

(1975) 08 MAD CK 0022
In the Madras High Court

Smt. Chandravalli Bai Purshotham dass	APPELLANT
Vs	
Poonamchand Mittalal	RESPONDENT

Date of Decision : 26-08-1975

Acts Referred:

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

Citation : AIR 1976 Mad 65 : (1976) 89 LW 75 : (1976) 1 MLJ 89

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The Rent Controller Appellate Authority certainly has exceeded its limit in the exercise of its jurisdiction and has chosen to by pass the well accepted principle laid down by a Division Bench of this Court and which itself has stood the test of time for a considerable time. The petitioner landlady wanted the respondent to vacate the portion of the building in 202, N.S.C. Bose Road, Madras for the avowed purposes of demolition and reconstruction of the same. The petition was filed u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 herein after referred to as the Act. The Rent Controller rightly ordered eviction. On appeal the appellate authority by a cavalier reasoning but without applying the well--established law of the State as laid down by the Division Bench of this Court has reversed the same and allowed the appeal and remitted the matter back to the Rent Controller for a disposal of the same in the light of the observations made by him. According to the appellate authority if there are other tenants occupying any other portion of the same building and no eviction application has been filed against any one or more of them, the present application for eviction directed against the respondent alone cannot be considered to be bona fide. It was in those circumstances the order of remit was made. On a reading of the appellate order, I find that the learned Judge is not emphatic that the petitioner is not going to demolish the premises in the occupation of the respondent for purposes of reconstruction. But what weighed in the mind of the appellate authority was that since the building was let out to different tenants and such tenants were occupying independent and

separate portions thereof, in the absence of a request to demolish the entire building (as a whole) and without the concurrent applications for eviction filed against such other occupants of the other portions of the building, Section 14(1)(b) would be inapplicable as according to him the petition savours of mala fides.

2. It does not appear from the judgment whether the appellate authority was apprised of the position as is clear from the ratio in the Division Bench Judgment in V.P. Selvaraj Vs. V. Narasimha Rao by Power Agent V. Sethu Rao and Another, . If it was brought to his notice it is very unfortunate that the appellate authority did not follow it. The only reasonable presumption that I could draw is that he was not able to understand that decision and hence he did not follow it. But if he did understand the ratio decidendi therein then the order of remit made by him and the observations on which the order of remit is based are absolutely without jurisdiction and is quite contrary to the well laid principle in the above decision.

3. The learned Judges constituting the Division Bench made it clear that there is in-built in the Section 14(1)(b) of the Act a safeguard under which the tenant could take shelter so as to thwart any pretences on the part of the landlord in the matter of the demolition of the building for purposes of reconstruction. The lever that is provided in the section is so obvious for, the tenant can seek for restitution if the landlord who has to peremptorily give an undertaking as provided for in Section 14(2) fails to demolish the same within the prescribed time. The landlord should make it appear that his intention, ever since he entered his petition for eviction at the threshold of the Rent Controller's Court till the date when he physically and practically began to demolish his own property, was that the building has to be demolished for purposes of reconstruction. Whatever reason might prompt an individual to destroy his own property that cannot be the subject-matter of investigation by a Court of law. It is in this sense the halo of bona fides which plays a very prominent part in so far as petitions under the other sections of the Act are concerned, sinks, in my opinion, to more or less to an insignificant level. In view of the fact that the landlord comes forward openly and publicly to demolish and destroy his property, that would not be a case which is automatically illustrative of the mala fides of the landlord. In such circumstances, there cannot be any acid test to measure the bona fides of the landlord in the matter of such eviction. It is this which was made clear in the Division Bench Judgment. In spite of it the appellate authority thought that since the respondent was occupying only a part of the building and as the landlord has sought for eviction of the respondent only from that part of the building, it would be necessary to investigate further whether the landlord is inclined to demolish the other portions of the building which is not the subject-matter of the enquiry at all. Apparently, the learned Judge did not bear in mind the definition of a building in the Act as given out in Section 2(2) of the Act which says "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non residential purposes and includes... The statute therefore recognises a part of a building as a building. If this unit which has been given out as a measure in the statute itself is borne in mind then the question whether the

landlord is inclined to demolish the other portions of the building and whether he is going to file eviction petitions against the other tenants in the building is outside the purview of enquiry. In so far as the respondent is concerned, he is occupying a "building" within the meaning of the Act and petitioners as landlord can u/s 14(1)(b) file an application seeking for eviction of the tenant in occupation of that "building" for purposes of demolition and reconstruction. This is so because a part of a building is also a building. The learned appellate Judge therefore did not bear in mind the fundamentals which govern the position in such circumstances, and he has erred in exercising his power of remit on the basis of the observations already referred to. The order of the appellate authority is therefore set aside and the revision petition is allowed. The counsel for the respondent requests time to vacate. Obviously his client is serious to vacate the premises. Taking this aspect into consideration the respondent is granted four month's time to vacate. No costs.