

(1998) 02 MAD CK 0084
In the Madras High Court
Case No : C.R.P.Nos. 1399 to 1403 of 1992

S. Namagiri Lakshmi

APPELLANT

Vs

Pravin Harilal Mehta and 4 others

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(8), 12, 13, 14(1), 16(2)

Citation : (1998) 1 CTC 595 : (1998) 2 MLJ 176

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. R.R. Mani, for Mr. T.M. Hariharan, for the Appellant; Mr. K. Alagirisamy, for Mr. S. Jegannathan, for the Respondent

Final Decision : Allowed

Judgement

1. The landlady, aggrieved against the order rejecting her eviction petition filed against the tenants, has filed the above revision.

2. The premises in question originally belonged to the husband of the landlady, and after his death, his sons and daughters inherited the same. The

landlady filed the eviction petition to evict the tenants on the ground that she requires the respective premises for demolition and reconstruction. In

the petitions she has stated that the premises are very old and in a dilapidated condition. So she wants to demolish and reconstruct the same as

multi-storeyed ones. According to her, the premises are in the verge of falling down. The said petitions were resisted by the respective tenants by

filing respective counters in the respective cases. The main defence that was taken in the counters was that the requirement of the landlady is not

true, genuine or bona fide. According to them, the premises are in good and habitable condition and well-maintained. The learned Rent

Controller/District Munsif, Coimbatore, after considering the oral documentary evidence allowed the petitions. Aggrieved against the same, the

tenants filed appeals before the Appellate Authority/learned Sub-Judge, Coimbatore. The Appellate Authority accepting the case of the tenants

that the landlady is going to remove the ceiling only, keeping the walls intact, held that the petitions u/s 14(1)(b) of the Tamil Nadu Buildings (Lease

& Rent Control) Act 18 of 1960 cannot be maintained and thereby allowed the appeals setting aside the order of eviction. Aggrieved against the

same, the landlady has filed the above revisions.

3. The learned Senior Counsel appearing for the respondents/tenants has raised an objection saying that the petitioner/landlady is only one of the

sharers and so she cannot maintain the petitions. Admittedly, her sons and daughters are also entitled to right in the properties in question, and,

without even impleading them, the petitions cannot be maintained. I find it difficult to accept the said arguments.

4. This plea was not at all raised neither in the counter nor before the authorities below. Moreover as a co-owner, the landlady is as much as a

owner of the entire properties as any sole owner of the properties in question. The legislature has not provided any restriction on the co-owner to

file an application u/s 14(1)(b) of the Act. The only restriction that has been imposed under the Act is u/s 10(8) of the Act, and, that too only

against the agent of the landlord/landlady. In the absence of any such restriction, it will be foreign to hold that the co-owner cannot maintain the

petition for demolition and reconstruction, especially when no evidence is available before the authorities below to show that the other sharers are

not willing to demolish and reconstruct the premises in question. Support is also gained for this view in Shanmugha Appa v. Abdul Hameed 1973

(I) M.L.J. 241 wherein P.S.Kalisam, J., as he then was, has held that petition for eviction by one co-owner even for demolition and reconstruction

is maintainable. Hence the contention raised on behalf of the tenants by the learned Senior Counsel cannot be countenanced.

5. The learned counsel appearing for the petitioner/landlady has submitted that since by removing the ceiling and raising further construction in the

premises the original building will lose its identity, the proposal of the landlady can be construed only as demolition and reconstruction and so the

Appellate Authority is not correct in setting aside the order of eviction.

6. The Appellate Authority has found that the petition premises in R.C.O.P.No.203 of 1984 is situate in Dr.Nanjappa Road, Coimbatore which is

a commercial center and there are multi-storeyed buildings around that locality. The Appellate Authority has also found that the landlady has got

permission from the concerned municipality and she is having sufficient funds for demolition and reconstruction of the premises. The Appellate

Authority has rejected the case of the landlady mainly on the ground that since she wants to retain the premises as such, and only by removing the

terrace of the premises, she wants to construct the first floor, as the buildings are not in dilapidated, condition. Such an approach cannot be

sustained. The appellate Authority though not specifically relied on the P.Orr. & Sons Pvt. Ltd. case, 1990 (2) L.W. 547 on the basis of the said

decision, has come to the conclusion that only if the building is in dilapidated condition, the landlord can seek for eviction u/s 14(1)(b) of the Act.

In the decision of this Court in S.P. Sabura Begum Vs. M.K. Thangavelu, , following the decision in Vijay Singh etc. etc. Vs. Vijayalakshmi

Ammal, , it is held that the age and dilapidated condition of the building not being sine qua non, the landlord should be entitled to obtain an order of

eviction u/s 14(1)(b) of the Act whether or not the condition of the building is such as to require immediate demolition.

7. The learned Senior Counsel appearing for the landlady anticipating objection from the tenants regarding the maintainability of the petitions u/s

14(1)(b) of the Act, has submitted that though the landlady wants to remove only the ceiling and put up multi-storeyed building in the premises, she

can maintain the petitions u/s 14(1)(b) the Act. In support of his submission, he has relied on the decision in S.A. Henry Vs. J.V.K. Rao, , the

decision in National Studies Rep. by its partners & others v. Mrs.Prema Kalyanasundaram 1997 (3) L.W. 269 and the decision in 1979 T.N.L.J.

73. On the basis of the abovesaid settled decisions, the learned Senior Counsel has submitted that Section 14(1)(b) of the Act requires a

demolition followed by; structural alteration by way of reconstruction so as to give a new face to the firm and structure of the premises. In the

decision reported in S.A. Henry Vs. J.V.K. Rao, , though the landlord, wants to re-model the building and not to demolish the entire premises and

put up new building on the site, learned Judge, as pointed by the learned Senior Counsel appearing for the petitioner, land that it amounts to demolition and reconstruction.

8. The learned Senior Counsel appearing for the respondents/tenants, on the other hand, has brought to the notice of this Court the decision in

K.Krishnan v. Manusamy 91 L.W.454, wherein, the Division Bench of this Court overruled the decision of Ramamurthi, J., as he then was, in

S.A. Henry Vs. J.V.K. Rao, .

9. Before going into the rival contentions raised before me, I think it is necessary to deal with the scope of Section 14(1)(a) and (b) of the Act

which reads as follows:-

Recovery of possession by landlord for repairs or for reconstruction - (1) Notwithstanding anything contained in this Act, but subject to the

provisions of section 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-

(a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated; or

(b) 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

purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of

the building to the landlord before a specified date

The word "demolition" has not been defined under the Act. Equally, the words "new buildings" have also not been defined. But the word

"building" has been defined u/s 2(2) of the Act. So, the word "demolition" must be therefore, obliterate substantially the old building and the

erecting must bring into a new building, The old building by act of demolition must come to an end as totally as to amount to substantial cease to

exist. Support is also gained for his view from Section 16(2) of the Act. Section 16(2) while referring the word "demolition" used the expression

"totally demolished". To appreciate the said section, it is necessary to extract the same, which is as follows:-

Where in a pursuance of an order passed by the Controller under clause (b) of sub-section(1) of section 14, any building is totally demolished and

a new building is erected in its place, all the provisions of this Act shall cease to

apply to such new building for a period of five years from the date

on which the construction of such new building is completed and notified to the local authority concerned

Though the words "totally" which finds place in Section 16(2) of the Act is not used in section 14(1)(b) of the Act while construing the meaning of

the word "demolition", we have importance to the word "totally" as mentioned u/s 16(2) of the Act.

10. While construing whether the removal of roof would amount to demolition, the Division Bench in the decision in *K.Krishnan v. Munusamy* 91

L.W. 454, has held as follows:-

We are in respectful agreement with the earlier part of this statement of law. But, we are unable to agree with the learned Judge that if the roof of

a building is to be changed, it would amount to "demolition" within the meaning of S. 14(1)(b). There are various types of roofs, and it may be that

it may become necessary to change the roof. Certain people for coolness might prefer a thatched roof instead of a tiled roof. Others may prefer a

roof with asbestos sheets because it is cheap, and a third person may like to have a concrete cement roof for greater stability or because that is

more commonly used. A change from one type to another may perhaps be a change of a substantial nature so far as the roof is concerned. But,

when one talks of demolition of a building as contemplated in S. 14(1)(b), it is difficult to assume that the change of a roof will amount to

demolition of the building. The learned Judge considered the decision of the English Court in *P.E.Cadle and Co. v. Jacmarch properties* 1965 (1)

M.L.J. 78 : 77 L.W. 632 wherein the view was taken that the work intended by the landlord of making the three floors into one self-contained unit

and to put inner staircases from the ground floor shop down to the basement, and from the ground floor shop upto the first floor and to construct

lavatories on the first floor with all the necessary plumbing and to make the basement a much better place by putting in a proper floor and doing

away with the damp would not amount to "reconstruction" a word that came up for consideration in that case. The principle of the decision was

not applied because the word used in the statute concerned was "reconstruction" and not "demolition". Certainly, reconstruction is of a lesser

import than demolition, and with respect, we think that the decision is helpful in

construing the word "demolition" in S. 14(1)(b), Since if the vast changes sought to be effected to the building there would not amount to reconstruction they would not amount to demolition whether the changes that have been adverted to in the English decision will amount to reconstruction or not, it is difficult to hold that similar changes or a change in the roofing will amount to "demolition" as contemplated in S. 14(1)(b) and the erection of a new building on the same site. The expression "erecting a new building on the same site" adds to the effect of the word "new building" because the very words "new building" would indicate that something different from what was in existence on the property or on the site to be more accurate, must be brought into being after demolition. Demolition must therefore obliterate substantially the old building and the erecting must bring into being a new building. Apart from this decision reported in M. Pattabiraman Vs. The Accommodation Controller, Madras and Another, , no other decision holding that the change of roof would amount to demolition, has been brought to our notice

11. While overruling the decision of Ramamurthi, J., in S.A. Henry Vs. J.V.K. Rao, , the Division Bench in 91L.W.545 cited supra, has held as follows:-

Our attention was then drawn to the decision of Ramamurthi, J., in S.A. Henry Vs. J.V.K. Rao, . The learned Judge after dealing with the various aspects held that there is a lacuna in the Act since S. 14(1)(b) would be attracted only in case of repairs as defined in the Act to which we have already made a reference, and the provisions in S. 14(1)(b) provided for demolition and erection of a new building as on the same site, and in between "repairs" as defined in the Act, and "demolition and erection of a new building", there could be many changes which could be made to a building and for which there is no provision made in the Act. In other words, when changes much more substantial than mere "repairs" fall for consideration, the learned Judge felt that if too technical meaning is to be given for the words "demolishing and erecting a new building on the site", appearing in S. 14(1)(b) many cases where substantial changes which have to be made would not fall within the scope of the Act, and therefore, the words appearing in S. 14(1)(b) must be given a larger import than what they appear to convey by reading them in the ordinary manner. With

great respect, we are unable to agree with this view of the learned Judge. We have to interpret the statute and gather the intention of the Legislature according to the words used applying the well-known principle that normally we must attach to those words a grammatical and literal meaning attributable to those words. Only in exceptional circumstances where absurdities would result by such interpretation, a court in interpreting the words in a statute can add to the words or attribute a meaning different from the meaning that is ordinarily applicable. It is perhaps true that some changes in a building which would not fall under the expression "repairs" as defined in the Act, would not amount to demolishing and erecting a new building on the site and if they fall out of the ambit of S. 14(1)(b) of the Act, eviction for those purposes may not be possible. We cannot rectify any lacuna, even if that be. With respect, we are unable to agree with the above principle as stated in paragraphs 24 and 25 of the judgment".

12. The learned judges in the said decision in K. Krishnan v. Munusamy 91 L.W. 454 have held further as follows:-

We are adverting to this aspect only to make it clear that the entire structure of the building need not be demolished and a new building is erected

in its place in order to attract S. 14(1)(b). When a part of a building is to be demolished which was under the tenancy of a person, it will be

sufficient if that part is demolished, and a new building is erected on the site".

So, change of roof of an old building will not itself amounts to demolition of the building and put up a new building on site of the old building, and

such a case u/s 14(1)(b) of the Act will not be attracted. In the present case it is not in dispute that the plan produced by the landlady did not

envisage the demolition of the entire building and permission is given only to remove the roof of the building and to put up multi-storeyed building

on that. It can also be seen from the evidence that there is no demolition of the entire building by the landlady but only the removal of roof portion

so as to use it as a site by the landlady for the purpose of constructing multi-storeyed building. Insofar as the tenants who are in the ground floor

are concerned, it has to be taken that the premises in which they are in occupation are not to be demolished. Therefore, applying the ratio of the

Division Bench decision cited supra, such a change of roof cannot be construed

as demolition u/s 14(1)(b) of the Act.

13. The learned Senior Counsel appearing for the respondents has further relied on the decision of S.S.Subramani, J., in National Studies Rep. by

its partners & others v. Mrs.Prema Kaslyanasundaram 1997 (3) L.W. 269. The said decision is also on the basis of the decision in S.A. Henry

Vs. J.V.K. Rao, . The decision of the Division Bench in K.Krishnan v. Munusamy 91 L.W 454 has not been brought to the notice of the learned

Judge. So, in view of the decision of the said Division Bench, I am not able to rely on the decision in National Studies Rep. by its partners & others

v. Mrs.Prema Kaslyanasundaram 1997 (3) L.W. 269.

14. In view of the above discussions, the order of the appellate Authority is sustained. Consequently, these revisions are dismissed. No costs.