

(1994) 08 MAD CK 0079
In the Madras High Court

N. Masilamani and Another	Vs	APPELLANT
Kutty Nair (died) and Others		RESPONDENT

Date of Decision : 11-08-1994

Acts Referred:

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

Citation : (1995) 1 MLJ 114

Hon'ble Judges : N. Arumugham, J

Bench : Division Bench

Judgement

N. Arumugham, J.—The landlords who lost their case before the Appellate Authority but, however succeeded before the Rent Controller have canvassed the same challenging the impugned judgment passed by the Appellate Authority made in R.C.A. No. 59 of 1981 dated 31.10.1983 by which order the finding given by the Rent Controller, Kancheepuram made in R.CO.P. No. 32 of 1973 dated 16.4.1981 was reversed.

2. The brief facts of the case which led to the filing of the revision are stated hereunder: The rental premises is one of the portions of the building bearing Door No. 108, Kamarajar Street, Kancheepuram so leased out to the first respondent long back and the quantum of rent payable by him at the time of the filing of the original petition was Rs. 125 permensem. Though, this is a part of a non-residential building, it was under the occupation and tenancy right of the respondent herein since the other tenant in the adjacent portion has already vacated the premises in question which alone is required for the revision petitioners for the purpose of demolition and reconstruction as provided u/s 14(1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). As the demised building was also required for their own use and occupation, after having given notice to the respondents herein and terminating the tenancy as contemplated under the law, a petition for eviction under two grounds viz., for the purpose of demolition and reconstruction and for own use and occupation was filed. The Rent Controller after having recorded the

oral and documentary evidence adduced by both the parties considered the matter and ordered eviction of the respondents on the ground that the requirement of the demised premises of the landlord for the purpose of demolition and reconstruction is bona fide but, however, rejected the next ground of own use and occupation.

3. The aggrieved tenant approached the Appellate Authority challenging the order of eviction passed by the Rent Controller as aforesaid. The Appellate Authority after re-assessing the whole matter in question upheld and confirmed the finding of the Rent Controller insofar as the ground u/s 14(1)(b) of the Act is concerned. While stating so, learned Appellate Authority took a point for consideration which was rejected by the learned Rent Controller and negated the same aspect was the impugned point of attack in this civil revision. Consequently, though the learned Appellate Authority found that the requirement of the landlord of the premises for the purpose of demolition and reconstruction was true and genuine, he allowed the appeal on the technical ground, viz., that the landlords while initiating the proceedings has, failed to give an undertaking to induct the respondents as tenants after demolition and reconstruction of the building is over. Perhaps and more precisely aggrieved at this conclusion of the Appellate Authority, the revision petitioners have come forward with this revision petition to set aside the judgment of the Appellate Authority.

4. Mr. V.R. Gopalan, learned Counsel appearing for the petitioner justifiably contended before me that the eviction proceedings have been initiated by the revision petitioner before the Rent Controller u/s 14(1)(b) coupled with Section 10(3)(a) of the Buildings Act. Though the Rent Controller has negated the second ground sought for by the petitioners, learned Counsel has frankly conceded that ground prayed for u/s 14(1)(b) of the Buildings Act for own use and occupation and additional accommodation cannot be allowed to go and that therefore he has conceded that the finding given by the learned Rent Controller is quite on par with the law and correct and cannot be rejected. But, however, the grievance expressed by the bar on behalf of the petitioners is that passing of the impugned judgment by the Appellate Authority, while accepting the bona fide claim of the respondents for the purpose of demolition and reconstruction, is true, valid and concurrent with the learned Rent Controller excepting the landlord to give a statutory undertaking which is quite alien to the procedure contemplated under the Act and that therefore, the Appellate Authority totally came to an erroneous conclusion and it is not only illegal, but unlawful and that therefore it is liable to be set aside.

5. Per contra, Mr. P.K. Gopalraj, learned Counsel for the respondents while persuading me to see the bona fide nature of the requirement of the building for the purpose of demolition and reconstruction has not made out, irrespective of the fact, whether the lower appellate court has given a finding in this regard or not. By stating so, learned Counsel for the respondents wants me to dismiss the civil revision petition. To substantiate the said contention, learned Counsel for the

respondents took me through the evidence of P.W. 1 recorded in this regard. On a careful scrutiny of the recorded notes of evidence and documents I am fully satisfied to hold that the landlords have clearly demonstrated and established their requirement of the premises for demolition and reconstruction of the same as was rightly and justifiably held by both the courts below concurrently for the reason that he has claimed that he has got means; and that he has got the plan and license approved and that he has given a statutory undertaking as warranted u/s 14(1)(b) of the Act and that he has taken steps to get the premises vacated by the tenant by issuing a legal notice for which there is no reply at all, if the cumulative effect of all the abovesaid aspect placed before the Rent Controller is perused, it is not possible at all to hold a different view or to dissent with the view concurrently held by both the courts below with regard to the requirement of the building for the purpose of immediate demolition and reconstruction as provided u/s 14(1)(b) of the Act.

6. Insofar as the finding given by the lower appellate court stating that no statutory undertaking is given by the landlords while initiating the proceedings before the Rent Controller is concerned, with great constraint, I observe straightaway that the lower appellate court has clearly fallen into an error and took an erroneous view that an undertaking is necessary. Reading Section 14(1) (b) of the Act in the context of statutory undertaking provided u/s 14(2)(b) of the Act, it is manifest that the landlords who require their building for the immediate purpose of demolition and reconstruction alone is expected to give a statutory undertaking as provided u/s 14(2)(b) of the Act, viz., that the work of demolition of the building shall be substantially commenced by them not later than one month and shall be completed before the expiry of three months from the date they recover the possession of the entire building or before the expiry of such period as the Controller may think for the reasons to be recorded in writing. This statutory requirement as provided under Sees. 14(1)(b) and 14(2)(b) of the Act is totally and absolutely available in this case and established before the Rent Controller. However, this aspect has been clearly overlooked by the Appellate Authority.

7. Giving a statutory undertaking to induct the tenant after the demolition of the building in its entirety or putting a complete new construction as provided u/s 14(1)(b) of the Act and Section 14(2)(b) of the Act is totally unknown and alien to the very concept of the procedure laid down by the Act. It is not known under what basis the lower Appellate Authority expects, the statutory undertaking to induct the tenant after the construction of the building is over as expected. Even if so, it is totally against law and unknown to the procedure and the various judicial pronouncements. Therefore, learned Counsel for the petitioners is quite justifiable in assailing the impugned judgment rendered by the Appellate Authority. This position has not been controverted on behalf of the respondents. However, learned Counsel for the respondents wanted me to go into the question of bona fide nature of the revision petitioners, viz., that they have not spoken about possession. In this regard, I may observe that I am not able to appreciate

this contention for the very reason that this has not been challenged before the courts below eventhough, an opportunity was given to the tenant to vindicate his remedy. That apart, the concurrent findings given by both the courts below are on the basis of the materials and evidence for the purpose of demolition and reconstruction is bona fide, true and valid in nature and binding on the respondents, herein. Even otherwise, there are ample evidence and materials placed before the Rent Controller to prove their case.

8. Since the eviction proceedings are started in the year 1978, it is rather unfortunate to see that the whole proceedings swallowed more than 16 years by now to see its finality. Having thus considered, the entire aspects, of the case, the evidence adduced and the rival contentions advanced by the Bar on behalf of the respective parties, I am fully satisfied to hold that the learned Appellate Authority is not correct in expecting the landlord to give a statutory undertaking which required to be given for the purpose of demolition and reconstruction is consequently available and perhaps he has considered the two positions, viz., requirement of the building for the purpose Of effecting repairs and for demolition and reconstruction. Only in case the building is required for effecting the repairs, a statutory undertaking is necessary to the extent of inducting the tenant after the repairs are over. In this case, the kind of statutory undertaking required by the Appellate Authority is totally unheard of and cannot be sustained in law. Therefore, the impugned judgment passed by the Appellate Authority is liable to be interfered with.

9. In the result, the revision petition is allowed. The order passed by the Appellate Authority made in R.C.A. No. 59 of 1981 is hereby set aside and the order of eviction passed by the Rent Controller against the respondents is hereby restored. At this stage, it was pointed out to me by the Bar that the respondents are in arrears of rent for the last nine years. Therefore, under such circumstances, the respondents are not entitled to any indulgence from this court. Accordingly, no time is granted to vacate the premises and respondents are directed to vacate the premises immediately. The civil revision is allowed with costs.