

SHAKEELUR RAHMAN

A

v.

SYED MEHDI ISPAHANI

NOVEMBER 29, 2002

[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

B

Rent Control and Eviction:

*Tamil Nadu Building (Lease and Rent Control) Act, 1960—Section 14(1)(b)—Eviction on the ground of **bonafide** requirement for demolition and reconstruction of building for better financial returns—Eviction denied by Courts below as age and condition of building not established—In revision High Court allowed eviction taking the view that establishing age and condition of building not required by law—On appeal interference of High Court with concurrent finding of facts in its revisional jurisdiction questioned—Held, though interference of High Court is illegal, but in the facts of the case finding of High Court is sustainable—Code of Civil Procedure, 1908—Section 115.*

C

D

Respondent-landlord filed suit for eviction under Section 14(1)(b) of Tamil Nadu Building (Lease and Rent Control) Act, 1960, for *bonafide* requirement for demolition and reconstruction of the building in question for better financial returns. Rent Controller and Appellate Authority denied eviction on the ground that in order to seek eviction under the provision it was mandatory to establish need for immediate demolition and reconstruction of the building.

E

In revision, High Court, interfering with the concurrent finding of facts of the courts below held that landlord had *bonafide* requirement for seeking eviction; that law did not require the landlord to establish immediate need for demolition and reconstruction of the building; and that in the instant case despite absence of pleadings regarding age and condition of the building, material on record established that the building was old and required demolition.

F

G

In appeal to this Court appellant-tenant contended that interference of High Court, in exercise of its revisional jurisdiction, with the concurrent finding of facts was illegal; and that there has been no provision for re-induction of the tenant after reconstruction.

H

A Respondent-landlord contended that for seeking eviction under Section 14(1)(b) of the Act, age and condition of the building is not the only criterion, but new structure for better financial returns also constitutes a *bonafide* requirement by the landlord.

Dismissing the appeal, the Court

B

HELD: 1. It is correct that interference of High Court with concurrent finding of the lower authorities in regard to the age of building is illegal, but it does not alter the result. Both Rent Controller and Appellate Authority proceeded on the basis as if age and condition of the building are the *sine qua non* for application of Section 14(1)(b) of Tamil Nadu Building (Lease and Rent Control) Act, 1960. But, though age and condition of the building sought to be demolished are relevant factors to test *bonafides* of the landlord, they are not determinative of the issue. Though High Court's approach in interfering with the concurrent finding of fact is not approved, yet it is not necessary or just to interfere with the impugned order, as on the other concurrent findings of facts recorded by the lower authorities, a finding of *bona fide* requirement of the landlord has been recorded by the High Court which is now affirmed by this Court. The finding is sufficient to sustain the order under challenge.

[396-H; 397-B, C]

E

Vijay Singh and Ors. v. Vijayalakshmi Ammal, [1996] 6 SCC 475, followed.

P. Orr and Sons (P) Ltd. v. Associated Publishers (Madras) Limited, [1991] 1 SCC 301 and *K.M. Abdul Razzak v. Damodharan*, [2000] 5 SCC 369, referred to.

F

2. The plea that there has been no provision for re-induction of the tenant after reconstruction is without any substance. A rational approach would be to hold that age and condition of the building are the only relevant factors, keeping in view the beneficial context of the statute. It is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere.

[397-C-E]

Vijay Singh and Ors. v. Vijayalakshmi Ammal, [1996] 6 SCC 475, followed.

H

Prabhakaran Nair and Ors. v. State of Tamilnadu and Ors., [1987] 4 SCC 238 and *R.V.E. Venkatachala Gounder v. Venketesha Gupta and Ors.*, [2002] 4 SCC 437, relied on. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7656 of 2002. B

From the Judgment and Order dated 25.10.2000 of the Chennai High Court in C.R.P. No. 3165 of 1997.

Krishnamurthi Swami and Ms. Prabha Swami for the Appellant.

S. Sivasubramaniam, R. Balachander and V. Balchandran for the Respondent. C

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted. D

A suit for eviction by the appellant-tenant filed by the respondent-landlord on the ground available under Section 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act') was dismissed by the Rent Controller and the Appellate Authority. However, the High Court exercising revisional jurisdiction allowed the prayer for eviction. Feeling aggrieved thereby, the tenant has filed this appeal by special leave. E

In a nutshell, the factual position about which there is not much controversy, is as follows :-

The suit premises consist of a ground floor and first floor measuring about 1 ground and 277 sq. feet. Landlord-respondent, as set out in the application R.C.O.P. No. 2424 of 1988 on the file of Court of Small Causes at Madras claimed that the eviction was required for demolition and reconstruction of the building bearing Door no.5, Clemens Road, Chennai. It was specifically pleaded that the property is situated in a residential-cum-commercial locality wherein multi-storied buildings have been erected and in order to utilize the property and earn better income he has decided to demolish the said building completely and desired to construct a multi-storied in the property. The appellant-tenant disputed the stand of the respondent-landlord and pleaded that the building is in a sound condition and does not require demolition at all. The Rent Controller rejected the respondent-landlord's prayer, F G H

- A accepting appellant-tenant's stand. Reliance was placed on this Court's decision in *P. Orr and Sons (P) Ltd. v. Associated Publishers (Madras) Limited*, [1991] 1 SCC 301, to hold that it was mandatory to verify whether the building in question requires immediate demolition and reconstruction. Though he accepted the respondent-landlord's case that the new building shall fetch more income and he has sufficient means to put up the construction, but
- B these facts were held to be not much of consequence. Appellate Authority concurred with the views of Rent Controller. On being approached for revision, learned Single Judge held that notwithstanding absence of pleadings regarding age and condition of the building, material on record clearly established that the building was old and required demolition. Additionally it was held that
- C the importance of the area where the building is situated has undergone a sea change and there was all around development. Reference was made to the evidence of witnesses and documents on record which established that an agreement (P-11) had been executed for demolition of the building in question and two others owned by landlord's mother and brother, and for putting up multi-storied structures. The total extent of the property for the three buildings
- D was 12½ Grounds, while the building in question was on an area of 1 Ground and 277 sq. ft. It was also observed that law does not require that unless the landlord established beyond doubt that the building was in such a bad and dilapidated condition that it would lead to immediate crumbling down, or later, he would not be entitled to an order of eviction. Reference was made
- E to the evidence of RW 1(the tenant), and RW2 (the engineer examined by tenant) to state about age and condition of the building. With reference to latter's evidence it was observed that since last forty to fifty years, no construction was put up with Madras terrace. Further, brick and lime mortar was used for construction and plastering was by lime mortar. These material facts which were brought to notice of the Court by the tenant clearly established
- F that the building was at least 50 years old and was not in good condition. In view of the aforesaid conclusions, it was held that respondent-landlord had *bona fide* requirements for seeking tenant's eviction.

- In support of the appeal learned counsel submitted that the High Court has erred in exercising revisional jurisdiction when there were concurrent
- G findings on facts recorded by the Rent Controller and the Appellate Authority that the building was not old and/or its condition was not such as to warrant immediate demolition. With reference to this Court's decision in *K.M. Abdul Razzak v. Damodharan*, [2000] 5 SCC 369, it was submitted that the High Court erred in exercising revisional jurisdiction to act as an appellate Court
- H to re-appraise or re-assess the evidence afresh as an appellate Court and come

to different findings contrary to the factual findings recorded by the courts below. A

Per contra, learned counsel for the respondent-landlord submitted that age and condition of the building are not the only criteria for bringing in application of Section 14(1)(b) of the Act. In a given case, where the demolition was intended to put up a new structure for better financial returns, it also constitutes a bona fide requirement by the landlord. B

In order to appreciate the rival submissions, it would be necessary to notice the legal position prevailing at the time the landlord filed the petition under Section 14(1)(b) of the Act. Section 14(1)(b) reads as under:- C

“14.(1).....the Controller, shall, if he is satisfied -*** (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. D

pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.”

The said provision was interpreted by this Court in *P. Orr and Sons* case (supra). It was observed that landlord could succeed in an application under Section 14(1)(b) only when it is established that the building is in dilapidated condition which require immediate demolition. This decision was applied by the Rent Controller for rejecting landlord's application for eviction. View in the said case was diluted by a subsequent Constitution Bench decision in *Vijay Singh and Ors. v. Vijayalakshmi Ammal*, [1996] 6 SCC 475. Some of the relevant observations made in the said case read as follows: E

“10. Permission under Section 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes 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 under Section 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 F

H

A *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 under Section 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.*

B

C *11. Respondent also wanted to demolish the entire building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the respondent that she had sufficient financial resources for construction of the new building. An*

D *undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of three months from the date the said respondent recovered possession of the building."*

(Underlined for emphasis)

E As observed in para 11 (supra) where the landlord wanted to demolish the building in order to construct a new shopping complex for which necessary permission from the authorities had already been obtained and sufficient financial resources were available for the construction the bona fide requirement is established. In the case at hand both the Rent Controller and

F the Appellate Authority held that the respondent-landlord wanted to demolish the building in order to construct a new complex and had requisite financial resources for undertaking the construction. High Court has referred to Exts. P8 to P10 and the evidence of PW1 to hold that the requisite financial soundness was to put up new multi-storied complex. In addition, agreement

G vide P-11, to which reference has been made supra, was referred to in this context.

H The main contention of the learned counsel for the appellant is that the High Court interfered with the concurrent finding of the lower authorities in regard to the age of the building which is illegal. No exception can be taken to the contention, but it does not alter the result. As noted above, both Rent

Controller and the Appellate Authority proceeded on the basis as if age and condition of the building are the sine qua non for application of Section 14(1)(b) of the Act, based on the view expressed in *P. Orr and Sons* case (supra). But in view of the decision rendered by the Constitution Bench in *Vijay Singh's* case (supra), though age and condition of the building sought to be demolished are relevant factors to test bona fides of the landlord, they are not determinative of the issue. Though we do not approve the High Court's approach in interfering with the concurrent findings of fact, yet we do not consider it necessary or just to interfere with the order under challenge, as on the other concurrent findings of facts recorded by the lower authorities, referred to above, a finding of *bona fide* requirement of the landlord has been recorded by the High Court which is affirmed by us. The finding is sufficient to sustain the order under challenge.

A faint attempt was made by learned counsel for the appellant that there has been no provision for re-induction of the tenant after re-construction. A rational approach would be to hold that age and condition of the building are the only relevant factors, keeping in view the beneficial context of the statute. This plea is without any substance in view what is stated in *Vijay Singh's* case (supra) and *Prabhakaran Nair and Ors. v. State of Tamil Nadu and Ors.*, [1987] 4 SCC 238. In the latter case, it was observed as follows:

"It has to be borne in mind that it is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere. This is the true purpose behind Section 14(1)(b) read with Section 14(2)(b). In the aforesaid view of the matter, we are unable to accept the submission that in providing for re-induction of the tenant in case of repairs and not providing for such re-induction in case of reconstruction, there is any unreasonable and irrational classification without any basis".

The view was re-iterated in *R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors.*, [2002] 4 SCC 437.

The inevitable result of this appeal is dismissal, which we direct, but without any order as to costs.

K.K.T.

Appeal dismissed.