

(1997) 04 MAD CK 0030

In the Madras High Court

Case No : CRP. No. 1386 and 3181 of 1993 and CMP. No. 6743 of 1993

S. Kattappan and Another

APPELLANT

Vs

Civil Advocates Clerks' Association

RESPONDENT

Date of Decision : 12-04-1997

Acts Referred:

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

Citation : (1997) 2 CTC 41 : (1998) 1 LW 53 : (1998) 1 MLJ 260

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Natarajan, for the Appellant; V. Ragavachari, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—C.R.P. No. 1386 of 1993 is by the tenant and C.R.P. No. 3181 of 1993 is by the landlord. They arise from the same

proceedings in R.C.O.P.No.21 of 1986, on the file of Rent Controller (Principal District Munsif) Dindigul.

2. Parties herein will be referred to according to their array in the rent control proceedings.

3. Landlord sought eviction of the tenant on the ground that he has committed wilful default in payment of rent and the building also requires immediate demolition and reconstruction.

4. Both the grounds were opposed by the tenant.

5. Rent Controller recorded evidence, both oral and documentary, and after considering them in detail he ordered eviction.

6. The matter was taken on Appeal by the tenant in R.C.A. No. 31 of 1990 on the file of Principal Sub ordinate Judge, (Appellate Authority)

Dindigul. The Appellate Authority confirmed the order of eviction in so far as the finding that the building requires immediate demolition and

reconstruction is concerned. But it was found that he is not liable to be evicted on the ground of wilful default in payment of rent. That is how

two Revision Petitions are filed, one by the landlord and the other by the tenant.

7. At the time of arguments, learned counsel for the landlord submitted that he is not pressing his Revision, namely, C.R.P. No. 3181 of 1993.

Therefore the same is dismissed.

8. The point that survives of consideration is, whether in the finding of the Authorities below that the building requires demolition and reconstruction requires interference by this court.

9. Learned counsel for the petitioner submitted that u/s 14(1)(b) of the Rent Control Act, the condition of the building is of primary importance,

and in this case, even according to the Commissioner's Report, it is clear that the building is not in such condition that it requires reconstruction.

The Commissioner inspected the property with the help of an Engineer. According to learned counsel, even though the building is old, and may not

have any modern amenities, it is structurally sound. He further contended that so far as the means of the landlord is concerned, no evidence has

been let in. It is his further case that the claim of the landlord is also lacking in good faith. That argument is based on the premise that it is at the

instance of P.W.2. the eviction petition itself is filed. According to him, he being a tenant, offered sufficient funds to the landlord to have the

construction or that he was prepared to take up the construction work. But without accepting that offer, landlords have accepted the offer of

P.W.2. This, according to the learned counsel is only to provide P.W.2 accommodation after reconstruction. It is further contended that if P.W.2

is a man who has to finance the reconstruction, it shows that landlord has no means to put up the construction. Both the Authorities below

concurrently found against the above contention and held that it has no basis. It further found that the claim of the landlord is bonafide.

10. Learned counsel so submitted that some of the decisions relied on by the Authorities below were declared to be not good law by the Supreme

Court and, therefore, the basis of the finding also goes.

11. I will consider these submissions in seriatum.

12. The Commissioner who prepared a Report with the help of an Engineer, has given a vivid picture of the building. Of course, he does not give a certificate that the building is dilapidated, that but it is seen that the building is more than 50 years old having no modern amenities. The entire flooring is damaged and some of the walls have also cracks. Even some portions of the roof and rafters are damaged according to the Commissioner. The argument of learned counsel is that these shortcomings in the building are but natural taking into consideration the age. But the seams do not affect the structural strength of the building which, according to him, is one of the main criteria to be considered. What is meant by condition of the building for the purpose of reconstruction? In a recent decision of the Supreme Court reported in *Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal*, their Lordships held that 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 of the building and erection of a new building on the same site is bonafide or not. For recording a finding that requirement for demolition was bonafide, the Rent Controller has to take into account (1) bonafide 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 the conclusion one way or the other has to be arrived at by the Rent Controller. In the concluding paragraph of the judgment, their Lordships took into consideration the importance of the locality, and the development that has taken place, the modern amenities that could be provided if a new construction is put up. This also suggests that the development in the locality and the amenities that are presently available are all to be taken into consideration to arrive at conclusion regarding the "condition" of the building. Along with the same, the economic advantage of the landlord if a new building is put up with modern amenities, is also relevant consideration.

13. When we say that the area is developing, naturally, the court has to consider the surrounding places where the building is situated. It is settled

law that while we take into consideration the condition of the building that requires reconstruction, the same has to be considered not from a

narrow point of view, namely, whether the building is in a dangerous or dilapidated condition. The primary importance that was given to physical

condition of the building has now been watered down to a certain extent in the decision of the Supreme Court cited supra. The court must have

due regard to the importance of the locality in which the building is situated, the developing nature of the locality and also the development of the

area where the particular building itself is situated.

14. In one of the earliest decisions of the Kerala High Court reported in Kalliani and Ors. v. Madhavi and Ors., 1970 K.L.T. 257 in paragraph 3,

V.R. Krishna Iyer, J, as he then was, held thus:-

... if a building perilously close to sinking alone can justify a petition u/s 11(4) (iv) in a State with heavy monsoons, I do not know what purpose

would be served by such a course except, to endanger the lives of tenants. It is obvious, therefore, that a wider and more realistic meaning must be

given to the so expression ""Condition of the building"". The social purpose of this provision is to remove the road blocks in the way of progress

building programmes. Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of absolent and

unsightly buildings to make room for larger, modern construction is a social necessity provided.

existing tenants are not thrown into the streets. The ""condition of the building"" is a larger concept which includes considerations of social

surroundings and allied factors. Where the building is very old and incongruous with the social setting and surroundings of the place, the Court has

get to take a more liberal view in applying the provision of law.

15. In the decision reported in Sherwood Educational Society, etc., v. Abid Namazie and Ors., 1997 1 L.W 323, I have also applied the above

decision.

16. In Saramma Varghese v. George, 1971 K.L.T. 282, a learned Judge of the Kerala High Court said that if the physical condition of the building

alone is taken into consideration it might be said that it does not call for

immediate reconstruction. But other factors like the situation of the building, the possibility of its being put to more profitable use after reconstruction etc., have also to be taken into consideration. All that the courts should see in a matter like this is whether the claim put forward is honest and the petitioner himself is earnest in carrying out the reconstruction.

17. In *Ahammad Kanna v. Muhammed Haneer*, 1967 K.L.T. 841, K.K. Mathew, J. as he then was has held thus:-

A conclusion on the question as to whether a building is in such a condition that it needs reconstruction, is to be arrived at, not merely on the basis of looking at the building alone or taking into account the actual physical condition of the building alone but having due regard to the various other circumstance, namely, the area where the building is situated, the nature of the developments that are taking place in the area, etc. To reach this conclusion obviously the court 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 it being put to a more profitable use after construction, the means of the landlord and so on (Italic supplied)

18. 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 u/s 14(1)(b) of the Act along with other factors.

19. In the case on hand, the finding of the Rent Controller as well as the Appellate Authority is that the building is situated in the heart of the town.

Modern buildings have come up, and that too in front of the Court-house, various modern buildings have also been constructed, and the locality is very important. Many public offices are also situated in the same junction. It has also come out in evidence that the existing building is without any modern amenities. Merely because the structure is strong, if there are no amenities, it cannot be said that it could be used conveniently. When we take into consideration the condition of the building, making use of the building

to its best advantage is also a matter that could be taken into consideration. It is in evidence that the flooring is damaged, and the mud portion has come up. Kitchen portion could not be made clean due to lack of amenities. Even now fire-wood is used for preparing food. That means, the entire area has become dark due to smoke. According to the Commissioner, the condition of the rafters is also not good. Portions of the roof have also lowered down due to bad structure.

20. Even if the building may not be that much dangerous as urged by learned counsel for the petitioner, that is not the way that we have to interpret

the condition of the building. It has got a larger concept, and we have to take into consideration and the social set up, and the Court is also entitled

to look into the aspect whether the existing building is fit to be there, taking into consideration the development that has taken place in the locality.

If, in that view, the commissioner's Report is interpreted in this case, I do not think, the Authorities below have wrong in holding that the building

requires reconstruction.

21. Regarding the means of the landlord, it is true, P.W.2 has also offered financial assistance. Landlord in this case is an association of the

Advocates' Clerks of Dindigul. They have make various arrangements to raise necessary funds, and both the Authorities below have come to the

conclusion that they have got the capacity to raise funds. They are not expected to produce the entire money before Court, to show their means.

Will the landlord be in a position to complete the proposed construction is the only question that has to be considered. That finding can only be in

favour of the respondent, as found by the Authorities below. Learned counsel for the petitioner submitted that the claim is not bona fide and the

attempt of the landlord is only to see that the tenant is evicted. I do not think such contention could also be accepted. From the very beginning, the

respondent was in search of a building for their own, so that all the advocate clerks can be together in one building of them own, and that too close

to the Court-house. In that view, they purchased the property and wanted to put up the construction. Lack of bonafides was argued for the reason

that when financial assistance was offered by the petitioner, the same was not accepted but the offer made by P.W.2 was taken into consideration

by the landlord. The argument seems to be that if the offer of the petitioner is

accepted, the claim will be bonafide, and otherwise it will not be. I do not think such an argument could be put forward by the petitioner. By admitting that he is prepared to provide financial assistance for the purpose of construction, it means that he is also satisfied that the building requires demolition and reconstruction. He also wants more modern amenities to be provided and he also wants to occupy a modern building. This is an implied admission by the tenant himself. The effect of that admission cannot be taken away merely because the landlord accepts the financial assistance from other persons. If a person is able to give financial assistance, it follows that he may also take into consideration the repaying capacity of the debtor. The means and bonafides are, therefore, proved.

22. In the result, I do not find any merit in this Revision. Confirming the findings of the Authorities below, the Civil Revision Petition is dismissed, however, without any order as to costs. C.M.P. No. 6743 of 1993 for stay is dismissed.

23. At the fag end of the arguments, learned counsel pleaded that in case the order of eviction is confirmed, his client may be given some time to vacate the premises. In this case, the litigation started in the year 1986, and now it is more than ten years. The cost of construction has also increased manifold. At the same time, the income which the landlord gets is meagre. After the litigation began nobody will be interested in maintaining the building. Naturally, the condition of the building must also have deteriorated further. Therefore, any further delay in asking the tenant to vacate the building will put the landlord to greater hardship. In the circumstances of the case, I do not think the tenant should be given any time to vacate the premises. The request made by learned counsel for the petitioner (tenant) is, therefore, rejected.