

(2000) 10 MAD CK 0037
In the Madras High Court
Case No : C.R.P. No. 338 of 1997

R. Pappathiammal and 2 others

APPELLANT

Vs

Nachammal and 13 others

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

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

Citation : (2001) 1 LW 814

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. S.V. Jayaraman, for the Appellant; Mr. R. Sekar, for the Respondent

Judgement

1. Respondents 1 to 12 in this revision filed R.C.O.P.N0.43 of 1989 against the revision petitioners seeking their eviction u/s 14(1)(b) of the Tamil

Nadu Rent Control Act. On merits that petition came to be dismissed. The landlords appealed in R.C.A.No.6 of 1995 before the appellate

authority Erode, who allowed that appeal on merits resulting in the eviction of the petitioners in this revision having come to be passed u/s 14(1)(b)

of the said Act. It is the correctness of the said order that is being challenged in this revision before this Court. Heard Mr.S.V.Jayaraman learned

senior counsel appearing for the revision petitioners as well as Mr.R.Sekar learned counsel appearing for respondents 1 to 12 in this revision.

2. The learned senior counsel mainly contended that the landlords have not established that the building in question is required for the purpose of

immediate demolition and reconstruction, though they have pleaded so in the petition. In the absence of proof that the building is required for the

purpose of immediate demolition and reconstruction, the appellate authority had

completely erred in law and on facts in ordering eviction. The learned senior counsel also contended that, even assuming for a moment without admitting that the landlords have established the condition of the building warranting an order of eviction, yet that alone would not be sufficient, in the absence of the landlords establishing their bona fides in regard thereto. The learned Rent Controller, while dismissing the eviction petition, not only found that the condition of the building had not been established, but also found that the bona fides of the landlords is also not established. However the appellate authority, while ordering eviction, had not adverted to the bona fide needs of the landlords in this case and consequently there is no finding on that aspect. The only pleading is that the landlords wanted to demolish the non-residential building and to put up a residential building. It has come out in evidence that the landlords own a number of residential buildings; they are in occupation of their own residential building and this aspect had been taken into account by the Rent Controller to find against the landlords on the question of bona fides. All the above mentioned aspects have escaped the attention of the appellate authority and therefore the order of the appellate authority suffers from illegality on that aspect as well. In other words, the sum and substance of the argument of the learned senior counsel is that, the landlords have neither established the condition of the building warranting an order of eviction, nor have established their bona fides and therefore they are not entitled to any order of eviction at all on the ground of demolition and reconstruction.

3. Opposing the arguments advanced by the learned senior counsel, Mr.R.Sekar learned counsel appearing for respondents 1 to 12 would contend that the proceedings under the Rent Control Act being summary in nature, strict rules of pleadings as contemplated in the regular civil litigation cannot be insisted upon. The court trying a case under the Tamil Nadu Rent Control Act should go by the totality of the pleadings and evidence available and decide on that, as to whether the parties to the litigation have made out their respective cases or not. As far as the condition of the building is concerned, the learned counsel would contend that the materials available on record do establish the condition of the building warranting an order of eviction to be passed and those materials alone have

gone into the mind of the appellate authority, who ordered eviction. As far as the bona fides are concerned, the learned counsel for the respondents would contend that taking into account the nature of the construction; the locality in which the building is situated and the importance of that area, it can be safely inferred and held that the landlords have established their bona fides, especially when their solvency and efforts taken by them are not in dispute. The learned senior counsel for the revision petitioners as well as the learned counsel for respondents 1 to 12 brought to my notice a few judgments in support of their respective contentions to which a reference would be made in this order a little later.

4. Having regard to the arguments advanced by the learned senior counsel for the petitioners as well as the learned counsel for the respondents, I perused the entire materials available on record. In view of the nature of the controversy raised before this Court, it is better I extract the relevant portions of the pleadings in this case and it is as follows:

VII. The petitioners require the petition property for the purpose of immediate demolition and reconstruction. There is a present genuine need and the requirement of the petitioners is a bona fide one. The petitioners want to demolish the existing tiled roof building and construct a new RCC residential building on the site. The petitioners have got sufficient funds and other recourse for the proposed construction. The petitioners have submitted the necessary plan to Erode Municipality in respect of the said proposed construction and get the same approved. The description of the property in the occupation of the tenant and forming the subject -matter of the rent control proceedings is found as hereunder

Schedule of Property: Erode Registration District, Erode Sub-Registration District, Erode Town T.Veerabadira Chettiar Road (New Shandy Road) Door No.64/T.S.23-I/F (New T.S.No.169/2, 170/1, 171, 17. 173, 174. 175) the buildings and the vacant site appurtenances there to situate within the following boundaries:

West of New Shandy Road North of Door No.63 South of Door No.64 East to the property (building vacant site belonging to our clients)

Within the above boundaries east-west 100 feet north-south 34 feet, in this a north facing tiled building measuring East-West 11 feet North-South

12-1/2 feet a north facing tiled shed measuring 65 feet in the East-West and 13 feet in the North-South; East facing shed measuring 34 feet in the North-South and 24 feet in the East-West, water tub, pipes, wooden gates electric fittings latrines etc.

In the counter statement, it is stated as follows:

It is absolutely false to say that the petitioners require the petition mentioned property for the purpose of immediate demolition and reconstruction

and the need is genuine and bona fide. It is also false to say that the petitioners want to demolish the existing tiled roof building and construct a new

R.C.C. residential building on the site. It is incorrect to say that the petitioners have got sufficient means for the same. This respondent submits that

the requirement of the petitioners is not bona fide. There is no necessity to demolish the existing building which is in very good condition. It is only

to evict my client. The first petitioner approached in May, 1989 and demanded and enhanced rental of Rs.1,200 per month. As it was refused, the

ground of demolition and reconstruction has been invented without any truth to evict the tenants. The factum of a plan being got approved is one

such move in that direction. The petitioners never intend to demolish the existing superstructure nor do they proposed to construct a new building

thereon.

In support of the claim for eviction, the 5th landlord examined himself as P.W.1, besides examining an Engineer as P.W.2. Seven exhibits were

marked on their side as Exs.P.1 to P.7. The sixth respondent gave evidence as R.W. 1 and no exhibit was marked on their side. The

Commissioner's report and plan had been marked as Court Exhibits 1 and 2.

5. The learned Rent Controller, while appreciating the dispute between the parties, had proceeded totally and completely on only one aspect in

non-suiting the landlords. It is clear from his judgment that he had been totally influenced by the sole fact that the landlords have not established that

the building is in such a bad condition that it is likely to fall forthwith or in the near future and in the absence of any pleading or proof in regard

thereto, the landlords would not be entitled to an order of eviction. The learned rent controller also held that there is nothing on record to show

that, if the building is not demolished and reconstructed, the building is likely to crumble down on it's own and it is in such a dilapidated condition.

In concluding so, the learned rent controller also took into account the evidence of P.W.2/Engineer, who would state in his evidence in cross that

he had not made any notes of inspection and that he is primarily engaged only in drawing plans. The learned rent controller also found that the

evidence of P.W.2 is totally silent as to the type of construction; the materials used in the construction and as to how and on what basis, he arrived

at the age of the building. In other words, according to the learned rent controller, the evidence of P.W.2 is absolutely of no help to establish the

condition and age of the building. The learned rent controller also found that the landlords have also not established their bona fides; they are living

in their own house; their family owns a number of properties in Erode and that shops have been let out by them for rent. For his finding that, unless

the building is shown to be in such a dilapidated condition warranting an order of eviction an order of eviction cannot be passed, the learned rent

controller relied upon a judgment of the Hon''ble Supreme Court of India reported in P.Orr & Sons Private Limited case, 1990 (2) LW 548. But

however the learned appellate Judge, on the totality of the materials available on record and taking into account the nature of the construction of

the property, had held that the landlords have made out a case for an order of eviction; the landlords are possessed of sufficient means and there is

no oblique motive on the part of the landlords in filing the eviction petition solely with a view to get rid of the tenants. Though there is no finding, as

pointed out by the learned senior counsel, that the requirement of the landlords is bona fide, yet there is a finding by the learned appellate Judge

that the requirement of the landlords of the petition premises is true.

6. The question that has to be decided on the above noted broad facts is whether the order of eviction granted by the appellate authority can be

sustained or not? It is no doubt true that in P.Orr & Sons'' case , 1990 (2) LW 548 decided by the Hon''ble Supreme Court of India, it has been

held that the condition of the building is the only essential requirement to be established before ever an order of eviction could be passed u/s 14(1)

(b) of the Rent Control Act. However this judgment appears to have been diluted substantially in the later judgment of the Hon''ble Supreme Court

of India in Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, . In that judgment it has been held as follows:

10. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed u/s 14(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller.

11. It appears from the facts of the present appeals that the building in question was an old one and was situated in a very busy locality of the town where a number of buildings in and around the building in question had been demolished and shopping complex had been constructed with modern amenities. The respondent also wanted to demolish the entire building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the respondent that she had sufficient financial resources for construction of the new building. An undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of three months from the date the said respondent recovered possession of the building. Taking all the circumstances into consideration, the Controller had passed an order in terms of section 14(1)(b) of the Act directing the appellants who were tenants in the building in question to deliver possession of the building to the respondent. According to us, all relevant factors have been taken into consideration and there is no scope for any interference by this court.

Therefore the controversy at issue in this case has to be decided only on the basis of the criteria laid down in *Vijay Singh etc. etc. Vs.*

Vijayalakshmi Ammal, brought to my notice by the learned senior counsel. The learned senior counsel also invited my attention to another

judgment of the Hon''ble Supreme Court of India in the case reported in *K. M. Abdul Razzak Vs. Damodharan*, , which also arose under the very

Act in question. It has been held in that case as follows:

The principles of law laid down in Vijay Singh case were that the landlord was not only required to show that the building is in a dilapidated

condition, but he was also to establish his bona fide intention for demolition and reconstruction as well as his financial position to reconstruct the

building. Unless findings to that effect are recorded in favour of the landlord, an application u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and

Rent Control) Act, 1960 does not deserve to succeed.

7. It is clear from the decided cases that this Court exercising jurisdiction u/s 25 of the Tamil Nadu Rent Control Act cannot re-appreciate the

evidence and record a finding contrary to those of the lower courts, if the finding arrived at by the courts below is supported by materials.

Therefore to succeed, the landlords must establish the following facts namely, the condition and age of the building; bona fide intention of the

landlord and his solvency. As far as solvency of the landlords is concerned, though a vague stand is taken in the counter that the landlords are not

solvent enough, yet from the very suggestion made on behalf of the defence to P.W.1 when he was in the witness box, it is seen that the landlords

own a number of buildings in Erode and many of them have been let out. Erode Town is buzzing with commercial activities and there is a great

demand for property and vacant place. In view of the importance of Erode Town, the very fact that the landlords are owning a number of

buildings, many of which have been let out to tenants, would by itself mean that the landlords can generate funds to meet the expenses to be

incurred for the purpose of reconstruction. In fact the appellate Judge had found on this point in favour of the landlords and he had taken the

evidence of the tenants into account, where they do not even say that the landlords are not possessed of means. The landlords, besides their oral

evidence let in through P.W.1, have also, by producing Exs.P.1 and P.2, had established that the plan for the proposed construction had been

sanctioned, the validity of which stood extended till July, 1992. Therefore it is clear that the landlords have taken steps. It is common knowledge

that the fee payable for the building plan is on the high side. It has been held by this Court in a number of judgments that, in view of the prohibitive

fees which every intending builder has to pay for getting the sanctioned plan; to

insist for the same and keeping it alive till the disposal of the eviction proceedings, would amount to burdening the landlord very heavily in terms of money and therefore it has been held in those cases that the production of the sanctioned plan is not a condition precedent before ever an order of eviction could be passed. Under these circumstances, I am in entire agreement with the appellate authority that the landlords had established their capacity to meet the expenses regarding the proposed construction as well as had taken necessary steps towards the same.

8. Coming to the question of the age and condition of the building, I have already extracted the relevant pleading in the rent control petition, wherein it is only stated that the petition property is required for the purpose of immediate demolition and reconstruction. The details regarding the age; type of construction and the condition of the building is not mentioned in the rent control petition. However it is seen from the schedule to the rent control petition itself that the petition premises consists of three tiled sheds, each roughly measuring 125 sft; 750 sft and 700 sft respectively in a total extent of 3400 sft of land. This means, a substantial portion of 3400 sft of land in the occupation of the tenants is lying vacant. P.W.2 in his evidence had stated that the building is old and it would have been constructed about 50 years before the date of his evidence. He had also stated that the building is in a dilapidated condition. No doubt in cross-examination he had stated that he had not made any notes of inspection and that he had not noted down the construction materials used in those sheds. The tenant was examined as R.W.1. While he was cross-examined, he would state as follows:

"In the west end of the property, there are two tiled sheds; they do not even have posts to support the ceiling; the tiles are resting on the walls; the tenancy commenced in the year 1964; the tiled sheds were put up by the ancestors of the landlords; between the two Calicut tiled sheds, there is a vacant land, which measures 60 feet north-south and 20 feet east-west; the shed on the western side measures 40 feet x 4 feet and those sheds would have been put up 30 years before.

From the description of the property as shown in the schedule to the rent control petition as well as from the evidence of the witnesses referred to earlier, it is clear that the superstructure in the occupation of the tenants consists

of wall with Calicut tiled sheds resting on the walls with no supporting cross beams, either made of iron or bamboo or even wooden rafter. The evidence also shows that there are no posts to support the ceiling. Therefore from the very nature of the construction of the superstructure; the fact that the tenancy commenced in the year 1964 and in the context of the evidence of R.W. 1 that the tiled sheds have been put up by the ancestors of the landlords, it is clear that the construction is not of modern type but only a shed just meant to meet some temporary requirements. Accepting the above materials and the evidence of P.W.2 that the building is not in a good condition, the appellate authority was inclined to hold that the building is not in a sound condition. It may be true, as already stated, that there is no pleading in the rent control petition about, the age and condition of the building. But however, as already stated, there is evidence before court. In *Ruth Margaret Gonsalves v. K.T.H. Press*, 1987 (100) L.W 258 former learned Chief Justice of this Court had held, while hearing the revision arising under the same Act, as follows:

Pleadings in such matters cannot be construed with strictness with which pleadings in civil suits are construed. The case of the landlord or the tenant, as the case may be, has to be read as a whole and on evidence of the pleadings. There is no doubt in this case that here is a landlord....."

In *Bank of India v. Lekshimani Doss and others*, 2000 (3) L.W.346 the Hon"ble Supreme Court of India had held as follows, though it arose in a regular civil proceeding:

"Want of pleadings or raising an issue in a suit would arise where any party is put to prejudice. In a case where the facts are writ large and the parties go to trial on the basis that the claim of the other side is clearly known to them, we fail to understand as to how lack of pleadings would prejudice them.

Absence of pleading would not disable the court from granting the relief, is the dictum of another judgment of this court in the case, reported in *S.M. Ispahani and another Vs. Harrington House School*, . The above judgments squarely cover the case on hand, as no prejudice whatsoever is established by the tenants in this case for want of pleadings.

9. It is no doubt true that the building is not shown to be in such a bad condition, which would result in the building itself crumbling down

immediately or sooner or later. But at the same time, the evidence also does not establish that the building is in a sound condition. The nature of the

construction referred to earlier, lends support to the finding of the appellate authority that the building is not in a sound condition. In this context I

hereunder refer to a few judgments brought to my notice by the learned counsel for the respondents.

(a) In *A.Lakshmanan and others v. Kanniammal @ Pattammal*, 1995 (1) LW 632 it has been held as follows;

(9) As rightly contended by the learned counsel for the landlady, section 14(1)(b) of the Act is not rendered inapplicable merely because the

building is not old or dilapidated, but is in good condition. In other words, if the intention of the landlady for demolition and reconstruction is

proved to be genuine and not spurious or specious, the landlady would be entitled to obtain an order for eviction u/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.

(10) It is settled law that a concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more

productive. and higher income yielding one, cannot, by any means, be said to be mala fide.

In order to satisfy the test u/s 14(1)(b) of the Act, the condition of the building need not have deteriorated to the extent of the building being in

danger of crumbling down but the condition must be such as to indicate a bona fide requirement for the timely, genuine and direct purpose of

demolition and reconstruction.

To the same effect is another judgment by the very same judge reported in 1996 (2) LW 534, wherein it has been held as follows:

"(10) Likewise, the motive for demolition and reconstruction is wholly irrelevant in a petition for eviction u/s 14(1)(b). As rightly contended by

learned counsel for the landlord, section 14(1)(b) of the Act, is not rendered inapplicable merely because building is not old or dilapidated, but is in

good condition. In other words, 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 u/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. It is well established in this case that the means of the landlord to carry out the work of demolition and reconstruction is a relevant factor to be taken note of by this court.

In *S.Raju and 9 others v. Nathamuni*, 1998 (3) LW 214 it has been held as follows:

In this case it has come out in evidence that the building is situated in an importance locality and the scheduled building is more than 50 years old

even on the date of petition. It is situated in the heart of Erode Town, an important town in Tamil Nadu the same being a commercial centre.

Taking into consideration the importance of the locality and the development that has taken place, the rent which the landlord gets is really meagre.

When various buildings with modern amenities have come up in that locality, naturally the scheduled building becomes unsuitable to the

surroundings. In fact the building in question, in it's 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. The 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 Hon"ble Supreme Court of India, is beneficial to both the landlord

and tenant and therefore interest of both of them should be taken into consideration.

For all the reasons stated above, I have no hesitation in agreeing with the learned appellate authority that the condition of the building is not sound

and the landlords have established their case that they require the building in question for demolition and reconstruction.

10. The last of the question, which has to be decided is, whether the requirement of the landlords of the petition premises, is bona fide? The

appellate authority had found that the requirement of the landlords are not mala fide and it is true and genuine. The appellate authority had also

found that there is no oblique motive in filing the petition for eviction solely with a view to get rid of the tenants. Once the appellate authority had

held that there is no mala fide intention on the part of the landlords in filing the eviction petition, then it must be true that the landlords requirement is

bona fide. Even here there are some judgments brought to my notice by the learned counsel for the respondents, which are very useful. The first

judgment is reported in S.M. Ispahani and another Vs. Harrington House School, . From Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, , it can

be easily gathered that if the sole object of the landlord is only to get rid of the tenant, then it would definitely destroy his bona fides u/s 14(1)(b) of

the said Act. In this case, I have already agreed with the learned appellate authority that there is no mala fide intention on the part of the landlords.

In S.Raju and 9 others v. Nathamuni, 1998 (3) LW 214 it has been held as follows:

The finding regarding bona fide requirement of demolition and reconstruction is a finding of fact. Unless the revision petitioners satisfies this court

that the said finding is perverse, this Court is not expected, while exercising revisional jurisdiction, to reverse -the said finding. It is settled law that

for the purpose of proving his bona fides, the landlord need only show that he has got the capacity to raise the necessary funds. When the evidence

proves the genuineness of the claim, the revisional court should be slow in interfering with those findings. If on the evidence available, such finding is

possible, the revisional court has only to confirm the said finding.

It has come out in the evidence of R.W.1 that the new bus stand is 500 feet south of the petition property and a number of new houses and

commercial complexes have come around the bus stand. The bus stand is an extent of land measuring four acres. It is also in evidence that the

petition property is abutted by important roads. I have already found that out of 3400 sft of land, only on a negligible portion there are

superstructures. These facts speak for themselves to establish the bona fides of the landlords. It may be true that the landlords have not pleaded

that they intend to put up the new construction with a view to augment their income. It may be noticed here that the landlords have not projected

that as a fact to get an order of eviction on the ground of demolition and reconstruction. There is no law declared by any court that unless and until

the landlord pleads and proves that he intends to put up a new construction solely with a view to augment his income, even if he had established the

other requirements for getting an order of eviction, he shall not be given the relief on the ground of demolition and reconstruction. The possibility of

augmenting the income may be one of the relevant facts to be taken into account, if it is pleaded and proved and otherwise not. In this case, I have already agreed with the learned appellate authority that the landlords have established their financial position; that they have taken efforts towards demolition and reconstruction; the age of the building as well as their bona fide intention. All these grounds by themselves would constitute valid materials for the landlords to get an order of eviction. They have also given the necessary statutory undertaking.

11. In view of my above discussion, I am of the considered opinion that the appellate authority had not committed any error at all, either in law or on facts, in ordering eviction. It may be noticed here that the order of the rent controller had been totally influenced by the sole fact that the landlord had not established that the condition of the building is so very bad that it calls for immediate demolition and reconstruction, as otherwise, the building will crumble down on its own. All the relevant materials, which have been taken into account by the appellate authority and noted in this judgment had not entered into the mind of the rent controller. For all the reasons stated above, I find that there are no merits in this revision and consequently the same is dismissed. No costs.