned u/s 10(3)(c) has to be considered solely with reference to the requirement of that provision and not with

reference to the need for demolition. The need for demolition and reconstruction mentioned u/s 14(1)(b) has to be considered in the light of the

principles laid down by this Court in P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited [OVERRULED], .

In that view, the eviction order was set aside, and the matter was remitted to the appellate authority for reconsideration of the entire case on the

available evidence. By the time the SLP was disposed of by the Supreme Court, other tenants had also filed Revision Petitions before this Court

and, in view of the order of the Supreme Court, eviction order passed against them was also set aside and the matter was remitted to the appellate

authority for reconsideration.

6. Rent Controller, as per common order, held that the landlady required the building for additional accommodation, u/s 10(3)(c), but dismissed all

the eviction petitions on the ground that the hardship of the tenant will outweigh the advantage that is likely to be obtained by the landlady by

getting an order of eviction. Regarding demolition and reconstruction, it was found by the Rent Controller that Section 14(1)(b) will not apply since

the landlady does not require demolition of the building, but only wanted certain changes to be made in the existing building. When the matter came

back to the appellate authority on remand, the appellate authority also found that the requirement of the landlady for additional accommodation is

genuine. It ordered eviction of Door Nos. 146 and 145, i.e., the respective tenant in R.C.O.P. Nos. 84 and 81 of 1981 was directed to vacate the

building. In those cases, the appellate authority further found that there is no hardship to the tenant and accommodation is available in the locality or

he could have searched for alternative accommodation in the nearby market. It was also found that the landlord will put to great hardship and

inconvenience. But at the same time, tenants will not be put to any hardship. It is against the said order of eviction, C.R.P. Nos. 1799 and 3074 of

1993 have been filed by the respective tenant.

7. One of the rooms, namely, Door No. 143 in the ground floor and situated on the western side of the staircase of the lodging house was

occupied by Co-optex. After the eviction Order was passed by the appellate authority earlier, it vacated the portion in its occupation. The same is

now in the occupation of the landlady. But the landlady failed in her claim for eviction in regard to Door Nos. 147 and 147-A, i.e., on the eastern

extremity of the entire building where the tenants are conducting a hotel by name Lakshmi Bhavan and a small bunk shop. With regard to those

portions also, the finding of the appellate authority was that the claim of the landlady is genuine, and it was also found that there will not be any

hardship to the tenant. But at the same time, it dismissed the petitioners for eviction on the ground that the landlady will have to make certain

changes to the existing building, and they are material changes. It found that the space occupied by those door numbers was bona fide required by

the landlady to park the cars of various customers. But since it could not be used as such, the appellate authority was of the view that eviction

cannot be ordered on the ground of additional accommodation. For that reason alone, the eviction petition was dismissed. It is against that order,

C.R.P. Nos. 978 and 979 of 1994 have been filed by the landlady.

8. Both the Rent Controller and the appellate authority have held that eviction cannot be had u/s 14(1)(b) of the Act. The correctness of the said

finding also cannot be doubted since the landlady does not intend to demolish the building. That finding of the Rent Controller as well as the

appellate authority, therefore, does not call for any interference.

9. Both the authorities below have held that the need of the landlord for additional accommodation is a genuine need. It held that the area where

the building is situated is one of the prime areas in the City and to conduct a lodge in that area is a profitable business. It has also been found by the

Authorities below that the space now occupied by the landlady is too meagre. The authorities upheld the contention that due to lack of space

various customers are put to great hardship which has affected the business and lodging business could be run more profitably if Other

conveniences are also provided. The claims of the landlady that for the upstairs portion and downstairs portion, she needs separate storeroom, a

rest room, a receptionist, were all found to be genuine needs, and they are all necessary for a lodging house. It was also found that the rooms

occupied by the tenants in the ground floor are also suitable for the needs of the landlady. The inconvenience to the various customers was also

taken into consideration by the Authorities below to hold that the need of the landlady is bona fide. It was further found that being a lodging house

situated in a prime locality and business area, various customers used to come in cars, and there is no parking space. The space occupied by Door

No. 147 will be suitable for the said purpose. It was found that certain changes will have to be made in the structural design and the plan filed by

the Architect was accepted. If the space comprised in Door No. 147 is available, four or five cars could be parked in that space, it being the front

portion. I think it is better to extract the very passage of the finding of the Rent Controller for the reason that I need not once again repeat the

evidence in that regard, especially when that finding is based on evidence. The relevant paragraph, namely, paragraph 13 of the order of the Rent

Controller reads thus:

The appellate authority has also believed the evidence of the landlady to come to the conclusion that the landlady has come to court with a genuine

claim, and not with an oblique motive. He also discussed the entire evidence and came to the conclusion that the downstairs portion occupied by

various tenants, is absolutely necessary for the conduct of the lodging house. The only reason given by the appellate authority to dismiss R.C.O.P.

Nos. 83 and 84 of 1981 which relate to Door Nos. 147 and 147-A, is that some structural changes will have to be made. If that be so, Section

10(3)(c) of the Act could not be attracted. In regard to the other two rooms occupied by the tenants, i.e., Door Nos. 144 and 145, since no

alterations need be made, appellate authority, found that those two rooms could be used such. Therefore, eviction was ordered. Of course, in this

case also, the appellate authority has found that there is no hardship to the tenants, if they are evicted.

10. In the revision petitions filed by the landlady, the only question that requires consideration is, whether the dismissal of the eviction petitions on

the ground that some alterations are to be made in the building is correct, and whether that will take away the claim of the landlady from the

purview of Section 10(3)(c) of the Act. It is better to extract the reasoning given by the appellate authority, refusing the order of eviction. It reads

thus:

The question is, how far the finding of the appellate authority is legally correct. Before going to the legal position, the wordings in Section 10(3)(c)

of the Rent Control Act may be extracted. It reads thus:

A landlord who is occupying only a part of a building, whether residential or non-residential, may notwithstanding anything contained in Clause (a),

apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord

in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the

case may be.

The above said sub-section permits the landlady to get possession from the tenant, if she requires the same for residential or non-residential

purpose. The only condition is that the landlady must be in occupation of a portion of the same building, and the other portion must be occupied by

the tenant. In the case of own use and occupation, Section 10(3)(a)(i) or Section 10(3)(a)(iii) is the same, that is, requirement of the landlord for

his own occupation or for any member of his family. The only difference is, in the case of Section 10(3)(c)(i), the building will be portions of the

same building, but in the case of Section 10(3)(a)(i) and (iii), the buildings will be independent structures, but both contemplate own occupation of

the landlord. Even though the word "members" is not used in Section 10(3)(c), the interpretation by the Supreme Court as well as is Court is that

members of the family are also included, and a landlord can seek eviction of a tenant for additional accommodation, for being used by a member of

his family also. In this connection, it is better to consider the definition of the word "building" given under the Rent Control Act. It is defined as "any

building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes - (a) the garden,

grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut.

It has been decided by the Supreme Court in various cases that in the case of a landlord who requires his building for his own occupation, the

requirement need not be in the same building. While getting an order of eviction, the landlord may demolish the building and put up a new building

for his convenience, and he may remodel it or even make it as a pathway for his adjoining building. All these are only for the purpose of own use of

the landlord. Some of the decisions of the Supreme Court may be considered at this juncture.

11. In *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, , their Lordships were considering the bona fide requirements of a landlord

of a building for his own occupation under the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947). The question was,

whether the landlord can put up a new building or remodel the existing building, when he pleads own occupation. The argument of the learned

Counsel was that the "own occupation" must be in relation to the same building. Repelling the contention of the tenant, their Lordships said thus:

Occupation of the premises in Clause (g) does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it

in any manner. In a case like the present, if the landlords on getting possession start their work of demolition within the prescribed period, they

would have occupied the premises in order to erect a building fit for their occupation.

12. In *Radhey Shyam v. Kalyan Mal* AIR 1985 S.C. 130 the question was under the M.P. Accommodation Control Act. There, the landlord

contended that he wanted to make use of the building for effecting the required alterations. A contention was taken that since the building was

required for effecting alterations, the landlord was bound to provide an equal extent of accommodation on such alteration. The said contention was

repelled holding that the occupation was only of the landlord, and for that purpose he was making the repairs or alterations. In that case, it was

held thus:

Where the order of eviction is based really and substantially only u/s 12(1)(f) of the Act, i.e., on the ground of bona fide requirement of the

landlord, the fact that Section 12(1)(h) which envisages eviction of tenant on the ground of effecting either repairs or alterations is also mentioned in

the order does not make the order of eviction purely one u/s 12(1)(h). Consequently, Section 18 will not be attracted and it would not be

obligatory on the part of the landlord to provide accommodation of equal extent to the tenants in the new building to be constructed by him.

13. In *Arya Samaj, Sagar and Others Vs. Pinjamal and Another*, also, it was held thus:

Section 12(g) deals with the situation where the building has become unsafe or unfit and the landlord wants the premises for carrying out repairs.

Section 12(h) on the other hand deals with the case where the accommodation is required bona fide by the landlord for the purpose of building or

rebuilding or making thereto any substantial additions or alterations and such additions or alterations cannot be carried out without the

accommodation in the occupation of tenant being vacated. Similar provision in Section 31(1)(g) under the Bombay Rents, Hotels and Lodging

House Rates Control Act, 1947 came up for consideration before this Court in *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, .

This Court held that the case in question fell under Clause (g) which is similar to Clause (f) of the instant case before us of Madhya Pradesh

Accommodation Control Act, Section 12(f). This Court further held that the mere fact that the landlord intended to make alterations in the house

either on account of his sweet will or on account of absolute necessity in view of the condition of the house, would not affect the question of his

requiring the house bona fide and reasonably for his occupation, when he had proved his need for occupying the house. Nothing further need be

proved. In this case, the case of the landlord-appellant is clearly covered by Section 12(1)(f). The fact that the building had to be reconstructed for

the said purpose is irrelevant.

[Italics supplied]

14. In *K.A. Anthappai Vs. C. Ahammed*, the case was under the Kerala Buildings (Lease and Rent Control) Act. There, the landlord contended

that he had to make alteration after eviction of the tenant. In paragraphs 10 and 11, their Lordships held thus:

The considerations which weighed with the High Court in taking a view contrary to that taken by the appellate authority do not, in our opinion,

justify interference in exercise of revisional jurisdiction. That the appellant has been living with his son in the house belonging to him (son) cannot

lead to the inference that the claim of the appellant that he wants to live in a house of his own is false and not bona fide. The same is true about the

building in question not having the requisite facilities and being not in a fit condition for residence because the appellant can make suitable repairs

and alterations in the same to make it fit for residential purpose. The claim of the landlord that he needs the building bona fide for his personal

occupation cannot be negated on the ground that the building requires repairs and alterations before the landlord can occupy the same. In

Devaky v. Krishnakutty (1987) 1 K.L.T. 671 it has been observed:

...Once the landlord establishes that he bona fide requires the building for his occupation of the member of his family, he can recover possession of

the building from the tenant in respect of the fact whether he would occupy the same with or without making any alterations. (p.673)

We are in agreement with this view which is in consonance with the decision of this Court in *Ramnikal Pitambardas Mehta Vs. Indradaman*

Amratlal Sheth, . In that case, it has been laid down:

...The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of

the condition of the house, does not affect the question of his requiring the house bona fide and reasonably for his occupation, when he has proved

his need for occupying the house. There is no such prohibition either in the language of Clause (g) or in any other provision of the Act to the effect

that the landlord must occupy the house for residence without making any alterations in it. There could not be any logical reason for such a

prohibition. (p. 5) (of S.C.R.) : (at p. 1678 of A.I.R.)

Similarly in Sub-section (3) of Section 11 there is no prohibition that a landlord must occupy the house for residence without making any alterations

in it. The finding recorded by the appellate authority, after considering the pleadings and evidence on record, that the appellant has succeeded in

establishing that he needs the building bona fide for his own occupation must, therefore, be restored.

15. In one of the decisions of the Kerala High Court reported in *Sarada v. Kumaran* 1969 K.L.T. 133, landlord had put up a lodging house near

the tenanted premises. He sought eviction of the tenant on the ground that he wanted to demolish the superstructure to provide a pathway to the

lodging house. The question was, whether the same will come under own occupation. There, learned Judge of the Kerala High Court held that

once the bona fides of the landlord are proved, it is not the Court's concern whether he uses the building as such or whether he uses it as a

pathway. I have already referred to the definition of the word "building". In the ordinary definition of building, it means not only the fabric of the

building, but also the land upon which it stands. In the decision reported in 1969 K.L.T. 133 the learned Judge has held thus:

Under Section 11(3) a bona fide need of the landlord need not be of the identical building as the purpose of the occupation is immaterial. If

occupation by a landlord in the re-constructed building after demolishing the existing building is sufficient ground within the meaning of Section

11(3) the question would arise whether the need to provide a passage through the site on which the original structure stood after its demolition will

attract Section 11(3). The word "occupation" does not necessarily refer to occupation as residence. An owner can occupy a place by making use

of it in any manner: The fact that the pathway is intended for the customers of the landlord to go to the lodging house and a restaurant belonging to

him does not mean that the landlord will not be in occupation of the same. The term "building" generally, though not always, implies the idea of a

habitation for the permanent use of man, or an erection connected with his permanent use. It imports tangibility, and may include the land on which

it stands, as well as adjacent land. The definition of the term building under the Act is not precise and an exhaustive definition of the term is also not

possible. The meaning of the word "building" "in ordinary language, comprise not only the fabric of the building, but the land upon which it stands.

The landlord for the purpose of the pathway is only going to demolish the superstructure or the edifice enclosing the space. The pathway will be

enclosed on the sides by the walls and the pathway which was part of the building will become part of the lodging houses to be constructed by him.

Thus it will be a building itself as defined u/s 2(1) of the Act. The conversion of the existing building into a pathway for the use of the landlord is a need covered by Section 11 (3) of the Act.

According to me, the same principles will have to be applied in the case of additional accommodation also. As I said earlier, "own occupation"

coming u/s 10(3)(c) is another species of "own occupation" coming u/s 10(3)(a)(i) and Section 10(3)(a)(iii) the only difference being in one case

the landlord is making for the entire building and in the other only that part of the building occupied by the tenant. In a case of additional

accommodation, the landlord comes to court with a plea that the present space is not sufficient, and he needs some more accommodation to suit

his needs. He needs the building for his occupation. His need is not for an identical building. Once the bona fide is proved and court is also satisfied

that the landlord is in need additional space. It is not the concern of the court, how the landlord uses it. In this case, the appellate authority has held

that the claim of the landlady is genuine, and she badly requires the premises in question for additional accommodation, "but at the same time, it

denied eviction on the ground that certain structural alterations will have to be made Rent Control is not expected to see how the landlord uses it.

The court is concerned only with the question whether the claim is genuine or not. That part of the finding of the appellate authority is not within his

realm. If the landlady makes use of it as a car park after making structural changes and after demolishing the eastern or southern wall, it cannot be

said that she is not using that as additional accommodation. On the other hand, that will amount to her making use of the building for her

requirement, and that too as additional accommodation. According to the court, the very section also gives a clue in that regard. While interpreting

this section, the Court, in various cases has held that in a claim u/s 10(3)(c), the landlord has been given some more indulgence. In an early

decision of this Court reported in *Saraswathi Sriraman and Another Vs. Pappi Chetty Raghaviah Chetty's Charities and Others*, , it was held thus:

In Section 10(3)(c) of the Act, the building referred to is the entire building and not the building with the restricted meaning i.e., in occupation of the

tenant alone or of the landlord alone. When the landlord wants additional accommodation he may either need it for residential or for non-residential

purposes. The restrictions that are made applicable to Section 3(a) with regard to the nature of the user, are not insisted upon in case of application

under Sub-section 3(a)(c). The purpose behind the section also appears to be obvious that in the case of additional accommodation, the landlord

is given a little more indulgence.

So, even if the tenant is making of the building for residential purpose, landlord, if he proves a claim u/s 10(3)(c) can make use of the same for

nonresidential purpose of vice versa. This denotes that structural alterations is also contemplated in their claim. It was held in V.S. Ahmed Thambi

Maraicayar Vs. Revathi Stores, That in such cases the landlord, if he wants additional accommodation either for one of the purpose or both the

purpose, residential or non-residential, is entitled to get an order in his favour. If this is the aim that was sought to be achieved by that section, the

dismissal of the eviction petition on the ground that material alterations will have to be made to the structure, cannot be sustained.

16. In the result, C.R.P. Nos. 978 and 979 of 1994 will have to be allowed, and they are accordingly allowed. The landlady is entitled to get

possession of Door Nos. 147 and 147-A, on the ground that those premises are required by her by way of additional accommodation.

17. C.R.P. Nos. 1799 and 3074 of 1993 : In regard to both these revisions filed by the tenant, both the Authorities below have concurrently found

that the claim of the landlady is bona fide Once it has been found that the claim of the landlady is genuine, it is not for the court to consider the

sufficiency of the existing accommodation. In the decision reported in R. Srinivasan and Another Vs. K.S. Muthu Mudaliar and Sons by Partner,

K.S. Muthu Mudaliar and Others, , it was held thus: (Vide Headnotes)

In this case, there is no dispute that the landlord's son is carrying on business in partnership with others in a rented building viz., at Door No. 388,

Bazaar Road. It is also not in dispute and as could be seen from the oral evidence, that the landlord's son is carrying on a partnership business in

Door No. 19-A. Under such circumstances, it is difficult for the court to appreciate the reasoning of the Rent Controller, as confirmed by the

appellate authority, that the landlord can search for better place/or his son's business, that the accommodation available with the tenant is not

sufficient, etc. [Para. 11]

In the instant case, it has been clearly established that the landlord has not only a genuine requirement to possess the shop let out to the tenant but it

is necessary for him to do so in order to carry on the business of his wife and son in order to augment their income and maintain themselves

properly. Being the owner of the premises, he cannot be denied eviction and be compelled to occupy a rented building merely to enable the tenant

to carry on his business at the loss of the landlord. This shows that great prejudice will be caused to the landlord if his petition is dismissed. [Para.

12]

An argument was taken by learned Counsel for the petitioner in this case that subsequent to the eviction petition, landlady had obtained possession

of Door No. 143 which is situated on the western side of the staircase, and that will satisfy the demands of the landlady. In view of the decision

cited supra, I do not agree with the said submission. That apart, in this case, the landlady filed eviction petition against that tenant also claiming that

she wanted the entire ground floor as additional accommodation. Authorities below have found that the requirement is genuine. Merely because the

landlady obtained possession of one room in the ground floor, that will not satisfy her demands.

18. Learned Counsel also submitted that with regard to Door No. 146, there had been prior proceedings between the very same landlady and

tenant. The tenant had to move the Accommodation Controller since certain amenities were cut off and it was only thereafter the present petition

was filed. These facts were considered by both the authorities below, and they have rightly come to the conclusion that the earlier proceedings

have nothing to do with the present bona fide claim. It was also faintly argued by learned Counsel about the relative hardship and advantage. Even

though the rent controller found that point in favour of the tenant, the appellate authority reversed it. I do not think that the decision of the appellate

authority in that regard is in any way incorrect. The tenants have contended that they are in occupation for a long period and they will not be in a

position to get a building with similar convenience in the same locality. According to them, they have spent huge amount for interior decoration,

huge amount is due from their customers, etc. None of these can be considered as a hardship. Interior decoration alone by them was for the

purpose of their business, to attract customers. Suggestion was put to the tenants whether they verified if alternative accommodation is available in

the near by market. They simply pleaded ignorance. If they proved that no additional accommodation is available at all anywhere in that town, that

would have been a genuine ground. But what they expect is an alternative premises in this very some locality. This demand or claim by the tenants

can only be construed as a demand of impossibility. It has been so held in the decision reported in Mst. Bega Begum and Others Vs. Abdul Ahad

Khan (Dead) by Lrs. and Others, . There also, the tenant was conducting a hotel for more than 30 years and he said that he is not in a position to

get a building in that locality. The said contention was rejected. In paragraph 24, their Lordships held thus:

It was then submitted by Mr. Andley, counsel for the respondents that if the respondents are evicted they will be thrown out on the road; that the

hotel is the only source of their sustenance and they are not likely to get any alternative accommodation on being evicted. If the defendants had

proved that they will not be able to get any accommodation anywhere in the city where they could set up a hotel, this might have been a weighty

consideration, but the evidence of all the witnesses examined by the defendants only shows that the defendants may not get alternative

accommodation in that very locality where the house in dispute is situated. There is no satisfactory evidence to prove that even in other business

localities there is not possibility of the defendants getting a house. To insist on getting an alternative accommodation of a similar nature in the same

locality will be asking for the impossible. The defendants are tenants and had taken the lease only for 10 years but had overstayed for 20 years and

they cannot be allowed to dictate to the landlord that they cannot be evicted unless they get similar accommodation in the very same locality.

19. In a recent decision of our High Court reported in Hotel De-broadway, etc. v. Snow White Industrial Corporation, etc. (1997) 1 L.W. 421 a

learned Judge of this Court has held thus:

Mere inconvenience of the tenant cannot deprive the landlord of his bona fide right to have additional accommodation in the premises.

Learned Judge further held thus:

The problem of getting alternative accommodation cannot be taken as a relevant

ground for rejecting the claim of the landlord. Once the landlord's requirement regarding the portion of the premises in question in the occupation of the tenant for his additional accommodation is bona fide the fact that the tenant cannot get an alternative accommodation alone, cannot be the basis to reject the landlord's claim.

I fully agree with the conclusion of the learned Judge. Therefore, C.R.P. Nos. 1799 and 3074 of 1993 are liable to be dismissed, and they are accordingly dismissed.

20. In the result, C.R.P. Nos. 1799 and 3074 of 1993 are dismissed. C.R.P. Nos. 978 and 979 of 1994 are allowed. There will be no order as to costs in all these revision petitions.