

(1997) 02 MAD CK 0008
In the Madras High Court

S.V. Periasamy and Sons and Others	Vs	APPELLANT
R. Senthil Kumar and Others		RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Transfer of Property Act, 1882 — Section 109, 130, 8

Citation : (1997) 1 LW 527 : (1997) 1 MLJ 420

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

Bench : Division Bench

Judgement

S.S. Subramani, J.—Tenants in R.C.O.P. No. 71 of 1987, on the file of Rent Controller (District Munsif's Court), Tuticorin, are the

revision petitioners. First respondent herein filed the above eviction petition on the ground that the tenants have defaulted in payment of rent and the

said default is wilful. It is also alleged that the building requires demolition and reconstruction. Eviction was also sought on various other grounds

including acts of waste, acts of nuisance, claiming permanent tenancy without any bona fides etc. The last three grounds referred to above were

found against the landlord even by Rent Controller, and the matter was not agitated before the Appellate Authority also on those grounds. The only

ground for eviction which found favour with the Rent Controller was that the revision petitioners have committed wilful default and that the building

requires demolition and reconstruction. The finding was also confirmed by the Appellate Authority. It is that judgment, which is sought to be

revised by the revision petitioners.

2. If this is the only ground that is agitated before this Court, being a finding of fact, it will not be proper on the part of this Court to interfere with

those findings. But, when the appeal was pending before the Appellate Authority, respondents 2 and 3 in this revision got themselves impleaded as

purchasers of the property as per sale deed dated 28.5.1991. In this revision, the main point urged was, what is the effect of a subsequent sale,

and how far respondents 2 and 3 are entitled to get possession of the building when the Rent Control Petition itself is pending consideration by this

Court, and the Order of eviction has not become final.

3. It is settled law that in proceedings under the Rent Control Act, subsequent events also will have to be taken into consideration, and that is why

the Appellate Authority has allowed respondents 2 and 3 also to be impleaded.

4. As stated earlier, the grounds on which eviction is now sought is, default in payment of rent and also requirement of the building for demolition

and reconstruction. The arrears of rent that is made mention of in the cause of action for the petition is from 6.11.1986 till the date of petition which

was filed on 29.6.1987.

5. Even though revision petitioners contended that they were not aware of the purchase by respondents 2 and 3 from 1st respondent, the previous

owner, that contention has been found against by the Authorities below, on the basis of evidence before it. It is seen that the revision petitioners are

aware of the sale, and in fact, even the first respondent's father did inform the tenants about the sale and also requested them to vacate the

premises. It is also seen from the records that there are other proceedings also initiated by first respondent. Under the above circumstances, the

findings of the Authorities below that the tenants were not aware of the sale, and their contention that they were not liable to pay rent to the first

respondent cannot be accepted, are only to be confirmed. Whether those findings will enable the purchasers to get eviction, is to be considered.

6. Even though the Tamil Nadu Buildings (Lease and Rent Control) Act applies in respect of the building in question, it cannot be said that the

provisions of the Transfer of Property Act will have no application in respect of those matters for which no, provision has been made under the

Rent Control Act. The right of ownership, when that ownership vests, the right to collect rent on the basis of sale, are all provided only under the

Transfer of Property Act, and only after the contract of landlord and tenant is entered into, the provisions of the Rent Control can be applied.

What is the effect of a transfer from a previous owner to a purchaser? For this, no provision is made under the Rent Control Act. So far as the Rent Control Act is concerned, it has got an overriding effect as against any law or contract in so far as the right to eviction, right to fair rent, etc. are concerned.

7. The sale deed executed by first respondent was marked by the Appellate Authority as Ex. A-7, by way of additional evidence. A reading of the document shows that from the date of sale, first respondent has ceased to be the owner and all his rights over the property are conveyed to respondents 2 and 3. The sale deed is for a sum of Rs. 1,20,000. But there is no statement in Ex. A-17 enabling respondents 2 and 3 to collect the rent which has already become due to the previous landlord, i.e., first respondent. The sale deed only says that the right, title and interest over the property of the first respondent are transferred to respondents 2 and 3. What is the effect of the transfer?

8. Section 8 of the Transfer of Property Act says:

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer and all

things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer and the locks, keys, bars, doors,

windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not

transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Along with this section, this Court will have to take into consideration Section

109 of the Transfer of Property Act also. It reads thus:

If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the

contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so

long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him

by the lease; unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent

due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessee, shall not be

liable to pay such rent over again to the transferee.

9. Once the transfer takes place, the arrears of rent which was due to the transferor becomes a debt and loses its character as arrears of rent. The

same could be transferred as an actionable claim coming u/s 130 of the Transfer of Property Act.

10. Mulla, in the Transfer of Property Act, Eighth Edition (1995), commenting on Section 109 (at page 907) has stated about the proviso thus:

The assignee is not, as already stated, entitled to rent before the assignment. Such rent is not part of the reversion, but is mere debt.

Various Courts have also considered this point.

11. In *Daya Debi v. Chapala Debt* AIR 1960 Cal. 378 in paragraph 2 of the judgment, a Division Bench of that High Court has held thus:

...A claim for arrears of rent loses its character of rent as it is assigned.

At page 379 of the Reports, their Lordships went on to consider this point and held thus:

...Mr. Lala appearing for the landlord opposite party contends that what is assigned to the assignee is not the right to recover arrears of rent but the

cause of action for recovery of arrears of rent and he contends that a consideration of the recitals of Ex. 1 and Ex. 3 would show that what was

intended to be assigned by the last owners was the cause of action for recovery of arrears of rent. In order to avoid the effect of Section 6(e) of

the Transfer of Property Act, which provides that the transfer of a mere right to sue is non-transferable. Mr. Lala that in the present case the right

to sue was assigned in favour of the same person to whom the proprietary right

in the house itself was conveyed, otherwise the transfer of a mere right to sue would be invalid u/s 6, Clause (e) of the Transfer of Property Act. To give effect to Mr. Lala's contention would lead to the consequence that a claim for recovery of arrears of rent in order to be valid cannot be transferred to anybody else except the person to whom the proprietary right in the house itself has been conveyed. I cannot agree that this is a legal consequence of the assignment of arrears of rent. In my opinion, the cause of action for recovery of arrears of rent is completely satisfied as soon as the assignor receives the consideration for which he sells the arrears of rent and what the assignee purchases is not the cause of action for recovery of arrears of rent, but the right of the assignor to recover those arrears. The right of the assignor to recover arrears of rent is a property and as such it is transferable under the main provisions of Section 6 of the Transfer of Property Act and it is not hit by any of the clauses which appear in that section. Such a right can be transferred either in favour of the person who has acquired title to the house itself or in favour of a stranger, It is quite possible that the house is sold to "X" and the claim for recovery of arrears is sold to "Y". For these reasons I have reached the conclusion that the claim for arrears of rent ceases to be a claim for rent and is converted into an actionable wrong as defined by Section 3 of the Transfer of Property Act and is assignable in the manner contemplated by Section 130 of that Act. This conclusion is supported to some extent by the decision of the Full Bench of this Court in the case of Hari Lal Sinha v. Tripura Charan Roy ILR 40 Cal. 650. In that case arrears of rent were transferred to a legal practitioner who instituted a suit for recovering the arrears assigned to him. One of the points raised before the Division Bench was, that the claim for arrears of rent was an actionable claim and as such the plaintiff's suit was hit by Section 130 of the Transfer of Property Act. On this point the Division Bench recorded the following opinion: ""On the third point we are of opinion that the right of arrears of rent purchased is an actionable claim u/s 130 of the Transfer of Property Act and that the plaintiff cannot, therefore, enforce it in any court. The Full Bench made the following observation at page 677 on this Point: It is conceded that, as held by the Division Bench, the plaintiff cannot successfully claim the arrears of rent purchased by him.

12. In Babu Bhai Habib Bhai Vs. Bhagwandas Jagannath, in paragraph 5 of the judgment, a learned Judge of that High Court considered the

question as to what is the effect of a transfer of the right to recover arrears of rent also. After holding that the arrears of rent loses its character as

such and will amount to a debt, their Lordships further went on to say in paragraph 7 that even if the purchaser becomes the owner of land and

building, along with the right to recover the arrears of rent that assignment in so far as it enables the purchaser to recover the rent will only amount

to recover an actionable claim. It was held thus:

It is argued by Shri Singh that the arrears of rent even when transferred as an actionable claim do not lose their initial character and it is sufficient

for the plaintiff to show that the dues recoverable from the defendant were arrears of rent. I am unable to accept this contention. In my opinion,

whether an amount due by the tenant is payable to the landlord as arrears of rent or otherwise will have to be determined by reference to the

provisions of the substantive law, the Transfer of Property Act. A distinction must be drawn between a case where a landlord who has to recover

arrears of rent from his tenant, while continuing to be the landlord, transfers the actionable claim to be a third person, and a case where a landlord

while transferring the property also transfers his right to recover the arrears of rent to the transferee. In the first case, the arrears of rent will be

recoverable as an actionable claim u/s 130 of the Transfer of Property Act; in the second case, perhaps, the transferee may recover the arrears of

rent u/s 109 of the Transfer of Property Act without applying the proviso. It is not possible to say that even in the first case the assignee of the

actionable claim will be able to sue the tenant for the recovery of arrears of rent as such, or further, he will be entitled to eject the tenant u/s 4 (a) of

the Act. * * * *

Shri Singh lays emphasis on the extended definition of the word "landlord" in Section 3(c) of the Act. I do not see how that definition helps him on

the point with which this appeal is concerned. The word "assignee" on which the learned Counsel lays stress necessarily refers to an assignee of the

rights of the landlord. In my opinion it does not include the assignee merely of arrears of rent which are actionable claims within the meaning of

Section 130 of the Transfer of Property Act.

13. In Rameshwar Chand and Another Vs. Sadhan Chandra Dey and Others, , the same principle was accepted.

14. In Ram Tahal Modi Vs. Ratan Lal, a Division Bench of that Court considered a similar question. In paragraph 7 of that judgment, (at page 17),

their Lordships held thus:

...Although under the Transfer of Property Act (the T.P. Act), the transferee acquires all the rights, of his transferor, in view of the proviso to

Section 109 of the T.P. Act the transferee ipso facto is not entitled to arrears of rent accrued before the transfer. Section 8 of the T.P. Act

provides the transfer, the transferee is entitled to the rents and profits thereof accruing after the transfer. Similar is the position u/s 55 of the T.P.

Act. In law, a transferee cannot claim that as the corpus has been transferred to him, the rent accrued prior to the transfer shall also be deemed to

have been transferred. If the arrear of rent accruing prior to the transfer is claimed by the transferee, he must show that that has also been

specifically assigned.

In that case also, the transferor and transferee were parties, and the transfer was made pending litigation as in this case. In paragraph 10 of the

judgment, their Lordships further went on to say thus:

In terms of Section 109 of the T.P. Act, the transfer ees-plaintiffs came to possess all the rights of the transferors-lessors with regard to the suit

properties. Under the general law, the transferees in all these cases the tenants being tenants month to month, could have immediately after the

purchase, terminated the tenancy and filed suit for eviction. Under the general law again, they as owners of the properties could have prosecuted

suit filed by the transferor on the basis of title. But in these cases, the transferees can obtain decree for eviction of the tenants only if at least one of

the grounds mentioned in Section 11(1) of the Rent Act is proved.

In that case also, an argument was advanced that the purchasers can take the benefit of the default committed by the tenants to the previous

landlords. In paragraph 14 of the judgment, their Lordships held thus:

Could the transferees obtain decree for eviction? The answer could have been in the affirmative had they been suits to which the Rent Act was not

attracted. The Rent Act has put impediment on the right of landlord to evict a tenant from a building. For obtaining decree for eviction, against a

tenant it must be proved (1) that the plaintiff is landlord within the meaning of the Rent Act, and (2) must also prove any of the grounds enumerated

in Section 11(1) which are as many as six in number. From the perusal of the grounds, there is no difficulty in holding that same cause of action or

occasion for filing suit are not available to a transferee pendente lite,....

Finally, in paragraph 17 of the judgment, their Lordships considered, what is the effect of transfer of property alone without any assignment of

arrears of rent. It was held thus:

It has already been held that rent accrued prior to assignment was required to be specifically assigned if the transferee intends to recover it. That is

not the case here. The added plaintiffs although could not claim the arrear rent, according to them, they could take advantage of default in payment

of the rent by the tenants for the period long before the transfer. The right of the transferees commenced with the assignment. They were neither the

owners nor landlords when the cause of action accrued. They cannot continue the suits for breaches which became complete before the suits were

filed, i.e., default in payment of rent. Landlord alone in relation to whom tenant defaulted in payment of rent may get a decree for eviction and not

his transferees....

15. A Division Bench of the Kerala High Court had occasion to consider a similar question in the decision reported in *Suhara v. Abdul Shukkur*

(1996) 2 K.L.T. 936. The relevant portion of the judgment reads thus:

Admittedly, in Ext. A-1, the right to collect arrears of rent was not transferred. Only by Ext. A-2, this was transferred, What was transferred by

Ext. A-2 is the right to collect definite amount as arrears of rent and interest due to the previous landlord. That can be collected only by filing a civil

suit and that will not entitle the transferee landlord to claim eviction of the tenant u/s 11(2)(b) of the Act. A mere right to sue for eviction u/s 11(2)

(b) which has accrued to the transferor landlord prior to the assignment cannot be transferred especially when the right to collect arrears of rent

was not transferred in the transfer deed and the right to collect arrears of rent if transferred later will only enable the transferee to file a civil suit if

the claim is not already time barred. The right of the present landlord/transferee commenced with A-1 assignment. With regard to the prior rent,

the present transferees were not owners or landlord. The default in payment of

rent which occurred prior to Ex. A-1 assignment may give rise to only a cause of action or a right to sue for eviction to the transferor who as then admittedly the landlord of the tenant. The transferor has not initiated any proceedings of eviction in enforcement of such course of action or right to sue already accrued to him till he ceased to be the owner of the building and the landlord to the tenant. After transfer even the transferor may have only a right to collect the amount of arrears or rent treating it as a debt since he is no more a landlord qua his erstwhile tenant and only a landlord can file petition for eviction u/s 11 of the Act. Thus, after Ex. A-1, the transferor can legally transfer only a right to collect the debt due to him from his erstwhile tenant eventhough it represents arrears of rent. That alone has in fact been assigned by him to the assignee landlord as per Ex. A-2. The assignee landlord can also claim only at best the right to collect the amount due as a debt and cannot claim any right to file a petition u/s 11(2) of the Act which even the transferor was not entitled to file a on the date of execution of Ext.A-2.

16. In *Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others*, , their Lordships did not discuss the issue; but approved the judgment of the High Court which implies that the right to recover arrears of rent, the assignee also can have a cause of action only if that right is also specifically assigned. In paragraph 9 of the judgment (at page 131), their Lordships held thus:

An objection based upon the proviso to Section 109 of the Transfer of Property Act was, we think rightly disposed of by the High Court as follows:-""The next objection is that under the proviso to Section 109 of the Transfer of Property Act the transferee is not entitled to arrears of rent due before the transfer. In our opinion he is ordinarily not so entitled unless there is a contract to the contrary. There was an express contract to the contrary contained in the compromise petition which was incorporated in the compromise decree passed by the Court.

17. In a recent decision of the Supreme Court reported in *N.M. Engineer and Others Vs. Narendra Singh Viridi and Another*, which is also a case under the Bombay Rents (Hotel and Lodging House Rates Control) Act, their Lordships considered a similar question. In that case, the Act provided that before institution of the proceeding, notice is necessary. The notice

is necessary. The notice must state the rental arrears and it provided that the notice must contain demand regarding the arrears legally recoverable from the assignee. Without the notice, no action could be taken. In paragraph 19 of the judgment, their Lordships considered the scope of Section 109 of the Transfer of Property Act and thereafter considered the validity of the notice. After extracting Section 109, it was held that in view of the Proviso, appellant-assignee is not entitled to rent before the assignment, the rent is merely a debt. In this connection after extracting the averment in the plaint, in paragraph 20, their Lordships went on to say thus:

Therefore, whatever might have been due prior to deed of lease dated 8-6-1967, could not constitute arrears of rent. It was mere actionable claim. That being so, the notice does not satisfy the requirements of Section 12(3)(a), more so in this case, as stated above, the arrears at the rate of Rs. 87 had been deposited....

18. In Mulla's "The Transfer of Property Act" (in the Edition referred to supra), commenting on Section 109, has further said thus (at pages 907 and 908):

During the pendency of a suit for eviction of the tenant, the plaintiff landlord transferred the suit property to another person (the transferee), by a registered sale deed, and the trial court allowed the transferee landlord to prosecute the suit on the ground of default committed by the tenant in paying rent for the period long before the date of transfer. It was held that although the transferee acquires all the rights of his transferor, in view of Section 109, Proviso, the transferee ipso facto is not entitled to the arrears of rent accrued before the transfer. Section 8 of the Transfer of Property Act provides that on transfer, the transferee is entitled to the rents and profits thereof accruing after the transfer

19. In view of this settled position of law, the cause of action on the basis of which first respondent filed eviction petition no more survives. The cause of action is that the tenant committed wilful default in paying the rent. On that date, the first respondent was entitled to collect the amount as arrears of rent. Once he ceased to be the landlord, he can recover the amount-only as a debt, and by the time eviction order was passed, he ceased to be a landlord. Right as landlord, which entitles to sue for eviction, is

transferred to respondents 2 and 3. Under Exhibit A. 17, even that debt has not been assigned. Even if there is an assignment that will amount to only an actionable claim and will cease to be arrears of rent. For getting eviction the nature of the amount due from the tenant must be arrears of rent. The relationship of landlord and tenant ceases, and the previous landlord only becomes a creditor and the tenant becomes a debtor. The eviction petition on the ground of default in payment of rent thereafter cannot be continued either by the previous landlord, or by the purchaser on the basis of the same cause of action.

20. Learned Counsel for the respondent brought to my notice a decision of this Court reported in K.N. Ramakrishnan and Brothers and Others

Vs. Thammaraj, wherein a learned Judge of this Court has taken a different stand. In that case, the learned Judge held thus:

...Therefore, in the opinion of the Court, the petitioner who is a purchaser of the demised premises from the original landlady and who had cleared

the arrears of rent payable by the respondents (tenants) to the" original landlady, is entitled to file the application for eviction of the respondents u/s

10(2)(i) of the Act on the ground of arrears of rent due and payable to the previous landlord.

This, according to me, runs counter to the decision of the Supreme Court reported in N.M. Engineer and Others Vs. Narendra Singh Viridi and

Another, , and, therefore, it cannot be taken as a good law.

21. At the fag end of the arguments, learned Counsel for respondents submitted that the Rent Control Act is a self-contained Code, and provision

of Section 109 of the Transfer of Property Act will not have any application.

22. The said argument cannot be sustained in view of the various decisions referred to by me above. The various decisions relate to Rent Control

Acts. In a Full Bench decision by the Karnataka High Court reported in Sri Ramakrishna Theatres Ltd v. General Investments and Commercial

Corporation Ltd. and Ors. AIR 1993 Karn. 90 their Lordships said that "The overriding effect of the Act may not have any application when the

tenancy is for a term, and the landlord is entitled to get eviction only on the expiry of the term." Their Lordships also held that the overriding effect

of the Rent Control Act will be only regarding eviction and fixation of fair rent.

23. Subsequently, in Sri Lakshmi Venkateshwara Enterprises (P) Ltd v. Syeda

Vajhiunnissa Begum ILR 1994 Karn. 1659 the Supreme Court

held that "A careful reading of the Section shows that if anything contrary is contained in any contract that cannot prevail... the provisions of Rent

Control Act would apply notwithstanding the contract." Even though the Full Bench decision was cited before Supreme Court, the same was

distinguished. The Supreme Court held that whatever may be the contract, that has to yield to the specific provisions of the Rent Control Act, for

which specific provisions have been made.

24. Another Full Bench decision of the Karnataka High Court is reported in M/s. Bombay Tyres International Ltd & Ors. v. K.S. Prakash & Ors.

ILR 1997 Karn. 111 their Lordships said that in view of the decision in Sri Lakshmi Venkateshwara Enterprises (P) Ltd. v. Syeda Vajhiunnissa

Begum ILR 1994 Karn. 1659 (S.C.), the earlier Full Bench decision stands overruled, and held that the non-obstante clause of the Rent Control

Act will have to be applied notwithstanding anything contained in the contract for which specific provisions have been made in the Rent Control

Act. From that decision also, it is clear that the contention of the learned Counsel for the respondents is not correct. The rights on the basis of the

assignment, and what the purchaser gets, are matters provided under the Transfer of Property Act only. Learned Counsel for respondents also

cannot urge this point since Ex. A-17 also does not enable him to get the arrears of rent. Section 109 of the Transfer of Property Act is in no way

inconsistent with the provisions of Rent Control Act. Even if the petitioners are only statutory tenants, they are liable to be evicted only by a person

who gets a cause of action to evict him, and the cause of action along with the right to evict must also continue during the course of proceedings till

the order of eviction become final. There are cases where the cause of action can continue even after assignment, i.e., unauthorised sub-letting,

material alteration acts of waste etc, where proof of the above acts itself would show that application is filed with bona fides. In those cases, there

is no change in the nature of claim as in the case of default in paying arrears of rent.

25. The Appellate Authority has allowed the purchaser also to get the benefit of the purchase including the right to get eviction of the tenant on the

ground of default committed by the tenant in paying rent to the previous

landlord. If the substantive law does not enable the purchaser to have the benefit, the decision of the Appellate Authority in that regard has to be upset.

26. Regarding the other ground for eviction, namely, immediate demolition and reconstruction also, the bona fide proved by the vendor will not be

sufficient so far as the purchasers are concerned. The qualification of a vendor cannot be the qualification of the purchaser. Even if the building

requires demolition and reconstruction, whether the purchaser has got the means, or whether his claim continues to be bona fide is a matter which

has to be investigated by the Rent Control Court. In taking this view, I am supported by the decision reported in S.V. Chidambara Pillai Vs.

S.N.V.R.N. Subramaniam Chettiar and Others, wherein the question that came for consideration was, whether the purchaser could be impleaded

in a proceeding initiated by the previous landlord, and the ground for eviction was u/s 14(1)(b). This Court held that impleading could be allowed

and he could also continue the proceedings. But, while considering the question of eviction, the bona fides of the purchaser also will have to be

taken into account. In that judgment, Srinivasan, J., as he then was, held thus:

The original petition is filed u/s 14(1)(b) of the Tamil Nadu Buildings (Lease & Control) Act. The bona fide requirements of the building as

contemplated u/s 14(1)(b) of the Act has to be established by letting in evidence at the time of hearing of the R.C.O.P. If before the matter is taken

up for trial the landlord thinks that he cannot fight with the tenant as the matter was being prolonged for years and sells the property to third parties,

it is open to the third parties who have become the owners of the property to continue the proceedings. It may be for the purchasers to establish

their bona fide requirement of the premises for the purposes of demolition and reconstruction as contemplated u/s 14(1)(b) of the Act. That is a

matter which has to be considered at the time when evidence is let in by both the parties in the R.C.O.P. It is open to the tenant to contend and

comment during the trial that the purchasers have not proved their bona fides as required by Section 14(1)(b) of the Tamil Nadu Buildings (Lease

and Rent Control) Act if the purchasers fail to let in evidence to that effect.

27. In this case, the Appellate Authority has taken into consideration the undertaking given by the earlier landlord stated in the eviction petition.

The Appellate Authority was also of the views that once the purchasers are

allowed to get themselves impleaded, the benefit of the undertaking in the eviction petition by the landlord also goes to them. Whether the purchasers financial capacity and whether they can put up a new construction on the basis of a plan which was filed during the proceedings are all matters of evidence to be adduced by the purchasers. Mere understanding by the purchasers without giving the tenant an opportunity for cross-examination, cannot be accepted as proof of bona fides. It must be understood that in all cases of eviction coming under the Rent Control Act, the bona fides of the claim. As the main point to be considered. Even if the purchaser has got the means, whether he wants to demolish the building only as an oblique motive without any intention to put up construction is a matter which requires consideration. In this case, absolutely no evidence has been let in, and the Appellate Authority has simply copied the judgment of the Rent Controller without discussing the evidence. It is not disputed that the purchasers did not adduce any further evidence after his sale, which was marked as Exhibit A-17. He also produced a plan. But that may not be sufficient to prove the bona fides of the claim. The finding of the Appellate Authority permitting the respondents 2 and 3 to get eviction on the ground of demolition and reconstruction also has to be set aside.

28. A question may arise as to whether the proceedings will have to be remanded to the Rent Controller or the purchasers should be asked to initiate fresh proceedings. The purchasers have purchased the building pending litigation. They did not want to adduce any evidence, nor was there an attempt before the Appellate Authority that they may be permitted to adduce evidence. Under law, the Appellate Authority is also entitled to take evidence. The purchasers did not avail that opportunity. They were satisfied with the making of the document.

29. For the reasons stated above, I am constrained to set aside the judgment of the Authorities below. The revision petition is allowed, and eviction petition will stand dismissed. There will be no order as to costs, in this revision.