

(1970) 06 MAD CK 0002
In the Madras High Court

N. Pattabiraman

APPELLANT

Vs

The Accommodation Controller and Another

RESPONDENT

Date of Decision : 24-06-1970

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 12, 12(1)(b)

Citation : (1971) 2 MLJ 326

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—These two writ petitions are connected. The petitioner is the owner of premises No. 33, Office Venkatachala

Mudali Street, Triplicane, Madras-5. He is living in the ground floor of the premises and the first floor is in the occupation of the 2nd respondent

who is a Government allottee. The portion in the occupation of the 2nd respondent consists of a hall, verandha, kudam, living room, bed room, etc.

The petitioner with the intention of demolishing the 1st floor and reconstructing it has sought for permission from the Corporation of Madras to

effect such alterations and ultimately obtained sanction therefore under building plan No. P. 2597 of 1970, dated 28th July, 1970. But, as the

second respondent was an allottee of the premises through the Government, the petitioner applied to the first respondent for delivery of possession

of the same and effectively asked for a release of the first-floor from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act,

1960. In fact the application was made u/s 12(1) (b) of the Act. The Accommodation Controller is said to have inspected the plan and enquired

the petitioner and ultimately was of the view that the petitioner's request for release could not be granted. The order of the 1st respondent reads

thus:

With reference to your petition cited, you are informed that your request for release of the premises u/s 12 (1) (b) of the Act has not been

complied with. The Corporation sanctioned plan bearing No. B.A. No. 2597 of 1970, dated 31st May, 1970, is returned herewith.

The petitioner is aggrieved as against the said order of the 1st respondent and has come up to this Court to quash the same. The case of the

petitioner is that as the repairs to be undertaken by the petitioner are not to be barely characterised as repairs and alterations, but would

tantamount to a demolition of a portion of the building and reconstruction of the same resulting in the identity of the original building being lost and

instead a new building being set up. It is urged that the cubical contents of the room also get enhanced and the roofing will be completely changed

from tiled roofing to Madras terrace roofing and the real purpose of the proposed alterations are effectively for demolishing and reconstructing the

building and not with any other oblique purpose. Many contentions were raised by the petitioner in support of his application for the rule amongst

which the main contentions are as follows. The 1st respondent who is dealing with, rights of parties and who is indeed a quasi-judicial tribunal

ought to have given reasons for rejecting the petition of the petitioner and ought not have summarily rejected the same without making it known to

others including this Court as to what prompted him to reject the application. The second objection which is formidable on facts is that on a casual

inspection of the sanctioned plan and the nature of the alterations contemplated, the work to be undertaken by the petitioner is to demolish and

reconstruct a building which includes a part of the building under the Act and that therefore the 1st respondent has no option in such cases except

to grant the request, as a private tenant placed under such similar circumstances has practically no remedy in law if such an application filed for

eviction before the appropriate authority is bona fide and not oblique. Reliance is placed on V.P. Selvaraj Vs. V. Narasimha Rao by Power Agent

V. Sethu Rao and Another, . Reference is also made to the decision in Ramachandran v. Kazim Khaleeli (1965) 1 M.L.J. 78 : ILR (1965) Mad.

703, for the proposition that the removing of roof of a building and putting up a another roof in substitution thereof amounts to demolition of the

building. Learned Government Pleader would state that, no doubt, the order is non-speaking, but, in the circumstances it should be presumed that

the 1st respondent went into the question of bona fide as well and the order has to be sustained on the ground that the Accommodation Controller

was not satisfied about the bona fides of the requisition.

2. I am unable to agree with the contentions of the learned Government Pleader. In a case where quasi-judicial tribunals adjudicate upon rights of

parties after hearing them it is but elementary that they should give demonstrable reasons so that when it is scrutinised by any one in the higher

hierarchy exercising visitorial powers he should be in a position to appreciate as to what was the real reason behind the order impugned or passed.

It is now well-settled that such judicial authorities ought not to lightly reject petitions by passing a non-speaking order which is totally bereft of any

reasoning. Such reasons ought to form part and parcel of the order itself so that the order could be demonstrated to be one which is sustainable or

otherwise by the superior Court or authority when it has the occasion to refer to it and consider whether such an order is proper or regular. This

view is accepted by the Supreme Court in one of its latest pronouncements in Travancore Rayon Ltd. Vs. Union of India (UOI), , The Supreme

Court, said:

When judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court insists upon

disclosure of reasons in support of the order on two grounds; one, that the party aggrieved in a proceeding before the High Court or the Supreme

Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the

obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

On the ground that the 1st respondent failed to give any satisfactory reasons and indeed no reason at all to justify the challenged order, the writ

petitions should succeed.

3. But as arguments have been addressed at length on the scope of what is demolition, it is necessary for me to consider the merits as well as the

law on the subject. As already stated, the plan produced clearly makes out the situation that the first floor is sought to be interfered with materially

and in many respects by the petitioner when he reconstructs the building in accordance with the sanctioned plan. The cubical content of enclosed

space is increased or altered, the walls are changed and above all the roof of the premises is removed and substituted by another. In a case where

the roof of a premises is removed and is substituted and this is followed up by a variation of the space content of the quondam building, then

undoubtedly the entire process involves not only demolition but also reconstruction. In such cases, where a landlord intends to demolish and

reconstruct his premises and for that purpose seeks eviction of the tenant in occupation of the old building, this Court in V.P. Selvaraj Vs. V.

Narasimha Rao by Power Agent V. Sethu Rao and Another, , observed after considering the import of Sections 14 (1) (b) and 16 which are the

relevant sections to be noticed.

The quality and content of the expression bona fide appearing in the various sections of the Act and for purposes therein enumerated have to be

weighed and construed in different lines under different circumstances having regard to the context in which the expression appears. In cases where

the claim of the landlord is not per se dishonest and has not been found to be oblique or for any designed purpose to evict the tenant, then it

follows that the petitioner is entitled to an order of eviction in the ordinary course, subject of course, to the other conditions prescribed by the Act

being satisfied.

The Court further observed that reading the two sections in conjunction with one another, the real content of the word "bona fide" appearing Sub-

section (1) (b) of Section 14 has to be understood in a limited sense. The safeguard provided u/s 16 acts as a pivot to tilt matters one way or the

other and in effect a microscopic scrutiny into the subjective content of the expression bona fide appearing u/s 14 (1) (b) becomes absolutely

unnecessary. These observations are apposite while considering similar application for release made by landlords in cases where the tenant is a

Government allottee. As a matter of fact, Section 12 deals with recovery of possession by landlord for reconstruction of the building in respect of

which the Government shall be deemed to be the tenant. Section 12 (1) (b) provides that on an application made by the landlord in such

circumstances the Authorised Officer if he is satisfied that the building is bona

fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purposes of erecting a new building on the site of the building sought to be demolished, pass an order directing the allottee to deliver possession of the building to the landlord before a specified date. The conjunction in Section 12 (1) (b) connecting the subjective content as to bona fides of the landlord and the objective reality of the erection of a new building need not create an impression that this sub-section is in any way for different from Section 14 (1) (b). As a matter of fact, both the purport and the literature of both the sub-sections are almost the same. The ratio in V.P. Selvaraj Vs. V. Narasimha Rao by Power Agent V. Sethu Rao and Another, , has to be borne in mind by the Authorised Officer while dealing with applications u/s 12 (1) (b). If, therefore, the landlord seeks for release of the building for the immediate purpose of demolishing and reconstructing a building which includes a part of the building then factually he has to verify whether the alteration or the modification sought would amount to demolition. I have already expressed the view that the work to be undertaken by the petitioner is effectively to change the entire phase of the building, its cubicle content and its size. More than anything else the roof is sought to be removed and substituted by another of a different variety altogether. Kailasam, J., in Ramachandran v. Kasim Khaleeli ILR (1965) Mad. 703 : (1965) 1; M.L.J. 78, while considering the import of Section 14 (1)(b) observed on the facts and particularly on the above aspect as follows:

The contention of the learned Counsel that the demolition intended, should be total, is not supported by any authority. In this case the roof of the premises that is in the occupation of the petitioner is to be demolished and a staircase put, retaining only the walls. This in my opinion, would amount to demolition.

A fortiori in a case like the one before me where a material change is being effected in the structure and the identity and contents of the building, the work undertaken by the petitioner as disclosed in the sanctioned plan would certainly amount to demolition and reconstruction of the building. In this view of the matter justice has not been rendered to the petitioner since the first respondent did not consider all the aspects of law and facts arising in the application disposed of by him in such a summary fashion.

4. On these grounds also the rule nisi is to be made absolute.

5. In Writ Petition No. 4488 of 1970, a writ of mandamus is sought directing the 1st respondent to dispose of the petitioner's application dated

2nd September, 1970, for release of the building u/s 12 of the Act. It is not necessary to make the rule absolute in the instant case. Instead, certain

directions which would serve the purpose can be made. The first respondent is directed to dispose of the petitioner's application for release u/s 12

of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 within six weeks from this date bearing in mind the principles of law and taking

into consideration the observations made by me in Writ Petition No. 4487 of 1970. There will be no order as to costs in both the writ petitions.