

(1998) 12 MAD CK 0073

In the Madras High Court

Case No : C.R.P.Nos. 156, 201, 223, 224 to 229, 293, 344 and 3248 to 3250 of 1995 and Connected C.M.Ps.

Mrs. Rookshana Nazir

APPELLANT

Vs

U.M.D.Shaukathulla and 5 others

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1), 25, 5

Citation : (1998) 3 CTC 687

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. J.R.K. Bhavanandam, M/S. Himmatmal Mardia, Mr.Lakshmi Narain, Mr.T.R. Mani, for M/s. Shah and Shah, M/s. Shah and Shah, Mr.T. Viswanatha Rao, Mr. D. Ashkok Kumar, for the Appellant; Mr. R. Krishnamoorthy, for Mr. A.J. Abdul Razack, for the Respondent

Final Decision : Dismissed

Judgement

1. In all these revisions, the respondents are the owners of the petition mentioned building and the petitioners are the tenants. The

respondents/landlords filed the respective petitions for eviction against all these petitioners/tenants u/s 14(1)(b) of the Tamil Nadu Buildings (Lease

& Rent Control) Act 18 of 1960 on the ground that the building in question is situated in a highly commercial locality, that the age of the building is

more than 70 years and it has outlived its age, that the building is structurally unsound and requires immediate demolition and reconstruction and

that they have decided to demolish the existing building and construct a shopping-cum- commercial complex using the latest technology, by which

the building will yield very good returns, not less than five times of the present rent. With respect to the capacity to reconstruct the building it is

stated by the respondents that they are possessing necessary means to carry out the same. It is also stated that they are preparing necessary plan

for obtaining sanction from the concerned authorities.

2. The respective petitioners/tenants resisted the eviction petitions mainly on the ground that the building is not in dilapidated condition, that the

respondents are not having sufficient means for reconstruction and that there is no bona fide intention to demolish the petition mentioned building,

and the eviction petitions have been filed only to get rid of the tenants. Engineers were appointed on the side of the landlords and also on the side

of the tenants. The respective parties adduced oral evidence and filed documents in support of their cases. Before the learned Rent Controller XII

Judge, Court of Small Causes, Madras, the landlords produced Ex.P-1 the permission given by the Corporation to demolish the building. To

establish the means, the landlords produced documents marked as Exs. P7, P8, P-19 series, P-20 and P-32 to show the deposit in the banks. To

establish the availability of the properties, the landlords filed Exs. P-10 to P-14, P-21 to P-23, P-25, P-27 and P-30. The landlords also

produced Ex.P-9 to prove that they are having a policy of life insurance for a sum of Rs.5,00,000. On the basis of those documents and evidence

available on record, the Rent Controller has come to the conclusion that the building requires demolition and reconstruction and the landlords are

capable of gathering means for the purpose of reconstruction and so the intention to demolish and reconstruct the building is nothing but bona fide

one. Aggrieved, the petitioners/tenants filed the respective appeals before the learned Appellate Authority. The Appellate Authority/IV Judge,

Court of Small Causes, Madras also concurred with the findings of the Rent Controller, dismissed the appeals. Still aggrieved, the tenants have

filed the above revisions.

3. Mr.T.R. Mani, the learned Senior Counsel appearing for the petitioners in C.R.P. 228 of 1995 has submitted that though the landlords have

come forward with the plea that the building is old and unsound, which was specifically denied by the respondents/tenants in the counter, the

authorities below have not properly appreciated as to whether the landlords have established that the building in question requires immediate

demolition and reconstruction. Regarding P.W.2, the Engineer, the learned Senior

Counsel has submitted that he has not at all inspected the each and every shop in question, after issuing notice to the tenants and so his report without even making proper inspection cannot be relied on. The learned Senior Counsel has further submitted that the age of the petitioners 3 and 4 in the R.C.O.Ps. had not been mentioned and so the petitions at their instance cannot be maintained and so the petitions at their instance cannot be maintained as they are minors. He has also submitted that in the petition and in the decree the description of the property has not been properly mentioned. The learned Senior Counsel, with respect to the means has submitted that in the absence of proper sanctioned plan to arrive at the cost of construction, the authorities below are not correct in holding that the landlords have established that they are having enough funds to reconstruct the premises. He has further pointed out about the estimate given by the landlords and the findings of the authorities below regarding the same. Even with respect to the documents filed to prove the means, the learned Senior Counsel has submitted that most of the documents are xerox copies and so they are inadmissible in evidence. With respect to the bonafide intention of the landlords, the learned Senior Counsel has submitted that when the landlord failed to apply and obtain sanctioned plan for reconstruction, it cannot be said that the landlords are going to reconstruct the premises in question. Further, they have obtained sanctioned plan only for the purpose of demolition of the premises, The learned Senior Counsel has relied on the evidence both oral and documentary with respect to the pleadings in the earlier proceeding between the petitioners and the original owner in fixing the fair rent, in regard to the building. On the basis of the same, the learned Senior Counsel has submitted that in 1981, it was stated that the age of the building was only 60 years and so it cannot be now stated as 100 years. Relying on those proceedings, the learned Senior Counsel has submitted that in 1981 the landlords/original owners did not feel that the building in question was in a dilapidated condition and so the case of the landlords cannot be accepted that within seven years the building in question has become dilapidated one. On that basis the learned Senior Counsel has submitted that there is no bonafide intention on the part of the landlords to demolish and reconstruct the building in question. He has further relied on the evidence

of P.W.1 and submitted that he is only an assistant of the power agent and so his evidence cannot be taken into consideration to decide the case.

4. Mr. Shah, the learned counsel appearing for the respective petitioners in the Revisions has submitted that once the orders were passed in the fair

rent proceedings, the counter filed by the tenants cannot be relied on to decide the case against them. He has also submitted that the documents to

establish the means also cannot be relied on without even examining the parties to the documents.

5. Mr. Himmatmal Mardia, the learned counsel appearing for the petitioners in C.R.P.No. 201 of 1995 has submitted that the shop portion with

respect to this C.R.P.No.201 of 1995 is a separate one as defined u/s 2 of the said Act and there is no evidence available on record that the said

shop portion is in dilapidated condition, and in the absence of any such evidence, the authorities below are not correct in ordering eviction on that

ground.

6. Mr. Lakshmi Narain, the learned counsel appearing for the petitioner in C.R.P.No. 223 of 1995 has submitted that the bona fide intention

mentioned u/s 14(1)(b) of the said Act is different from the bona fide intention which is required with respect to the other provisions of the Act.

According to him, the bona fide intention mentioned u/s 14(1)(b) of the said Act should be with respect to the condition of the building which

requires immediate demolition and reconstruction. With respect to the other aspects, the learned counsel has adopted the other arguments

advanced by the other learned counsel. He has further submitted that in 1981, the fair rent proceeding was taken by the original owner. Since the

present landlord cannot file a further petition in view of Section 5 of the said Act, with the mala fide intention to get rid of the tenants, the landlord

has filed the eviction petition.

7. Mr.R. Krishnamoorthy, the learned Senior Counsel appearing for the respondents/landlords has submitted that though in the petition it is

specifically stated that the age of the building in question is 70, there is no acceptable evidence on the side of the tenants. With respect to the

means, the learned Senior Counsel has relied on the abovesaid documents in support of his submission that the landlords are having sufficient

means to reconstruct the building. He has further relied on the Ex.P-1 under

which the landlords have obtained permission for demolition of the building. The learned Senior Counsel has submitted that the respondents/landlords have explained as to why they have not obtained sanctioned plan. He has relied on the evidence of P.W.2 on that aspect. Relying on the counters filed in the fair rent proceedings, the learned Senior Counsel has submitted that the tenants themselves admitted that the building is in dilapidated condition and so the admission of the opposite parties to test the evidence, according to him, the landlords, have established their requirement u/s 14(1)(b) of the said Act, including the bona fide intention, which has been accepted by the authorities below. Relying on the decisions with respect to the scope of Section 25 of the said Act, the learned Senior Counsel has submitted that this Court may not interfere with the concurrent findings of the authorities below with respect to the issue involved.

8. From the respective submissions put forward by the respective counsel, this Court has to decide as to whether the respondents/landlords have established their requirements u/s 14(1)(b) of the said Act, and the same is a bona fide one.

9. As stated supra, the landlords have come forward with the plea that the building in question is more than 70 years old and it is in a dilapidated condition. It is also stated that the building is required for the purpose of constructing a modern shopping complex using the latest technology, which would give very good returns not less than five times the present rent. From the abovesaid pleadings, it is very clear that the landlords have not only come forward with the plea that the building has to be demolished on the ground that it is in dilapidated condition but also with the intention to construct a modern shopping complex using the latest technology through which they would earn good income. In this case, according to the respondents, the age of the building is 70. Even under Ex.P-3 dated 9.8.1985, the sale deed in favour of the respondents, it is stated that the age of the building was 70 years as on that date. The authorities below have relied on Exs. P-4 to P.6, the counter affidavits filed by the tenants in the fair rent proceedings filed in 1981 wherein it is specifically stated that the building is very old and in dilapidated condition.

10. The learned Senior Counsel appearing for the tenants has submitted that the

said counter affidavit should not be relied on, when the order was passed. It is also stated that there are discrepancies in the evidence adduced on behalf of the landlords, and in the pleadings with respect to the age of the building. But the authorities below after taking into consideration of the materials available on record had factually come to the conclusion that the building is 70 or 80 years old. With respect to the condition of the building, the learned counsel appearing for the petitioners have submitted that the report of P.W.2 cannot be relied on as he has not inspected the each and every portion of the building itself. To come to the conclusion that the building is old and the condition of the building also bad, the authorities below have relied on Exs.P-4 to P-6, the counter affidavit filed in respect of the fair rent proceedings in which the tenants have categorically stated that the building is in dilapidated condition and is very old. When the petitioners themselves have come forward with such plea with respect to the same premises, as submitted by the learned Senior Counsel for the respondents, the admission of the tenants is the best evidence to decide the issue. Though the learned counsel appearing for the petitioners have submitted that the said counter affidavit cannot be relied on, I am not able to accept the said submission. It is not in dispute that the counters were filed on their instruction. When the petitioners have filed the counters with respect to the same building, it can be taken into consideration. It cannot be said that the authorities below have simply relied on the report filed by P.W.2 to come to the conclusion that the building is not in good condition. The authorities below have not only taken into consideration of the report of P.W.2 but also the other oral and documentary evidence available on record. No Court can fix any limit in respect of the age and condition of the building for the purpose of ordering eviction u/s 14(1)(b) of the said Act. Mere reading of Section 14(1)(b) of the said Act along with Section 16, it can be said that for eviction of tenant on the ground of demolition of the building for erecting a new building, the building need not be a dilapidated and dangerous one for human habitation. Certain safeguards have been provided u/s 16 of the said Act that the permission has been granted to the Rent Controller u/s 14(1)(b) of the Act for demolition and reconstruction, but, if such demolition is not carried out under the terms of the order and the undertaking,

then the Rent Controller can order the landlord to put the tenant in possession on the original terms.

11. In *K.J. Sivalingam Vs. S. Guruswamy and Another*, , while dealing with the scope of Sec. 14(1)(b) of the Act, it is 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 under Sec. 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".

12. *AR. Lakshmanan, J.*, in the decision in *S. Thangaswamy Vs. R. Vinayakamurthy*, , while dealing with the scope of the said Section has held as follows:

In my opinion, in order to satisfy the test under Sec. 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 bona fide requirement for the timely, genuine and

direct purpose of demolition and reconstruction".

13. While dealing with the similar issue, the Apex Court in the decision in *Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal*, , has held as follows:

In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission u/s

14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that 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 was bona fide, the Rent Controller has to take into account

(1) bona fide intention of the landlord far from the sole object only to get rid of the tenant; (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 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 a conclusion one way or other has to be arrived at by the Rent Controller"".

14. To reach the conclusion that the question as to 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.

15. 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 under Sec, 14(1)(b) of the Act along with other factors.

16. Though the learned counsel appearing for the petitioner has submitted, relying on the decision in P.Orr & Sons (P) Ltd., v. M/s. Associated

Publishers (Madras) Limited, 1990 (2) L.W. 547, that it should be proved that the condition of the building is in dilapidated condition to sustain the

eviction petition filed u/s 14(1)(b) of the Act, in view of the subsequent decision of the Apex Court, I am not in a position to accept the same. The

condition of the building is also to be taken into consideration but it cannot be the only factor to sustain the eviction petition.

17. Venkatadri, J., as he then was, in the decision in R.V.N. Chandrasekara Chetty Vs. Kakumani Adikesavalu Chettys Charities, , while dealing

with a case under Sec. 14(1)(b) of the Act has held as follows:

Thus the word "bona fide" plays an important part in the minds of the deciding authority, whenever the landlord files an application requiring the

building for the purpose of demolition or reconstruction. It is to be noted that in the analogous provisions of the English Act the words used are

"reasonably required". They do not contain the words "bona fide". It is only in our statutes the courts have attached great importance to the

ingredient "bona fide" when the landlord sues to evict the tenant. "Bona fide" may be proved in any ordinary way like any other fact in issue or

relevant fact. There is no such rule of law, that "bona fide" being the subjective matter could only be proved by the plaintiff stepping into the

witness box - *Atmaram v. Narayan-Arjun*, 23 Bom. L.R. 972 : AIR 1922 Bom. 109. While considering the "bona fides" the Judge should take

into consideration every circumstances affecting the interests of the landlord and the tenant as well as the interests of the public, at the date of

hearing.

18. In the decision in *S.P. Sabura Begum v. M.K. Thangavelu*, 1997 (1) L.W. 418, following the decision in *Vijay Singh etc. etc. Vs.*

Vijayalakshmi Ammal, , this Courts has held as follows:

The Appellate Authority has not considered any other factor except applying the decision in , *P.Orr. & Sons case*, 1990 (2) LW 547. The

Appellate Authority has not understood the scope of that judgment. Even in that judgment, the Supreme Court has held that the condition of the

building need not have deteriorated to the extent of its being in danger of crumbling down, but it should indicate the bona fide requirement for the

timely, genuine and direct purpose of demolition and reconstruction. In the recent judgment of the Supreme Court reported in *Vijay Singh etc. etc.*

Vs. Vijayalakshmi Ammal, the Supreme Court has held that it is difficult to accept the stand of the appellants (tenants) that the building must be

dilapidated and dangerous, unfit for human habitation for granting permission under S. 14(1)(b) of the Act. The judgment reported i S.

Thangaswamy Vs. R. Vinayakamurthy, is also on the same line. In the decision reported in *Venugopal & others v. Fathima Beevi* and another,

1996 (2) L.W. 772 it is held that if the intention of the landlord is proved to be genuine and not spurious or specious, the landlord would be

entitled to obtain an order for eviction under S. 14(1)(b) of the Act whether or not the condition of the building is such as to require immediate

demolition, the age and dilapidated condition of the building not being sine qua non for such eviction. The said judgment will directly apply to the

facts of the present case. I find from the oral and documentary evidence let in this case that the requirement of the landlord is a bonafide one. The

learned counsel for the respondent is not able to persuade me to take different view. So, I have no hesitation in holding that the Appellate Authority

is not correct in allowing the appeal, on the basis of the physical condition of the building alone. Even then, the report of the Advocate-

Commissioner will reveal that there are some cracks in the building. For the abovesaid reasons, I set aside the order of the Appellate Authority,

and restore the order of eviction passed by the Rent Controller"".

19. While dealing with the similar facts, S.S. Subramani, J. in the decision in S. Raju and others v. K. Nathamani, 1998 (3) L.W.214 has held as

follows:

I have already mentioned about the importance of the locality where the building in question is situated. It is said to be one of the nerve centers of

Erode Town. The tenants themselves had to repair the demised premises on various occasions. It is more than 50 years old. It is nobody's case

that after the construction of the building 50 years back, no other buildings have come up in that locality. When new buildings with modern

amenities have come up in that locality, naturally, the schedule building becomes unsuitable to the surrounding. In fact, the building in question in its

present condition is a liability to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden

for ever. If a new building is constructed in that place, it can never be doubted that both the landlord and the tenants will be in a better position,

and it will be economically advantageous to both of them, and it will not be a proper construction of the statute if the landlord is asked to continue

to retain the building as it is after effecting repairs. Tenants may be satisfied with the present state of the building since they have to pay only a

nominal rent. But, the Rent Control legislation, as interpreted by the Honourable Supreme Court is beneficial to both the landlord and tenant, and,

therefore, interests of both of them should be taken into consideration. If Section

14(1)(b) of the Rent Control Act is to be interpreted in that way,

I do not think that the Authorities below have gone wrong in ordering eviction. The landlord has produced the estimate for reconstruction, the plan

and licence. The Authorities below have also believed the evidence of the landlord in coming to the conclusion that the building requires

reconstruction. Taking into consideration the evidence of the tenant also, the Authorities were justified in coming to the conclusion that the building

requires immediate demolition and reconstruction. In this connection, the decision reported in Venugopal & others v. Fathima Beevi and another

1996 (2) L.W. 772 also requires consideration wherein I have said that the non-examination of a Commissioner or Engineer is not fatal to the

case, and for that reason alone, an eviction petition cannot be dismissed. The Court is concerned about the genuineness of the claim"".

From the abovesaid settled principles of law, it is very clear that the submission of the learned counsel for the petitioners cannot be accepted,

unless the condition of the building is established that it is in a dilapidated condition, and the landlords are not entitled to sustain the petition u/s

14(1)(b) of the Act.

20. The learned counsel for the petitioners have submitted that the landlords have not established their means. As stated earlier, the landlords have

filed a number of documents to show both their deposits in the bank and they are also having a number of immovable properties. The learned

counsel for the petitioners, while objecting the same, have submitted that most of the documents are xerox copies, and the parties to the documents

have not been examined. So, the authorities below should not have relied on the said documents to come to the conclusion that the respondents

are having means. I am not able to accept the said submission also. The Rent Control proceedings, cannot be compared with the proceedings

under the Code of Civil Procedure, and the Rent Control proceedings are only summary proceedings. The landlords have to establish before the

authorities below, on the basis of the documents that they are capable of mobilising means. The appellate authority also has given elaborate reasons

in paragraphs 14 to 17 of the order regarding the same. So, I am not inclined to interfere with the said findings on the basis of the technical

objections that had been raised on behalf of the petitioners. It cannot also be

said that the finding of the appellate authority is not based on any evidence at all.

21. Further, to accept the report of P.W.2, the appellate authority has given valid reasons in the order in paragraphs 11 and 12, which also cannot be treated as wrong.

22. To substantiate the case of the petitioners/tenants that the landlords are not having any bonaftde intention to demolish the building, the learned

counsel for the petitioners have submitted that the landlords have not obtained any planning permission for reconstruction, though they have

produced the permission to demolish the building. When the premises is located in an important business locality it cannot be said that vacant land

will remain in the place of the existing building, after its demolition, without any reconstruction in that place. P.W.2 in his evidence has stated that

the reason for not applying for the planning permission is that they have to pay a fee of Rs.1,00,000 for every six months towards licence fee.

Though the learned counsel for the petitioners have submitted that they are not competent to speak about the fees, they have admitted that there is

no contra evidence available on record. The eviction petitions have been filed in 1987 and the above revisions are now posted for dismissal, after

11 years. If getting the planning permission is compulsory on the date of the petition, then by this time, the landlords should have spent a sum of Rs.

22,00,000, only for the purpose of keeping the sanctioned plan in respect of the building in question, alive.

23. While appreciating the necessity for filing a sanctioned plan, Ramanujam, J., as he then was, in the decision in A.S. Shaik Fathima and Others

Vs. Omer Cloth Store and Others, , has held as follows:

So far as the first reason given by the appellate authority that no sanctioned plan for reconstruction has been obtained is concerned, the petitioners

have explained that if they obtain permission to reconstruct and also a sanctioned plan for that purpose, the construction should be commenced

within six months from the date of issue of the permit and the construction should be completed within two years from the date of the permit.

Otherwise, fresh permission has to be obtained on payment "again" of the necessary building licence fees before proceeding with further work.

According to the petitioners as the ultimate decision in the eviction petitions will

take some time they thought that they can apply for permission to reconstruct and obtain the sanctioned plan, after the Court orders eviction as otherwise any delay in the disposal of the eviction petitions will result in the petitioners paying the licence fee every time when the permission lapses for purpose of getting renewal of the permission or for getting fresh sanction of the plan. According to the petitioners if they had obtained plan for reconstruction even before the filing of eviction petitions and the eviction proceedings are dragged on, they will have to pay the renewal fees time and again and that will involve them huge expenses which they wanted to avoid by merely applying for permission to demolish and obtaining a sanctioned plan for demolition. I am inclined to accept the explanation given by the petitioners for not getting the requisite permission for reconstruction and get sanctioned plan for reconstruction.

Admittedly, in this case, the petitioners have applied for permission to demolish the building and they have filed the sanctioned plan for that purpose. It cannot be disputed that in all such cases where eviction is sought on the ground of the landlord's requirement for demolition and reconstruction the main question to be considered by the Court is whether the requirement is bona fide or not. Even if the plan for reconstruction has not been obtained, if there are other materials to indicate that the requirement is bona fide, the fact that the petitioners have not applied for sanction for reconstruction or not got the plan sanctioned for that purpose, that by itself cannot be taken to be a ground for holding that the requirement is not bona fide. As already stated, the Rent Controller as well as the appellate authority have held that the petitioners have sufficient means to undertake the work of demolition and reconstruction. They have also proved by producing the plan for demolition and the permission granted by the Corporation for that purpose, their intention to demolish and reconstruct the building. Therefore, merely because plan for reconstruction has not been obtained in addition to the sanctioned plan for demolition it is not possible to say that the petitioners, requirement is not bona fide".

24. Further, S.S. Subramani, J., in the decision in Ammal Pillai and others v. M/s. Varadarajulu Complex Etc., 1997 (1) L.W. 364, has held as

follows:

I do not accept the said contention for various reasons. 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, nobody 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. The argument of the learned counsel is, therefore, rejected. I find that the building requires immediate demolition and reconstruction, and the landlords have satisfied all the legal grounds. Once all the ingredients under the Section are satisfied, and there is no lack of good faith, law presumes bona fides in their claim. I hold that the eviction petition was filed by the landlords in good faith, and the building requires immediate demolition and reconstruction".

25. S.S. Subramani, J. in the decision in S. Kannan Vs. P. Manoharan, , following the decisions in Ammini Pandarathy and others v. Leelamma and others, 1988 (1) K.L.T30, Sukumaran v. Additional District Judge, G.K. Jose and Others Vs. Ramathal, and in S. Balasubramanian v. Gulab

Jan, 94 L.W. 102, has held as follows:

Even when a condition is imposed in the State for production of plan and licence as a pre-condition for eviction, and the same has been interpreted by court that the production at the later stage will be sufficient, in statutes where there is no such condition, according to me, the production at the late stage cannot be considered as an after thought or eviction

petition was filed without any bona fides. In this case, the eviction petition was filed in 1982. Till 1989, the petition was in cold storage. If we ask the landlord to have plan and licence every time renewed, as held in *S. Balasubramanian v. Gulab Jan*, 94 L.W. 102, it will be a fulfil exercise depending upon the result of the litigation and unnecessary expenses will have to be incurred. After licence is obtained, even the licence rules may change. So, the earlier plan becomes ineffectual. By the time eviction is ordered, the plan already filed may become ineffectual due to change of life of the property, or change of rules of construction. Even at the time when fresh licence will have to be taken up (sic). Under the circumstances, to insist the landlord that he must produce the plan and licence along with the petition cannot be correct. The court will have to see whether the landlord has come to court with clean hands with a good intention that he wants to demolish and reconstruct the building. For the said purpose, it will be sufficient if the plan and licence are filed either at the time of evidence or at the time of execution. The Rent Controller can insist that before the tenant is dispossessed, the landlord should produce a plan and licence".

26. The learned counsel appearing for the petitioners have submitted that since the building is not in dilapidated condition it is not necessary to demolish and reconstruct the same. As stated earlier, the landlords' intention is taken into consideration and also the locality in which they want to raise the modern commercial complex. While dealing with the scope of objection raised by the tenants, in similar circumstances, *Ramanujam, J.*, as he then was, in the decision in *A.S. Shaik Fathima and Others Vs. Omer Cloth Store and Others*, , has further held as follows:

It may be that the petitioners want to put up a new and modern building in the place of the existing building, which will appreciate in value in course of time, and, therefore, they decided to demolish the existing building and to construct a new and modern building. The test whether the investment undertaken by the owners of buildings is prudent or not cannot be taken to be germane for considering the bona fides of the owners" requirement; nor can it be taken to be conclusive or decisive. Further, in these cases the eviction petitions have been filed in 1976 and the income which the petitioners estimated to receive from the reconstructed building on the

date of the filing of the petitions is naturally a low figure. Since the filing of the petition it is common knowledge that rents in the locality have considerably increased. Therefore, the petitioners might have thought that there is possibility of getting a higher income from the property as reconstructed as against the income from the building as on date. Therefore, in my view, the authorities below are not justified in going into the question as to whether the proposed demolition and reconstruction is a prudent investment or not so long as it is shown that the petitioners had bona fide intention and taken suitable preliminary steps for the demolition of the existing building and for the reconstruction of a new building. It is not therefore, possible for this Court to agree with the second reason also"".

27. The landlords have produced Ex.P-1 permission to ""demolish the premises and as held in the decision in Vijay Singh etc. etc. Vs.

Vijayalakshmi Ammal, , Sec. 16 of the Act safeguards the interest of the tenants. If the landlords did not demolish the premises, the tenants can

approach the Rent Controller for restitution. It cannot be said that a prudent landlord only with a view to get rid of the tenant would demolish the

building and keep quiet without reconstructing the premises after demolition of the same, especially when it is located in an important business

centre. From the abovesaid discussions and in view of the factual concurrent findings of the authorities below, I find that the intention of the

landlords based on the age and condition of the building and also their capacity to invest the money to reconstruct, and the locality, is nothing but

bona fide one.

28. With respect to the age of the petitioners 3 and 4 in the R.C.O.Ps., I do not find any substance in the submission made by the counsel. When

the petitioners in the R.C.O.Ps. has come with the specific plea that they are majors, it cannot be said that they are minors only because such plea

was raised in the counter. Admittedly, the tenants did not press the said objection and so there was no cross-objection on that aspect. Even with

respect to the description of the schedule property, 1 am not able to accept the argument of the learned counsel. The parties understood the

identity of the property that has been sought for eviction and had proceeded with the case. So at this stage the tenants cannot be allowed to raise

that issue.

29. Moreover, while exercising the jurisdiction under Sec 25. of the Act, this Court cannot simply interfere with the findings of the authorities

below by re-appreciating the oral and documentary evidence as requested by the learned counsel for the petitioners. Even if two views are

possible, this Court is not expected to interfere with the findings of the authorities below. As held by the Apex Court in Sri. Raja Lakshmi Dyeing

Works and Others Vs. Rangaswamy Chettiar, , this Court should not obviously interfere with the finding of facts merely because it does not agree

with the findings of the subordinate authorities.

30. S.S. Subramani, J., in Sherwood Educational Society Vs. Abid Namazie and Others, , has further held as follows:

Sitting in revision, this Court can exercise its powers under Sec. 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act only if it is shown

that the judgment by the Appellate Authority is in any way illegal, irregular or improper. It cannot re-appreciate the evidence as a Court of Appeal.

If the decision is based on materials and that decision could be arrived on these materials for the purpose of arriving at a different conclusion, the

evidence cannot be re-read or re-appreciated"".

31. In the decision in S. Raja & others v. Nathamani,1998(3) L.W. 214, S.S. Subramani, J., has also held as follows:

The finding regarding bona fides is a finding of fact. Unless the revision petitioners satisfy this Court that the said finding is perverse, this Court is

not expected, while exercising the revisional jurisdiction, to reverse the said finding. The tenants have miserably failed on that point"".

32. In view of the abovesaid discussions, the findings of the authorities below cannot be interfered with. Accordingly, these revisions are dismissed

with the costs of Rs.1,000 each. Consequently, the connected C.M.Ps. are closed.