

(1968) 06 MAD CK 0023
In the Madras High Court

V.P. Selvaraj

APPELLANT

Vs

V. Narasimha Rao by Power Agent V. Sethu Rao and Another

RESPONDENT

Date of Decision : 21-06-1968

Acts Referred:

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

Citation : (1969) ILR (Mad) 94 : (1969) 82 LW 139 : (1969) 1 MLJ 587

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—Both the tenant and the landlord aggrieved against the legality, regularity and propriety of the order of the learned District Judge of West Thanjavur, have filed these two revision petitions, the former being the one filed by the tenant and the latter by the landlord. It is unnecessary to repeat the entire facts which have been clearly stated by the learned District Judge in his order. Suffice it however to observe the relevant details.

2. The tenant, petitioner in C.R.P. No. 112 of 1965, was occupying the premises in question in its entirety from 1956. The premises, however, contained two distinct compartments, one the front portion thereof which was used for non-residential purposes, and the other the back portion which was at all times being used for residential purposes. In or about 1962, the tenant (petitioner in C.R.P. No. 112 of 1965, and respondent in C.R.P. No. 1620 of 1965) and the landlord (respondent in C.R.P. No. 112 of 1965, and petitioner C.R.P. No. 1620 of 1965) entered into an arrangement whereby the front portion which was delimited and delineated by mutual understanding, was to be demolished and reconstructed, and on such reconstruction the landlord was to re-let the same to the tenant on an increased rent. The other material portions of the arrangement between the tenant and the landlord need not be stated as it is not necessary. The tenant, in fact, advanced moneys to the landlord to enable him to demolish and reconstruct the front portion as agreed to. Indeed a mortgage, Exhibit B-I, dated 21st May, 1962, was executed for the purpose. Later, due to differences between the

tenant and the landlord, the arrangement was not implemented. The landlord thereafter filed an application u/s 14(1)(b) of the Madras Buildings (Lease and Rent Control) Act of 1960, hereinafter referred to as the Act, including the back portion on the ground that he required the building for demolition and reconstruction. The Rent Controller allowed the petition. The Appellate Authority, however, disagreeing with the Rent Controller, set aside the order of the Rent Controller. On revision to the learned District Judge, West Thanjavur, he was of the view that regard should be had to the anterior arrangement entered into between the landlord and the tenant and to that extent at least the bona fides of the landlord to demolish and reconstruct the front portion of the building is established and having regard to the difference between the provisions of Sections 14(1)(a) and 14 (1) (b), came to the conclusion that the supervening intention of the landlord in seeking eviction of the tenant from the back, portion of the building appears to be oblique and. lacking in bona fides. He ultimately came to the conclusion that in so far as the claim of the landlord to evict the tenant from the front portion of the building which was delineated and demarcated by both the parties was concerned it was well founded and bona fide and therefore ordered the eviction of the tenant from that portion of the building; as regards the back portion of the building, the claim of the landlord was negatived. Against this order of the learned District Judge, both the tenant and the landlord have come up in revision.

3. At the outset it is necessary to observe the statutory provision which enables a landlord to file an application for eviction for demolition and reconstruction of his building in the occupation of a tenant. Section 14(1)(b) speaking of recovery of possession by a landlord for reconstruction, provides that on an application made by a landlord the Controller shall, if he is satisfied 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. Sub-section (2) (b) of Section 14 imposes a further obligation on the landlord. This sub-section provides that no order directing the tenant to deliver possession of the building u/s 14(1)(b) of the Act shall be passed unless the landlord gives an undertaking 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 or before the expiry of such further period as the Controller may allow. It is however to be noted that Section 16 controls the letter and spirit of Section 14(1)(b) of the Act. Section 16. makes it imperative that the undertaking envisaged in Section 14(2)(b) of the Act shall be implemented, and in default thereof the tenant would be entitled to restoration of the possession of the building. Section 16 of the Act in terms thereof provides that where the work of demolishing any material portion of the building has not been substantially commenced by the landlord within the period of one month in

accordance with his undertaking under Clause (b) of Sub-section (2) of Section 14, the tenant may after following the prescribed procedure therein, reclaim the building; from the landlord on an application made in that behalf. The Controller, while dealing with such an application is mandatorily obliged to put the tenant in possession of such a building on the original terms and conditions. It is in the light of such statutory provisions that the word "bonafide" appearing in Section 14(1)(b) has to be understood. No doubt, the word bona fide is tritely used in the Act for many purposes, and to achieve different objects. But the word "bona fide" in Section 14(1)(b) has to be understood in the context in which it is used. When Section 14(1)(b) is read in conjunction with and in juxtaposition to Section 16 of the Act it is very clear that the real content of the word "bona fide" appearing in this sub-section has to be understood in a limited sense and has to given effect to in the context in which it appears. While dealing with the expression "bona fide" Veeraswami, J., speaking for the Bench in *Nathella Sampathu Chetty v. Sha Vajinjee Bapulal* (1967) 80 L.W. 73, observed as follows:

It is not in controversy before us that the conditions of Section 10(3) (in) are satisfied, and, therefore, the only question is, as was rightly posed by the lower appellate Court, whether the claim of the landlord is bona fide. This requirement that the claim of the landlord should be bona fide is common to not only the provision under which the petitioner applied in this case, but also to several other provisions which provide for tenant's eviction. The expression, therefore,, will have to be understood in the context, but subject to that, it means that for present purposes the landlord honestly desires to occupy the premises from which eviction is sought and his claim is not a device to serve an oblique purpose.

4. The quality and content of the expression bona fide appearing in the various sections of the Act and for purposes therein enumerated have to be weighed and construed in different lines under different circumstances having regard to the context in which the expression appears. Section 16 of the Act affords a statutory right to the tenant to reclaim possession of a building secured by the landlord u/s 14(1)(b), if he does not substantially demolish the building and attempt at reconstruction as proposed. This controlling provision provides as it were a key to the interpretation of the expression "bona fide" appearing in Section 14(1)(b) of the Act. It appears to us that in cases where the claim of the landlord is a not per se dishonest and has not been found to be oblique or for any designed purpose to evict the tenant, then it follows that he is entitled to an order of eviction in the ordinary course, subject, however, to the tribunals constituted under the Act being satisfied that the other relevant conditions required and prescribed under the Act are complied with. It is relevant at this stage to quote an excerpt from the decision of a Division Bench of this Court in *David v. Daniel* (1967) 1 M.L.J. 110. The learned Chief Justice speaking for the Bench said:

The only requirements of Section 14(1)(b) is the honest desire of the landlord to demolish the building 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. There is nothing in the language of this clause to warrant the view that, the building should be old and decrepit. The expression "bona fide" occurring in that clause cannot sustain the opinion that it is only when a building is old and in a dilapidated condition that it could be demolished for the purpose of putting up a new construction, so as to attract Clause (b) of Section 14(1). The import of the section is that the desire or the intention to demolish and rebuild should be honestly entertained by the landlord. It should not be a device to evict the tenant.

Moreover there are sufficient safeguards in the statute itself against such device in the shape of Section 14(2)(b), Section 16 and Section 33(3) (b).

5. In the instant case it is not suggested that the landlord's claim for possession of the entire building is in any way oblique or dishonest or indeed designed. No doubt, there was a prior arrangement between the parties that the landlord intended to reconstruct only the front portion of the building which was being used for non-residential purposes. Later on, he changed his mind and wanted to demolish the entire building including the back portion and reconstruct the same. In the light of the statutory mandates and the undertaking which he is bound to give at the time when he secures an order u/s 14(1)(b) of the Act, it is difficult to hold that there is partial lacking of bona fides on the part of the landlord in so far as his claim for eviction of the tenant from the back portion of the building is concerned. Bona fides cannot be mutilated in the way it was sought to be done by the learned District Judge. In an application u/s 14(1)(b), there is no scope for such bifurcation of bona fides and compartmentalisation thereof. It cannot be said that the application for demolition and reconstruction of the front portion of the building is bona fide and that it is not so in so far as it relates to the back portion of the same building. Once it is found that the landlord has satisfied all other relevant considerations which might arise u/s 14(1)(b) of the Act, and his claim is found to be honest and not designed and not for an ingenious purpose, then no option is left to the Court except to direct eviction of the tenant. This is so, because the landlord is always under the grave risk of facing a claim for repossession of the building or part thereof whenever he fails in his undertaking as contemplated in Sub-section (2) of Section 14 resulting in the tenant securing a redelivery of the building or part thereof secured by the landlord pursuant to the orders passed by the Controller u/s 14(1)(6). This safeguard acts as a pivot to tilt matters one way or the other and in effect a microscopic scrutiny into the subjective content of the expression " bona fide " appearing u/s 14(1)(b) becomes absolutely unnecessary.

6. In view of the finding of the learned District Judge that the landlord's requirement of the front portion of the building is bona fide justified. We are of the view that his conclusion that the petition has to be dismissed insofar as it relates to the back portion of the building is not well-founded. In our view the order of the learned District Judge is neither legal, regular or proper. It is

therefore set aside. In the result C.R.P. No. 112 of 1965 is dismissed and C.R.P. No. 1620 of 1965 allowed. There will however be no order as to costs. The petitioner in C.R.P. No. 112 of 1965 is granted four months time from to-day to vacate and surrender possession, to the landlord of the entire building.