

(1964) 11 MAD CK 0005

In the Madras High Court

Case No : Civil Revision Petition No's. 2114 of 1963, 1861 and 1862 of 1963 and 338 of 1964

R.V.N. Chandrasekara Chetty

APPELLANT

Vs

Kakumani Adikesavalu Chettys Charities

RESPONDENT

Date of Decision : 06-11-1964

Acts Referred:

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

Citation : AIR 1966 Mad 14 : (1965) 78 LW 326

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

(1) These petitions were heard together, as the question of law and of fact raised in all of them was a common one.

(2) The petitions arise out of the proceedings before the Rent Controller filed by the landlord in each case that be required the premises bona fide

for the purpose of immediate demolition and reconstruction u/s 14(1)(b) of the Madras Buildings (Lease and Rent Control) Act, 1960. The tenants

contended in all these petitions that the application of the landlord was not a bona fide one, that the condition of the building was good and that the

landlord was making use of the provisions in the Act for getting enhanced rent. The finding of the Rent Controller as well as of the appellate

authority in all these cases was that the building in question in each of the applications was very old, that the landlord had ample resources to invest

in the new building proposed to be constructed after demolition and that the application was bona fide. The tenant in each of the applications has

therefore come to this court in revision.

(3) The question that arises for consideration is whether it is necessary for the

landlord to prove that the building is in a dangerous or dilapidated condition and that the immediate purpose is demolition of the building for the purpose of reconstruction. The words used in S. 14(1)(b) of the Act

are ""bona fide"" required for the immediate purpose of demolishing and such a demolition is to be made for the purpose of creating a new building"".

Now, what is the interpretation to be given for the words ""bona fide required for the immediate purpose of demolishing?

(4) In almost all the Rent Control Acts in the various States, provision has been made for the landlord to claim eviction of the tenant, on the ground

of demolition and reconstruction of the building. The words ""immediate purpose of demolishing"" are used only in the Madras Buildings (Lease and

Rent Control) Act, 1960 and the Bombay Rent Control Act. But in the Rent Control Acts in the other States, the words used are ""reasonably

required by the landlord either for the purpose of building or rebuilding"", or ""bona fide required by the landlord for the purpose of building or

rebuilding....."" or ""requires the premises in order to carry out any building work"" or ""for the re-erection of the building or for its replacement by

another building"" or ""the building is proposed to be reconstructed"". It is often contended by the tenants in all these applications, that the application

of the landlord is not a bona fide one, that the building is not in such a condition that its immediate purpose is demolition and that the landlord, with

a view to harass the tenant, is making use of the provision to drive away the tenant, though the building is in good condition. Now, in such cases, is

it necessary for the courts to consider the condition of the building ?

Under the Bombay Rent Control Act, when the landlord wants the building for the purpose of demolition and reconstruction, he should obtain a

certificate from the Tribunal constituted under the Act. The State Government has constituted a Tribunal consisting of the House Commissioner of

Bombay for the City of Bombay, and the Executive Engineer of the Road and Buildings Division within whose jurisdiction the area is concerned.

The Tribunal's proceedings would be governed by rules framed by the State Government. The Tribunal may grant a certificate after being satisfied

that the plans and estimates of the new building have been properly prepared, that the necessary funds for the purposed of erection of the new

building are available with the landlord and such other conditions as the State

Government may by a general or special order specify. It is only after obtaining the necessary certificate from the Tribunal that the landlord can apply to the Rent Controller that he requires the building reasonably and bona fide for the immediate purpose of demolishing the same and for erecting a new building and that the suit premises consist of not more than two floors. But such a procedure is not followed in the other States except Bombay.

Under the Rules framed by the State Government under the Madras Buildings (Lease and Rent Control) Act, when such an application is filed before the Rent Controller and when there is a contention before him that the building is not in good condition or that the building is dangerous to live in, then the Rent Controller can personally inspect the building concerned and make notes of inspection and such notes shall form part of the record. In such circumstances is it necessary for the Controller to take into consideration the state or condition of the building ? Or is it necessary that the building should be in such condition that it would not be safe for the tenant to live in, or is it enough though the building is safe for the tenant to continue to live there, the landlord, thinks that he wants to demolish it for the purpose of reconstruction, with modern requirements and develop their properties fully ?

The Act, as it stands, provides that the landlord, when he seeks to re-possess the building, should prove his bona fides or good faith. The Act does not say that the proposed alteration, improvement or construction is necessary to maintain the safety of the building. There is nothing in the Act to show that an owner is entitled to pull down a building only when it is hopelessly old and then to build a new structure thereon. If one were to construct like that, it would come to this, that the owners of fairly substantial buildings would not be allowed to erect new buildings with modern requirements and develop their properties fully.

(5) In the Punjab Motor Co. v. Shaik Juman, AIR 1923 Rang. 13, the landlord purchased certain premises held by the tenants and wanted to demolish the old one-storeyed building and to erect a four-storeyed one. When he filed an application for ejectment against the tenants, it was resisted by them that the application was not a bona fide one. The learned Judges observed that the landlord should show that he was acting bona

fide, that it was his real intention to pull down and re-erect, that he had the means to carry out his intentions, that it would be for the public benefit

that the site should be put to a use and that would be to the advantage of a large number of persons more particularly at a time when residential premises were very scarce.

(6) In *Bhulan Singh and Others Vs. Ganendra Kumar Roy Chowdhury*, , the landlord, who was trustee, filed a batch of ejectment suits against the

tenants on the ground that he required the building bona fide for the purpose of rebuilding. He obtained sanction from the Corporation of Calcutta

to rebuild the premises in 1939; but, as War broke out, he did not proceed with the reconstruction of the building. Subsequently, the Corporation

authorities issued a notice to the owner drawing attention to the dangerous condition of the building and demanding that certain repairs should be

done immediately. The trustee entered into agreement with a firm of contractors to rebuild the premises, in accordance with the plan already

sanctioned by the Corporation. He also filed application for permit for necessary cement required for the construction. It is in those circumstances

the landlord applied to the Rent Controller for sanction to bring ejectment suits against the tenants. Before him, evidence was let in to prove that

the building was very old and in a dilapidated condition. The Judge made a personal inspection of the building and he heard the evidence of an

Engineer, who was examined on behalf of the landlord. The tenants contended that they were not entitled to be evicted and there was no

protection for them in case the building was demolished. The learned Judges, while interpreting the words in the Act, namely ""where the premises

are bona fide required by the landlord either for purposes of building or rebuilding"" observed (at page 75) :

What it states is that sub-sec. (1) shall have no application if the landlord requires the premises bona fide for rebuilding. The state of the premises

therefore is not an essential factor in the case. However, it cannot be overlooked that in this case the learned Judge has accepted the evidence of a

witness which showed that these premises were very old, dilapidated, dangerous and likely to fall if extensive repairs were not done to them

quickly.

It appears to me that the premises are bona fide required by the landlord for the

purpose of rebuilding, if the landlord honestly required them for that purpose. The equivalent of the phrase "bona fide" is "honesty". It refers to the state of the landlord's mind. The landlord therefore will be entitled to possession as against the tenant if he established that he honestly requires the premise for rebuilding"".

(7) In Sharma Electric Engineering Works and Others Vs. Radha Devi and Another, the landlady filed a batch of suits for ejectment of the tenants

on the ground that the building was very old and there was great danger of the house falling down unless it was reconstructed immediately. Though

it was denied by the tenants, the Rent Controller gave a finding that the landlady had made out a case that the premises were reasonably required

for the purpose of rebuilding. When the matter was finally taken to the High Court, the learned Judges observed at page 229 of the report thus.

The test of reasonableness must be whether the purpose for which the re-building is proposed is reasonable. Three things are necessary. First, the

occupation of the premises by the landlord must be ""required""; secondly, that requirement must be for the purpose of re-building, and thirdly, that

the requirement is reasonable. If the purpose of re-building is merely to make the house more beautiful, that would not be considered a reasonable

requirement. If, on the other hand, the purpose of re-building, as in this case, is to ensure the safety of the tenants and the preservation of property,

the requirement must be ordinarily considered to be reasonable"".

(8) In Deb Kumar Mukherjee and Others Vs. Abhoypada Banerjee, the landlord required the building for demolition of the tile-roofed room and

construction of these rooms on its site, one on each floor, addition of two more rooms over the first floor of the main building after removing the

existing roof over the first floor which had got damaged on account of rust of the iron joints, and extending the existing stair-case upto the roof of

the second floor. The tenants contended that the proposed addition or alteration would enure more to the benefit of the landlord than to the public

advantage or benefit, and that the landlord's motive for getting a higher rent by making the new construction was so patent, and obvious that the

courts below should have held that the requirement was not reasonable. The learned Judges observed :

the court in determining the reasonableness of requirement for purposes of

building or re-building shall have regard to the comparative public benefit or disadvantage by extending or diminishing accommodation. It does not say that the question of costs, gain or any other economic motive of the landlord, must be subordinated to the question of public advantage or benefit to be derived by extending the existing accommodation of a tenanted house..... In my opinion it is not necessary in a case of this description, that the extent of public advantage or benefit must be such as to preponderate over the economic gain of the landlord

(9) Finally, the learned Judge held that both the courts had concurrently founded that the requirement of the landlord was not only honest but

reasonable and that he would not be justified in superseding that finding. At the same time, he agreed with the proposition that all honest

requirements might not be reasonable, because the honest belief of a landlord that he required some premises for building or re-building would not

necessarily make his claim reasonable, unless the court, having regard to all the facts and surrounding circumstances of a particular case, came to

the conclusion that it was so.

(10) In *Ramchander v. Kidarnath* AIR 1954 Punj 185, the landlord, after repeated attempts for ejecting the tenant on various grounds, finally filed

an application for ejectment of the tenant on the ground that he wanted to rebuild the old building which was in a damaged and dilapidated

condition. He also filed a plan which he had got sanctioned from the Cantonment Board. The tenant pleaded that the application was not a bona

fide one. The Punjab High Court held that the landlord could apply for an order directing the possession to be delivered to him, if he required it for

re-erection or replacement of the building or erection of other buildings. The learned Judge observed (at page 136) :

It is not the state of the building which is the test of re-erection, but it is the desire of the landlord to rebuild.

But this decision was not followed in the subsequent decision, viz., *Bua Dass Tarachand Vs. Piare Lal Dewan Chand*, where it was held at page

24 : ""..... It is not the desire of the landlord to rebuild but his bona fide need for construction that is the determining factor

(11) In *Md. Azizuddin v. Asiz Hussain*, 1960 2 Andh WR 203 , the landlords applied to the Rent Controller for eviction Rent Controller for

eviction of the tenant from the suit premises which was gifted to them by their grandfather under a registered deed of gift. In their application, they stated, that as they had no houses of their own, they wanted to demolish the suit property and rebuild a three-storeyed building with the object of living in the first two floors and letting out the third floor. The tenant who had put a petrol bunk in the suit property contended that the application was not a bona fide one, that the landlords did not really require the property for their residential purpose and that their motive was to increase the rent. The tenant further stated that he had invested about Rs. 15,000 on the petrol bunk and that the order evicting him would put him to a loss of Rs. 30,000. The Rent Controller as well as the appellate authority came to the conclusion that the application of the landlord was a bona fide one.

When the matter came up to the High Court, the learned Judges of the Andhra High Court, after examining the relevant provision in the Hyderabad

Houses (Rent, Eviction and Lease) Control Act 1954 observed.

Here again the question of bona fides would be a question of fact, that is, that is, the Rent Controller would be entitled to take into consideration

the fact that the landlord has the means and that he intends in fact to construct. The question whether he intends to construct a big or a small

building, and whether it is reasonable or necessary to construct it or not, is not a matter which could be taken into consideration because that

would depend upon the means and the intention of the landlord to make the best use of his property, a matter in which his view will not be

substituted by the view of the Rent Controller. If the landlord had the means to build and intends to build a three-storeyed building, as in this case,

that does not go counter to the policy of the Rent Control Act. In fact, it may effectuate the policy because the policy of the Rent Control Act is to

protect the tenants, having regard to the scarcity of accommodation. If a landlord can afford to build premises with greater accommodation,

certainly that would in some way relieve the scarcity".

(12) Now, in our High Court, there are three unreported decisions, on the interpretation of the words "immediate purpose of demolition". In C. R.

P. 1763 to 1766 of 1963 (Mad) Ramchandra Iyer C. J. observed-

S. 14 does not limit the right of the landlord to obtain possession of the building only in cases where the building has become old requiring

immediate demolition and reconstruction. The terms of the section are wide enough to include cases where the landlord bona fide requires the

building for his own business or for other legitimate purpose. A proposal to demolish an existing building and to reconstruct it into a bigger and

more productive one, cannot by itself be regarded as mala fide".

(13) In C. R. P. No. 68 of 1964 (Mad) P. M. Madhavan Vaidyar v. N. K. Natarajan, before Kailasam J., it was contended by learned counsel

for the tenant that, before a landlord could succeed in a petition under S. 14 of Act 18 of 1960, he must establish that there was immediate need

for demolishing the building i.e., the building was in such a state of condition that it required immediate demolition. On the other hand, it was

contended by learned counsel for the landlord that the words used in S. 14(1)(b) of the Act were "immediate purpose" and not "immediate need",

and that, therefore, it was enough if it was established that the immediate purpose of the landlord was demolishing the building for the purpose of

erecting a new building, Kailasam J. held-

The sub-section does not state that the condition of the building should be such as there is need for demolishing it..... The policy behind the sub-

section is to enable the landlord to put up a new building so that more accommodation would be available..... I am unable to accept the

contention of the learned counsel for the petitioner that eviction under S. 14 is only available for the purpose of demolishing a building which is in a

very bad condition..... Considering all the evidence. the District Judge has come to the conclusion that the landlords bona fide required the

building for demolishing it for the purpose of erecting a new building in its place. I am unable to say that the interference by the District Judge with

the order of the Subordinate Judge is unwarranted exercise of the revisional powers

(14) Anantanarayanan J. in a similar case held that the condition of the building at the time of the application was only incidental and that what the

section required was that the landlord must satisfy the Court that the building was bona fide required by the landlord for the immediate purpose of

demolition. In C. R. P. 2150 of 1963 (Mad), Mohidin Bhai v. Hale and Co. Anantanarayanan J. observed-

I am totally unable to see how the present state of the building, and the extent

to which it could stand without immediate demolition and reconstruction, in the future, are not relevant considerations in assessing the bona fides of the landlord. On the one hand, landlords may bona fide require such buildings, particularly old buildings, in their own interest, for demolition and reconstruction. On the other hand, it is equally possible that the mere fact that the building is old, is taken advantage of by the landlord to put forward such pretext, his real object being ulterior, and not bona fide for the purpose of reconstruction. The courts have to apply several criteria, and to judge upon the totality of the facts. But the courts cannot exclude the possibility that the ancient or relatively old character of the building, which may nevertheless be in quite a good and sound condition, is being taken advantage of by a landlord in order to make such an application with an ulterior purpose, which purpose might be, for instance, to obtain far more advantageous terms of rent in the future. What the section really contemplates is a bona fide requirement.

(15) In *Neta Ram Vs. Jiwan Lal*, the landlord wanted to evict the five tenants who were in possession of certain shops and chobaras in the town of Patiala, on the ground that the shops were in a state of disrepair and were dilapidated and that the landlord wished to rebuild them after dismantling the structures. The Rent Controller held that the requirement of the landlord was not bona fide. This was confirmed on appeal. But when the matter went upto the High Court, in revision, the High Court set aside the finding of the courts below and ordered eviction, as it was satisfied that there was a bona fide desire on the part of the landlord to rebuild the premises. In the appeal filed to the Supreme Court, their Lordships observed at page 502-

The Controller has to be satisfied about the genuineness of the claim. To reach this conclusion, obviously, the Controller must be satisfied about the reality of the claim made by the landlord and this can only be established by looking at all the surrounding circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward and says that he entertains a particular intention, however strongly, said to be entertained by him. The clause speaks not of the bona fide of the landlord, but says, on the other hand,

that the claim of the landlord that he requires the building for reconstruction and re-erection must be bona fide, that is to say, honest in the circumstances. It is impossible, therefore to hold that the investigation by the Controller should be confined only to the existence of an intention in the mind of the landlord to reconstruct. This intention must be honestly held in relation to the surrounding circumstances".

In the end their Lordships of the Supreme Court held that the High Court was not justified in interfering, when two Tribunals had gone thoroughly into the question and discussed it from a correct angle.

(16) 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 word "bona fide". It is only in our statutes the courts have attached great importance to this

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 a subjective matter could only be proved by the plaintiff stepping into the witness

box--Atmaram v. Narayan Arjun, 1922 23 Bom LR 972: AIR 1922 Bom 109 . While considering the "bona fide" the Judge should take into

consideration every circumstance affecting the interests of the landlord and the tenant as well as the interests of the public, at the date of hearing.

(17) In Epsom Grand Stand Association (Ltd.) v. E. J. Clarke, 1919 35 TLR 525, Lord Justice Bankes said-

The plaintiffs had to satisfy the court that the premises were reasonably required. It was not merely a question of their acting bona fide. They must

not only act bona fide but they must act reasonably in requiring the possession of the premises. Whether the premises were reasonably required

must depend on the circumstances

(18) Again, in Errington v. Metropolitan Dist. Railway Co., (1882) 19 Ch. D. 559 . Jessel M. R. Said-

It is the company who are to be the Judges of what they require unless they are not acting bona fide, and the evidence, and the only evidence

required, is the opinion of the Engineer or Surveyor, or other officer of the

company, unless the other side can show that they are not acting bona fide. Now, of course, you can show want of bona fide in two ways. You may show it by proving that the lands are wanted for some collateral purposes as a fact, or you may show it by proving that the alleged purpose is so absurd under the circumstances that it cannot possibly be bona fide

(19) The Court must consider not whether the landlord's desire for possession is reasonable, but whether it is reasonable to make an order for

possession. Because a wish is reasonable, it does not follow that it is reasonable for a court to gratify it.

(20) In order to prove bona fides in such applications as the present one, where the landlord requires the building for the immediate purpose of

demolition, he should satisfy the deciding authority that his requirement is a reasonable and bona fide one, that he has prepared the plans and the

necessary estimates for the new building, that he has obtained the necessary sanction of the Corporation or the Municipal authorities for the

purpose of such erection and that he has got the necessary funds with him to carry out such reconstruction.

(21) In C. R. P. 2114 of 1963, the landlord, Sri Kakumani Adikesavalu Chetti's Charities by its President, M. Rajamannar Chetti, owns about 15

buildings yielding about Rs. 6000 per month as rent. The Board of Trustees have passed a resolution, Ex. P. 2 to demolish the present building and

reconstruct a new building in its site. The landlord has obtained a plan sanctioned by the Corporation, Ex. P.3. The landlord has got an estimate

prepared by an Engineer (Ex. P. 5) for Rs. 1,25,000. The trust has got ample resources for spending on the new buildings. The building is

sufficiently old and there is evidence to show that the building is in dilapidated condition and has cracks in walls and is leaky, and the roof of the

kitchen is propped up by 2 casuarina poles. Even on the evidence adduced by the tenant through R. W. 2, that the building is 50 years old, both

the Rent Controller and the Appellate authority have given a finding that the application of the landlord for demolition and reconstruction is a bona

fide one. Similarly, in the other batch of revision petitions, viz, C. R. P. 1861 and 1862 of 1963 and C. R. P. 338 of 1964, the landlord wants the

tenants to be evicted on the ground that the building in which the shops are

housed is over 75 years of age and that the building is bona fide required for the immediate purpose of demolition and reconstruction. During the course of the enquiry, the Rent Controller inspected the building. He has recorded in his notes of inspection that the rafters have been eaten away, that the walls are very small and that on the whole the major part of the shops looked bad, old and justified the request for demolition. After considering the evidence and the circumstances of the case, the Rent Controller held in all these cases that the application of the landlord was really bona fide and that the landlord required the building immediately for the purpose of demolition and reconstruction.

(22) Before I conclude, I would refer to what Lord Greene M. R. Said in Cumming v. Danson. 1942 2 All E. R. 653.

In considering reasonableness..... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common-sense way as a man of the world..... Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account

(23) Having reviewed the entire case law on the subject, and discussed the facts in all these cases, I am unable to interfere in revision with the findings arrived at by the courts below.

(24) The revision petitions are dismissed, but, in the circumstances, there will be no order as to costs.

(25) Learned counsel for the tenants (petitioners) represents to me that they have been residing in the premises for a long time, and that some of them have been carrying on business also and that they would be put to hardship if they are asked to vacate the premises immediately. It is, therefore, necessary to give them sufficient time to vacate the premises. I therefore grant about six months time for the tenants to vacate the premises. Further time will not be granted. I direct the tenants to vacate and surrender vacant possession positively before 30-4-1965. No further time will be given to the tenants.

(26) Revisions dismissed.