

(1996) 12 MAD CK 0024
In the Madras High Court

Sherwood Educational Society

APPELLANT

Vs

Abid Namazie and Others

RESPONDENT

Date of Decision : 24-12-1996

Acts Referred:

Income Tax Act, 1961 — Section 3

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (1997) 1 LW 323 : (1997) 1 MLJ 445

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

Bench : Division Bench

Judgement

S.S. Subramani, J.—Tenant in R.C.O.P. No. 4698 of 1983, on the file of XI Judge, Court of Small Causes at Madras, having rent control

jurisdiction, is the revision petitioner.

2. Respondents filed the present eviction petition on the allegation that the building requires immediate demolition and reconstruction.

3. Material averments in the petition may be stated as follows:

Petitioners (in eviction petition) and their late mother Hussain Begum Namazie are joint owners of the non-residential bungalow having an area of

more than 10 grounds. The same was let out to the petitioner herein on a monthly rent of Rs. 2,400 exclusive of electric and other charges, payable

on the 1st of every succeeding English calendar month. Landlords filed a petition u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act,

for fixation of fair rent, and by order dated 15.12.1979, Rent Controller fixed the fair rent at Rs. 4,200 per month both parties were not satisfied

with the decision of the Rent Controller. The matter was taken before the Appellate Authority and finally it came to this Court in C.R.P. Nos. 3679

and 3770 of 1982. It is said that the said petitions are pending. As per decision of the Appellate Authority, fair rent was fixed at Rs. 6,185 with retrospective effect from 10.6.1979.

4. It is alleged that the building is very old and outdated, ill-designed, poorly built and a fast deteriorating structure. When it was constructed, it was designed as one family unit residential bungalow with a spacious compound, and now it is too unwieldy for the original purpose. Considering the importance and high value of the land site, presently it is a poor investment, and to render it worthy, the said building should be reduced to a vacant land site to facilitate the construction of a multi-storeyed complex consisting of residential flats and non-residential apartments.

5. It is further averred that a similar property of the same condition and design about 2 doors away at the blind end of the road, was demolished about two years ago and replaced with a multi-storeyed building. Petitioners own another property very near the suit property consisting of about

3 1/2 grounds of land-site and building. A plot of about 2 1/2 grounds to the rear of the building comprised in the same door number exclusively

belongs to first petitioner and he has put up a multi-storeyed building with a number of buildings in co-operation with a reputed builder, without his

having to spend any money for the construction and for his share, he has 30% of the built-up area. There is a competition among builders

wherever a good and sizable land site is available. The terms are similar. The land owner is allotted between 30% or 33 1/2% of the built-up area

in return for surrender 70% or two-thirds of undivided share in the land site to the owners of the other flats and apartments. The entire cost of

construction is borne by the builder and the land owner has nothing to do or spend. It is said that the present Rules and Regulations permit the

construction of four floors including the ground floor and not more. The reason is that water and drainage main pipes laid about half a century ago

cannot cope up if there are more floors. It is further said that the petitioners have struck a deal with a reputed builder to exploit the land site

forming part of the said property and they have been assured the allotment of 30% of the built-up area. The total built-up area in question will be

about 60,000 sq.ft. or more in which case the petitioner will get about 18,000 sq.ft of plinth area in the share of about bedroom flats about a little

over 10,000 sq.ft each. Each petitioner will get one flat free for his own occupation and get a monthly rent of Rs. 6,000. The monthly rental

valuation will be Rs. 7,500 for the 5 flats and Rs. 22,500 for the 15 flats which will be about times the present rental income. It is further alleged

that in view of the long-drawn litigation, the Local Authorities are also not issuing sanction for a period exceeding three years. They have finalised

the blue-print and reserved their right to submit the same to the Authorities at the appropriate time, on their getting possession. It is, therefore,

prayed that the petitioners may be allowed to take possession of the building for the purpose of immediate demolition and reconstruction.

6. In the counter-affidavit filed by the respondent Educational Society, it denies that the building is old and out-dated. It also denies the building was

constructed as one family unit, with a spacious compound. According to the respondent, the building does not require immediate demolition and

reconstruction. It is said that the intention to build a multi-storeyed complex is not bona fide. Regarding the arrangement with builders also,

petitioner herein disputes the correctness of the same. It is the case of the tenant that the claim put forward by the landlords is not bona fide. The

tenant is making use of the building as a school, and the intention of the landlords is only to leave all the children in streets. It is said that at the time

of original demise, there was only the main building, servant's quarters and a car shed. The tenant has put up laboratory buildings, and also a

building to keep all the sports materials, and a building for urinals, and has thus made improvements to the property/Originally the surrounding area

of the main building in the entire compound was open land. The land being a black loose soil, rain-water soaked in the soil and there was likelihood

of the main building being endangered during change of seasons. There was no drainage in the compound. The tenant had gravelled the entire

compound and had put up tar surface, which is used as play ground of the school. In and around the main building, concrete surface has been put

up by the tenant. The respondent tenant would claim that it has made proper drainage facilities, and now there is no scope for the rain water being

soaked into the soil. There were some cracks in the minor walls when the respondent Educational Society was inducted as tenant, and it filled up

all the cracks and relaid the flooring. The main walls did not develop any cracks. The tenant had put up buttress walls also before the play ground

was laid. The tenant is carrying out all the repairs to the building periodically and is keeping the building in perfect condition. The building is in a very good condition and there is no immediate need to demolish the building.

7. Rent Controller, as per Order dated 9.12.1986, dismissed the petition. He came to the conclusion that the landlords have not proved their case that the building requires immediate demolition and reconstruction. It may be noted that for taking such a conclusion, Rent Controller has taken into consideration the oral evidence of P.W. 1 (first petitioner). On the side of the respondent, two witnesses were examined as R.Ws. 1 and 2. Exs.

A-1 to A-9 were marked on the side of the landlords, and Exs. R-1 to R-10 were marked on the side of the tenant.

8. Aggrieved by the Order of the Rent Controller, landlords took the matter in appeal as R.C.A. No. 130 of 1987. The Appellate Authority reconsidered the entire matter, and, as per judgment dated 25.8. 1987 set aside the same and allowed eviction.

9. The Appellate Authority was of the view that the claim of the landlords is bona fide and that the building requires immediate demolition and reconstruction.

10. The said judgment was challenged before this Court in C.R.P. No. 4269 of 1987. This Court set aside the judgment of the Appellate Authority

and remanded the matter to the same Authority for reconsideration. The main reason for the remand was that the Appellate Authority did not take

into consideration the physical condition of the building. By that time, the judgment of the Supreme Court in P. Orr. & Sons (P) Ltd. v. Messrs

Associated Publishers (1990) 2 L.W. 547 became the law. On the basis of the said decision, physical condition of the building had to be given

greater importance than other requirements. This Court was of the view that the Appellate Authority had not considered, nor was there a definite

finding regarding the physical condition of the building. Therefore, the matter was remanded with the following observations:

...Admittedly, the Appellate Authority has not rendered any finding with regard to the condition of the building and it has not got into the question

whether the condition of the petition mentioned building is such that it requires immediate demolition for reconstruction before deciding the question

whether the petitioners' requirement of the building for demolition and

reconstruction is bona fide obviously following the directions of this Court reversed by the Supreme Court during the pendency of this C.R.P. In these circumstances, in the interests of justice, the matter has to be remanded to the Appellate Authority with a direction to dispose of the matter afresh in the light of the principles laid down by the Supreme Court in *P. Orr. & Sons Ltd. v. Associated Publishers*, (1990) 2 L.W. 547 and to decide the question whether the petitioners' requirement of the building for demolition and reconstruction is bona fide after rendering a finding on the condition of the building. Accordingly, the civil revision petition is allowed, the judgment in R.C.A. No. 130 of 1987 is set aside and the matter is remanded to the Appellate Authority for fresh disposal in the light of the observations contained in this Order and the principles laid down by the Supreme Court in *P. Orr. & Sons Pvt. Ltd. v. Messrs. Associated Publishers* (1990) 2 L. W. 547. It is open to both parties to let in fresh oral and documentary evidence before the Appellate Authority. There will be no order as to costs.

11. After remand, before the Appellate Authority additional evidence was taken. P.W. 1 was recalled and he was further examined to prove both regarding physical condition of the building and also the petitioner's financial position. P.W. 2 was also recalled. On the side of the respondent, R.W. 3 and R.W. 4 were examined after remanded. The Appellate Authority thereafter reconsidered the entire matter and came to the conclusion that the landlords bona fide need the building for demolition and reconstruction. It further came to the conclusion that the condition of the building is bad, and it is slowly deteriorating. Even though it is not in a dangerous condition, a definite finding was rendered that the building is not in good shape. For the said purpose, the Appellate Authority also took into consideration the admission of the tenant in a parallel proceeding. It also took into consideration the development in the locality, and it also took note of the fact that if a multi-storeyed complex is put up, how far it will be advantageous to the landlords. The financial position of the landlords for putting up the construction was also found to be true. With the result, the earlier judgment of the Appellate Authority was restored, though for different reasons and in conformity with the direction in the order of remand.

12. It is the judgment of the Appellate Authority that is challenged in this

revision by the tenant.

13. Sitting in revision, this Court can exercise its powers u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act only if it is shown that

the judgment by the Appellate Authority is in any way illegal, irregular or improper. It cannot reappreciate the evidence as a Court of Appeal. If the

decision is based on materials and that decision could be arrived on those materials, for the purpose of arriving at a different conclusion, the

evidence cannot be re-read or re-appreciated. Learned Senior Counsel for the petitioner was well aware of the jurisdiction of this Court and that is

why he wanted this Court and that is why he wanted this Court to we into consideration certain additional facts. He, therefore, filed C.M.P. No.

16992 of 1994, seeking permission to adduce additional evidence in the C.R.P.

14. In the affidavit filed in support of the said petition, it is alleged by the petitioner that one of the landlords has entered into an agreement for sale

with one Reshma Enterprises on 28.7.1989 to sell his one-third share in the property, and that for effectuating the sale, permission from the Income

Tax Authorities was also sought for. The Authorities have refused sanction u/s 269 UC read with Section 3 of the Income Tax Act. It is further

said the agreement holder has initiated proceedings before the Civil Court. The suit was dismissed and an appeal was taken before the City Civil

Court, Madras, and he wanted those documents to be treated as additional evidence in this case.

15. A detailed counter-affidavit was filed by the first respondent herein, wherein it is said that there is no necessity to adduce additional evidence

and it is not a case where the tenant, petitioner herein, was not given sufficient opportunity before the Rent Controller or before the Appellate

Authority. The reasons mentioned in the affidavit, even if true, will not show the lack of good faith on their part to have the building demolished and

reconstructed. It was further contended that this Court is only concerned about the propriety of the Appellate Authority's judgment and the scope

of admitting additional evidence, sitting in revision, in rent control proceedings. It is contended in the counter that additional evidence cannot be let

in rent control proceedings in revision. It is also contended that even if those documents are before Court, the result is not going to change in any

way.

16. I will first consider whether the judgment of the Appellate Authority requires interference in revision, and thereafter I will consider whether the

documents sought to be produced as additional evidence have any relevance, and even if relevant, how far they will affect the case.

17. After *P. Orr. & Sons (P) Ltd v. Messrs. Associated Publishers* (1990) 2 L. W. 547, the Supreme Court had occasion to consider the scope

of Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, and what are the matters that have to be proved by the landlord

for getting eviction. The same is reported in *Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal*, . Their Lordships also interpreted the words

"immediate purpose of demolishing" occurring in the section and whether *P.Orr. & Son's* case, (1990) 2 L.W. 547 strikes a different note. While

considering the same, their Lordships said that the bona fide intention of the landlord has to be gauged taking into consideration the age and

condition of the building, financial position, development that has taken place in the locality, and if a new building is put up, how far that could be

made use of advantageously, and further said that "No Court can fix and 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". In

paragraph 10, their Lordships said thus:

On reading Section 14(1)(b) along with Section 16, it can be said that for eviction of a tenant on the ground of demolition of the building for

erecting a new building, the building need not be dilapidated or dangerous for human habitation. If that was the requirement, there is not occasion

to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub-section (1) of Section 16 contemplates that

permission has been granted by the Rent Controller u/s 14(1)(b) for demolition of the building. But, if such demolition is not carried out in terms of

the order and undertaking, then the Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and

conditions. If the building is dangerous and dilapidated requiring immediate demolition for safety then there is no question of the Rent Controller

directing the landlord to put the tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord

to commence the demolition within the period prescribed. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restricted provisions of the Act of a period of five years from the date on which the construction of such new building is completed and notified to the Local Authorities concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission u/s 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposed to immediately demolish the building in question to erect a new building. At the same time, it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. 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 bona fide or not. 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.

18. And, finally, Their Lordships confirmed the order of eviction in that case taking into consideration the following factors. The building is an old one situated in a busy locality of the town where a number of buildings in and around the building in question had been demolished and shopping complex has been constructed with modern amenities. In that case also, the landlord wanted to put up a shopping complex for which necessary permission from Municipal Authorities had been obtained. Financial position was also found to be sound. Undertaking by the landlord that he will demolish and start the construction within the time stipulated by the statute was also there. These were all taken into consideration in confirming the

order of eviction. On the basis of these principles, the remand order also will have to be taken into consideration. In the order of remand by this

Court in the earlier C.R.R the direction was to decide the question whether the petitioners' requirement of the building for demolition and

reconstruction was bona fide after recording a finding regarding the condition of the building. For taking note of the condition of the building, the

decision reported in Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, has given the necessary guidelines. "Condition" does not mean the physical

condition alone, but something more.

19. Section 14(1)(b) of the Rent Control Act says:

14 (1) Notwithstanding anything contained in this Act, but subject to the provisions of Sections 12 and 13, on an application made by a landlord,

the Controller shall, if he is satisfied-

(a) (Omitted)

(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.

In this connection, the corresponding provision of the Kerala Rent Control Act is also relevant for consideration. It may also be noted that u/s

11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965, the landlord is entitled to get eviction.

If a building is in such a condition that it needs reconstruction and if the landlord requires bona fide to reconstruct the same and if he satisfies the

Court that he has the plan and licence, if required, and the ability to rebuild and if the proposal is not made as a pretext for eviction. Interpreting

this Section, V.R. Krishna Iyer, J., as he then was, has taken Kalyani v. Madhavi 1970 K.L.T. 257 the following view:

Counsel, however, argues and rightly, that the building must be in such a condition that it needs reconstruction and this ingredient has to be made

out apart from the landlord's bona fide intention to reconstruct. Here, it is argued that the stress is upon the physical condition of the building. I do

not agree. If eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse, there is no

doubt that few buildings could be evicted before they have actually collapsed. Knowing the length of time taken in rent control litigation in Kerala, not unusual to find the period between the institution of an application and its ultimate disposal in the revisional court, lengthening into several years 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 expression condition of the building. The social purpose of this provision is to remove the road blocks in the way of progress in building programmes. Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern constructions 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 the surroundings of the place, the Court has got to take a more liberal view in applying the provisions of law....

20. In *Neta Ram Vs. Jiwan Lal*, , their Lordships held thus:

Before a landlord can obtain an order for ejectment of his tenant on ground of his requirement for reconstruction of a house, he must satisfy the

Rent Controller about the genuineness of his claim 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.

Section 13(3)(b) of the Pepsu Urban Land Restriction Ordinance speaks not of the bona fides of the landlord, but says, on the other hand, that the

claim of the landlord that he requires the building for reconstruction and reerection must be bona fide, that is to say, honest in the circumstances. It

is possible, 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.

21. In view of the above settled position of law, I do not think the Appellate Authority has gone wrong in coming to the conclusion that the building requires reconstruction. I justify the reasoning of the Appellate Authority that the building in question requires reconstruction for the reasons stated herein.

22. It is settled law that the best evidence in a case is the admission of the opposite party. There were proceedings by the very same landlords against the tenant for eviction as O.H.R.C.N. 1846 of 1979 on the ground that the tenant has damaged the building. Ex. P-9 is the objection filed by the very same tenant before the Rent Controller, dated 7.9.1989. In para 3 of the counter, the tenant has said thus:

The building stands on black soil and foundation is not sufficient deep and well laid with the result of the walls of the main building are frequently affected by lapse of time. The building does not stand on firm ground and hence the position of the walls frequently change on account of the weight of the building. The main building itself developed cracks repeatedly and was likely to fall down. Even so, the petitioners have not spent a single paisa for maintenance and repairs of the building. The petitioners have permitted the school to be run in the building till 1980. The school was inspected by competent authorities before granting recognition and afterwards also. The school building had to be put in a proper condition for the recognition to be granted and to be continued. Hence the respondent has spent enormous amounts in filling up the cracks and in completely reflooring the ground floor by painting all the walls and windows and doors and other woodwork and has been maintaining the building in a good condition by spending money periodically. The fact that there are three buttress walls on the western side of the main building would show that the building is a very old one and with the position of the walls changing periodically for lack of proper maintenance and deficiencies in the soil, the building had to be given support to keep in place. As a consequence of change in position of the walls, periodically the flooring also gets several cracks and had to be attended to every time as and when they occur in order to safeguard the main structure from crumbling. In fact a portion of the building fell down in 1975 on account of the fact that the walls have changed

their position and serious cracks had developed in the walls and the walls could not support the weight of the building and the entire building itself was likely to fall down. At that time major repairs were carried out to the main building in order to make it stand on the ground in one piece without the immediate fear of the falling down. The petitioners have not spent a single paisa to the improvements of the building. They have given their consent for carrying out the improvements and did not demur at that time. The petitioners cannot make any complaint now at this stage. They have acquiesced all along. They cannot make it cause of action for the present petition.

This counter petition was not filed in the petition for fixation of fair rent where the tenant would be interested to see that the value of the structure is shown less, so that the rent payable also becomes less. This statement was filed in a case where the tenant was sought to be evicted for improper user of the building which had caused damage. Naturally, the tenant will have to say what was the condition of the building at the time it was let, and it is not because of its user there was damage to the building. The statement therein shows that in spite of improvements effected by the tenant, the condition of the building is not good. Though the same is sought to be explained by R.W-4, after remand from this Court, he was not successful in giving a valid explanation. We have other evidence also in this case to show that the building is not in good condition. Originally the building was used for residential purpose. It is let out for non-residential purpose, where a school is being conducted. Naturally, that has also caused its utility. Landlords have also the same case, namely, that the construction originally made was not proper. Best materials were not used. Masonry work was not proper. Taking along with the same, the soil where the building stands is also loose. Even though the building is situated in a very important locality in the City of Madras, the age and place of its construction, long user as a non-residential premises, has made the building to its present state.

23. A contention was taken that every year recognition of the school is renewed, and one of the conditions for continued recognition is safety of the building. It is the case of the petitioner herein that they have taken certificates from Engineer, and only on the basis of Engineer's report,

recognition of licence is given by Government. The basis for giving such Certificate is not explained. The Engineer who has given the certificate has not been examined. Even if such certificate is issued, it goes against the admission of the tenant. So, no reliance can be placed on the so called certificate. Further, the tenant who is interested in continuing in that locality, will also be interested in getting such a certificate. Whether that certificate itself was issued after inspection of the building is in doubt. Absolutely, no evidence has been let in that regard. Admittedly, the landlords were not given notice before issuance of any such certificate by the so-called Engineer. It is admitted by both parties that even on the date of petition, the building was more than 50 years old. It has also come out in evidence and it is also alleged in the petition that in the nearby locality brand new buildings have come up and the area is developing to a great extent. If the present building is allowed to continue there, that will be a misfit in the locality. As V.R. Krishna Iyer, J. said, it will be like a pimple in the fair face. In this case, evidence has also been let in to show that the landlords have got the financial capacity to put up the construction. In fact, that was not a matter in issue till the order of remand. Before this Court, the only point agitated was, regarding the physical condition of the building. But, when the order was made to verify the condition of the building, the financial capacity or the financial means of the landlords also became necessary for enquiry. The evidence of P.W. 1 shows that he is a man of means. He has got assets of his own, and even the property in question which is more than 10 grounds will be sufficient to put up a multi-storeyed complex. It is well-known that any builder will be too glad to provide a construction in this vast area, even without any investment by the landlords. Even though the admissibility of Ex. P-4 was doubted, that by itself will not show that the landlords have no capacity to raise funds. They have got other properties within the City of Madras and also close to the schedule property. P.W. 1 has further alleged and spoken that in the very same locality, multi-storeyed buildings have been put up by builders. It is also settled that for considering the financial capacity, the landlords need not produce/liquid cash before Court. It is sufficient if the landlords show that they have got the capacity to raise funds. Even without Ex. P-4, if the landlords approach any builder for implementing the building programme, it cannot be said that they have no intention in putting up the

construction. Even without any investment, any builder will be willing to commence the construction. Law also does not insist that the landlord alone should invest for putting up construction.

24. Regarding plan and licence, petitioners/landlords themselves have stated that they cannot produce the approved plan at present. A very good reason has been stated therein. The Statute does not say that only if an approved plan is filed before Court, eviction could be ordered. It is only one item of evidence to prove the bona fides. In this case, the eviction petition was filed in 1983. Till date, the landlords are not in a position to get possession of the building. Even if the landlords had obtained plan in 1983, the same cannot be made use of at present. Again, the plan is necessary only for the purpose of putting up a construction. That can be had only after physical possession of the property is also obtained.

Various changes both in the Laws, Regulations of the Development Authorities in the manner of construction, will have to be taken into construction before the landlords can produce an approval plan. According to me, if blueprints (Exs.P-1 to P-3) are filed and the landlords express their bona fide intention to put up a building on the basis of the approved plan unless there is some oblique motive to doubt their veracity, the same have to be accepted.

25. It was held in *S. Balasubramaniam v. Gulab* Jan 94 L.W. 102 that want of sanction plan or lack of preparation for the work of demolition and reconstruction by itself cannot negative the bona fides of the landlord.

Each case has to be decided on its own facts. Under certain circumstances, it is futile to expect the landlord to make the preparations for

demolition and reconstruction on the fond hope of succeeding in his proceedings for eviction. The insist upon such a factor as a sine quo non for

initiation of proceedings for eviction on the ground of demolition and reconstruction, would drive the landlord to incur expenditure which may turn

out to be futile depending upon the ultimate result in the proceedings for eviction.

26. From the above discussion, it is clear that the condition of the building is such that it needs demolition and reconstruction. The Appellate

Authority has further discussed the entire evidence minutely and has come to the correct conclusion. I do not want to reappreciate the same

overgain.

27. The next question that arises for consideration is whether the bona fides have been proved. Section 14(1)(b) of the Rent Control Act begins

with the words ""that the building is bona fide required by the landlord for the immediate purpose of demolishing it."" The law is settled that in

considering bona fide, it is not the intention of the landlord that has to be considered, but the proof must be, the genuineness of the claim. That is

proved by establishing the surrounding circumstances such as the condition of the building, its situation, the possibility of its being put to more

profitable use, the means of the landlord and so on. The intention must be honest and in relation to surrounding circumstances. If this is the criterion

to arrive at a finding on bona fides, that also has got to be found in favour of the landlords, for, this point has already been found in favour of the

landlords.

28. From the evidence as it stands, it do not find any ground to interfere with the finding of the Appellate Authority.

29. Now I have to consider the subsequent event which, according to the petitioner, will affect the case of bona fides of the landlords. It is said in

the affidavit filed in support of the petition, namely, C.M.P. No. 16996 of 1994 that one of the landlords has entered into agreement with one

Reshma Enterprises and a civil suit has been filed to enforce that agreement. The argument is that if there is an agreement for sale, the intention is

clear that the landlords are not going to implement the building programme. The further contention is that having entered into an agreement, the

landlords also will not be interested in further investing amounts in the property, and even a builder will not be ready to take up the construction

work.

30. A counter affidavit has been filed by one of the respondents pleading ignorance about the agreement for sale, and also about the civil suit. Even

assuming that there is an agreement for sale, and a civil suit is also pending, I do not think that the bona fides of the landlords can be doubted only

on that basis. It is here, the importance of the undertaking by the landlords comes into play. u/s 14(2)(b) of the Rent Control Act, the landlord is

bound to undertake before Court that the work of demolishing any material portion of the building shall be substantially commenced by him not

later than one month and shall be completed before the expiry of three months

from the date he recovers possession of the entire building. Legal

consequences for violation of such undertaking are also provided in the statute, i.e., the tenant will be allowed to re-occupy the building. Section

16 of the Rent Control Act provides for it. The scope of undertaking has also come for consideration before this Court.

31. In *Rathinam v. Syed Beevi (dead) and Ors.* (1989) 1 L.W. 279 a learned Judge of this Court considered the scope of undertaking u/s 14(2)

of the Act. The learned Judge said that it is not a personal undertaking. It is a statutory undertaking and the same is incorporated in the petition. It

will bind all his legal representatives even after the death of the landlord. In paragraph 4 of the judgment (at page 281), the learned Judge said that the

undertaking will not come to an end on the death of the person. It was further held thus:

...There is a misconception in this plea because the undertaking by the landlady is with reference to the property, which she undertakes to demolish

and construct. Giving an undertaking is a statutory compulsion which will have to be done with reference to the petition property by the landlady or

the landlord, as the case may be. u/s 2(6), the wider concept of "landlord" having been conceived, and on the death of Syed Beevi, her legal

representatives having become landlords, they have the right to continue the proceeding initiated by her and will be bound by all acts of statutory

undertaking given by her. Once such statutory undertaking is recorded or incorporated in the petition, it will be binding upon her legal

representatives. It is not a personal undertaking given out of her volition, but one which statutorily compels her to give in relation to the property, if

relief is sought for u/s 14(1)(b). In its absence, the petition is not maintainable.

Therefore, the claim that it is a personal covenant by her is not acceptable.

32. In *Boochi Animal v. Man Chettiar* (1984) 2 M.L.J. N.R.C. 6, learned Judge V. Ratnatn, J., as he then was, has also taken a similar view. In

that case, it was held thus:

...Merely because a landlord has filed an application for an order of eviction on one ground or other of the provisions of the Act, the power of

disposal of the landlord over the property will not be affected and the undertaking made by the landlord, would be binding on the successor-in-

interest also. Even otherwise if the undertaking can be used against the landlord

who gave it, it will also be his duty to see that the purchaser also conforms to the undertaking given by him.

33. If this is the law, any agreement made by the landlords will be subject to the undertaking given to Court. It is more or less like a covenant

running with the land and binds the successors-in-interest. An agreement-holder will also be bound by the obligations annexed to the ownership. It

is only subject to that right, the agreement is executed and accepted. Apart from the same, this can be viewed from another angle also. There are

three petitioners (landlords) in this case, and all of them are co-owners. As between them, there has been no petition. Each co-owner is the owner

of the entire property. Each of the petitioners has given an undertaking before Court regarding demolition. Section 14(1)(b) of the Rent Control

Act says that the undertaking must be by the landlord.

34. In *Sri Ram Pasricha Vs. Jagannath and Others*, , Their lordships considered whether one co-owner can get possession of the building without

impleading the other co-owners. While interpreting the same, Their Lordships said thus:

A co-owner is as much an owner of the entire property as any sole owner of a property is. Now jurisprudentially it is not correct to say that a co-

owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-

owner or a fractional owner of the property. The position will change only when partition takes place, it is, therefore, not possible to accept the

submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of

Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he

is a co-owner of the property being at the same time the acknowledged landlord of the defendants.

The said decision was followed in *Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs.*, which is a case coming

under the Tamil Nadu Buildings (Lease and Rent Control) Act. In that case eviction was refused on the ground that the landlord ultimately became

a co-owner in possession. While considering the same, Their Lordships said that the word "his own" is not only that of which he is an absolute

owner, but also that of which he is a co-owner, for, a co-owner of a building who is its landlord is regarded under Rent Control Act laws of our

country as its owner entitled to obtain possession of such a building from a tenant for his bona fide requirement.

35. Even if we exclude the third respondent herein, the undertaking given by other respondents will enable the Court to direct them to comply with

the undertaking. It must also be noted that the 3rd respondent is disputing the agreement and has also brought to my notice that he is disputing the

claim put forward on the basis of the so called agreement. If a purchaser can be bound by an undertaking, a person who is holding only an

agreement will be naturally bound by it, for, the agreement itself must be subject to the covenants. As co-owners also, the undertaking could be

implemented. In either way, the contention put forward by learned Senior Counsel for the petitioner cannot stand. His the tenant's attempt is only

to see that as between the landlords, there is a fight, so that he can cling on to the property as long as possible. Further, the Court also must take

into consideration certain circumstances against the contention of the petitioner herein.

36. Eviction petition was filed in 1983 under the honest belief that they can get possession of their property. We have to take into consideration the

express that would have become necessary for putting up the construction. Till date, the hope remains only as a hope. Inflation has increased

several folds, and naturally, the investment which the landlords expected in 1983 may not be sufficient as on today. Naturally, if the landlords think

that there is no hope of getting the property after litigation, they should not be blamed for having entered into an agreement, even if any. The person

responsible is only the tenant. It should not find fault with the landlords for its own acts. Even if the landlords come with clean hands with all bona

fides stating that they require their premises for demolition and re-construction and laws" delay is being exploited by the tenant by taking all

untenable contention one after another, that should not be a point that could be raised against the landlords. In this case, even if an agreement for

sale as alleged by the tenant is true, the bona fides of the landlords can never be doubted. The so called subsequent event which was highlighted in

the course of arguments has no relevance for the purpose of this case.

37. In the result, I confirm the judgment of the Appellate Authority and dismiss the civil revision petition with costs. C.M.P. No. 16992 of 1994 is also dismissed.