

CASE NO.:
Appeal (civil) 3345-3349 of 1998

PETITIONER:
R.V.E. VENKATACHALA GOUNDER

Vs.

RESPONDENT:
VENKATESHA GUPTA & ORS.

DATE OF JUDGMENT: 09/04/2002

BENCH:
R.C. Lahoti & P. Venkatarama Reddi

JUDGMENT:

R.C. Lahoti, J.

The suit property consists of a building situated on Easvarankoil Street of Tirupur city in the State of Tamil Nadu. There are six tenants in the building and the portions in their occupation are identified respectively as door Nos. 64, 64A, 64B, 64C, 64D and 64E. Six petitions for evicting the tenants were filed before the Controller on the ground available under clause (b) of sub-section (1) of Section 14 of The Tamil Nadu Building (Lease and Rent Control Act) 1960 (hereinafter the 'Act', for short) alleging that the building was 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. The tenants resisted the proceedings for eviction. One of the pleas taken by them was that the land, on which the building stood, belonged to Veeraragava Perumal and Visweswara temple and, therefore, the question of the landlord reconstructing any building over the land did not arise. However, this plea did not find favour with the Controller and, at the stage of appeal, the plea was specifically given up by the tenants. Similarly the landlord had sought for eviction of the tenants also on the ground of the tenants being wilful defaulters but that plea was given up by the landlord. What survives for consideration is, therefore, solely the availability of ground for eviction under Section 14(1)(b). The Controller negated the availability of this ground for eviction. The landlord preferred six appeals which were allowed and, in supersession of the order of the Controller, the petitions for eviction were allowed and the tenants were directed to be evicted. Out of six tenants, one has submitted to the order of the appellate authority. Five tenants preferred civil revision petitions before the High Court. The High Court has re-appreciated the evidence and recorded a finding that the requirement of the landlord could not be said to be bona fide and, by a common order, directed the eviction petitions to be dismissed. The landlord has filed these five appeals by special leave.

Sub-Section (1) and (2) of Section 14 and Sections 15 & 16 of the Act, relevant for our purpose, read as under:-

"14. Recovery of possession by landlord
for repairs or for reconstruction.____

(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) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated; or

(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 erection 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.

(2) No order directing the tenant to deliver possession of the building under this section shall be passed__

(a) on the ground specified in clause (a) of sub-section (1) unless the landlord gives an undertaking that the building shall, on completion of the repairs, be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1) for his reoccupation before the expiry of three months from the date of recovery of possession by the landlord, or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow; or

(b) on the ground specified in clause (b) of sub-section (1), 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, for reasons to be recorded in writing allow.

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15. Tenant to re-occupy after repairs._____

(1) Where the landlord recovers possession under clause (a) of sub-section (1) of Section 14, he shall, within two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work will be completed. Within fifteen days from the date of receipt of such notice, the tenant shall intimate to the landlord his acceptance of the building offered for his re-occupation and if the tenant gives such intimation, the landlord shall within thirty days from the date of completion of the work of repair put the tenant in possession of the building on the original terms and conditions. If the tenant fails to give such intimation, his right to re-occupy the building shall

terminate.

(2) If after the tenant has delivered possession, the landlord fails to commence the work of repairs within one month from the date of such delivery, or fails to complete the work before the expiry of three months from the date of such delivery, or before the expiry of the further period allowed under clause (a) of sub-section (2) of section 14 or having completed the work fails to put the tenant in possession of the building in accordance with the provision of sub-section(1), the Controller may, on the application of the tenant made within thirty days from the date of such failure, order the landlord to put the tenant in possession of the building on the original terms and conditions; and on such order being made, the landlord and any person who may be in occupation shall put the tenant in possession of the building.

16. Tenants to occupy if the building is not demolished.---

(1) Where an order directing delivery of possession has been passed by the Controller under clause (b) of sub-section (1) of section 14 and 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 give the landlord notice of his intention to occupy the building the possession of which he delivered. If within fifteen days from the date of receipt of such notice, the landlord does not put him in possession of buildings on the original terms and conditions, the tenant may make an application to the Controller within eight weeks of the date on which he put the landlord in possession of the building. The Controller shall order the landlord to put the tenant in possession of the building on the original terms and conditions.

(2) Where in a pursuance of an order passed by the Controller under clause (b) of sub-section (1) of section 14, any building is totally demolished and a new building is erected in its place, all the provisions of this Act shall cease to apply to such new building for a period of five years from the date on which the construction of such new building is completed and notified to the local authority concerned."

Before we may proceed to discuss the submissions on question of law made by the learned counsel for the parties, we may briefly set out the relevant facts to lay down the factual matrix on which the submissions, on question of law, would stand. The building is situated in the city of Tirupur which, as the appellate authority has noted, is an industrial town and so far as the cloth business is concerned the city is top-city of the State. Evidence was recorded before the Controller in the year 1989. At that time the building was 30 years old. According to the landlord, the building was situated in a business locality but was in a bad condition. The landlord wanted

to reconstruct the building so as to augment his earnings. The condition of the building, the plans for reconstruction submitted to the Municipality and approved by it, are the facts stated in the notice, served on the tenants, prior to invitation of proceedings for eviction. According to the landlord, the building would be demolished immediately and on godown being constructed at the site the landlord would be able to earn rent at the rate of Rs.1.25p. per sq. feet. The landlord also stated that a portion of the newly constructed building would be utilized for the personal use and occupation of the landlord and if any portion was left out as being in excess of the personal requirement of the landlord then the landlord was willing to let out the same to the tenants at the rate of Rs.1.50p. per sq. feet. The building proposed to be constructed was a double-storey building on which an amount of Rs.6 lakhs was likely to be spent. The landlord tendered documentary evidence showing that approximately an amount of Rs.9 lakhs was available with the landlord in the bank accounts. One of the tenants, namely Venkatesa Guptha, RW1 admitted in his deposition that the suit premises were situated in an important business locality of Tirupur. The building was constructed with stones, bricks and mortar and was not required to be demolished. However, during cross-examination, he admitted that the front portion of the building was covered with cement sheets and back portion was covered with tiles. There was also some un-constructed portion of the property lying at the back. Subbarayan, RW3 admitted that though the building was not dilapidated and damaged, yet, if a building on all the land was constructed, then it would fetch more rental income. The tenants offered that even without new construction they were prepared to pay rent at the rate of Rs.1.25p. per sq. feet in the present condition of the building.

Thus, on a broad conspectus, the situation which emerges is that out of the total property of the landlord, part is lying unconstructed and part is constructed. The constructed portion is covered with asbestos sheets or tiles used as roof. The property is valuable as situated in busy business locality. The building was about 30 years old by the year 1989. If reconstructed, obviously the building would be double-storeyed, a modern building of cement concrete and would admittedly fetch more rental income apart from satisfying some personal need of the landlord. The appellate authority considered all the evidence and relevant circumstances of the case and arrived at a finding that the requirement of the landlord was bona fide. These findings have been reversed by the High Court mainly on the ground, as the judgment of the High Court reveals, that as the tenants were prepared to pay Rs.1.25p. per sq. feet by way of rent in respect of the existing accommodation, the question of reconstructing the building for the purpose of augmenting earnings of the landlord, and that too after spending Rs.6 lakhs, did not arise. The High Court observed that merely because the landlord was having sufficient funds and had got the plans of proposed reconstruction approved, the Court could not order eviction.

In this Court, it is submitted by the learned counsel for the landlord-appellant that a finding on the question of bona fides of the landlord is basically a finding of fact which, having been arrived at by the appellate authority on the consideration of all the relevant facts and circumstances of the case, was not liable to be interfered with in exercise of revisional jurisdiction of the High Court. The learned counsel pointed out those relevant aspects of the case which were not adverted to by the High Court, rendering the judgment of the High Court infirm, with which we will deal with a little later. The learned counsel for the respondents-tenants submitted, on the other hand, that the real purpose of the landlord is to get rid of the tenants and not to reconstruct the property. The learned counsel pointed out a serious lacuna in the Act and submitted that after securing orders of eviction if the landlord demolishes the property but does not commence

reconstruction, the tenants are left without any remedy and therefore the Court should carefully and cautiously examine the bona fides of the landlord and should not order eviction unless fully satisfied of the need for reconstruction and its bona fides. It was lastly submitted that the condition of the building was one of the relevant and weighty - factors and in as much as the building was neither dilapidated nor was so old as to need immediately a demolition, the eviction could not have been ordered. The landlord wanted to earn more and if such expected earnings are secured by retaining the premises in the present condition, in view of the offer made by the tenants, the question of reconstruction being allowed does not arise at all.

In *Prabhakaran Nair & Ors. Vs. State of Tamil Nadu & Ors.*, (1987) 4 SCC 238, constitutional validity of Section 14(1)(b) read with Section 14(2)(b) was challenged on the ground that the provision is violative of Article 14 of the Constitution because it does not provide for re-entry of the tenant in the reconstructed premises as has been done in several other State Legislations. It was also submitted that while the premises, having been vacated for the purpose of repairs under Section 14(2)(a), are available for re-occupation by the dislodged tenants, a similar provision is not to be found for protecting the tenants evicted for the purpose of reconstruction under Section 14(2)(b) and this also renders the latter provision unreasonable. The challenge was turned down by this Court. This Court held inter alia that in the case of demolition and reconstruction, the landlord has to substantially commence the work of demolition in material portion of the building not later than one month and the entire demolition work to be completed before the expiry of three months from the date he recovers possession of the entire building. This is a reasonable guarantee for the bona fides of the landlord. Vide paras 12 and 13, the Court held as under:-

"12. It has further to be borne in mind that after such demolition the reconstruction of a new building on the same site is bound to take time and such time depends upon the nature of the building to be erected and it might take years it was argued. During that period a tenant was bound to have found some other suitable alternative accommodation; on the other hand in the case of a building for repairs, a tenant may arrange for temporary accommodation for a few months and return back to the building. Therefore provision for re-induction in the case of repairs and absence of such a provision in the case of demolition and reconstruction is quite understandable and rational.

13. 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."

During the course of its judgment the Court further observed that the courts are not concerned with the wisdom of the Legislature and the provision contains sufficient inbuilt guidelines to save it from being rendered unconstitutional. While protecting the tenants from

unreasonable eviction, the landlords should not be discouraged from constructing new buildings because in the ultimate result it would augment the housing wealth of the nation which in turn would benefit the tenants and protect their larger interest by reducing the shortage of housing.

A three-Judge Bench in the case of P. Orr & Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited, (1991) 1 SCC 301, considered Section 14(1)(b) of the Act and the underlying legislative scheme and held that in order to make out a case for eviction under Section 14(1)(b), demolition for the purpose of erection of a new building must be the direct, immediate, genuine and real requirement of the landlord. In the opinion of the Court, the bona fide character of the requirement is proved by the appropriateness of time and the absence of any ulterior or irrelevant consideration separating the requirement from the statutory or permitted purpose. The direct and immediate nexus between these two elements is proved by the condition of the building and other relevant circumstances. What is the degree of urgency warranted by what extent of damage to the building that makes the requirement directly and immediately connected with the statutory purpose, is a question of fact which must be decided in each case on evidence. Absence of any need for urgency by reason of the strong and sound condition of the building will negative the bona fide character of the requirement and as such a building which is sound and safe does not qualify for demolition in terms of Section 14(1)(b). Any such building falls totally outside its ambit.

Thus, in the opinion of three-Judges Bench in the above-noted case, the determinative factor was the condition of the building though in addition, other factors could be taken into consideration. The three-Judges Bench decision in P. Orr & Sons came up for the consideration of five-Judges Bench in Vijay Singh & Ors. Vs. Vijayalakshmi Ammal, (1996) 6 SCC 475. The Constitution Bench lamented the Legislature having not employed clear and specific expression to make their intention clearly understandable. However, keeping in view the two pronged purpose of the Act — to protect the tenants from eviction at the mere will and desire of the landlord and at the same time to fulfil the legislative intent of securing eviction for the "immediate purpose for demolishing", the Constitution Bench held that the said expression could not be linked only with the dilapidated and dangerous condition of the building. Section 16 was a pointer to the legislative intent; if only such buildings which were dilapidated and dangerous for human habitation were intended to be covered then provision would not have been made in sub-section (1) of Section 16 for re-induction of the tenant in such a building on original terms and conditions if the building was not demolished. On the contrary, there being no provision for re-induction of the tenant in the newly constructed building and, further, such newly constructed building having been exempted from the provision of the Act for a period of five years from the date of completion of such new building having been notified to the local authority concerned, it is a clear indication that the framers of the Act desired to encourage erection of new building in place of the building which had been totally demolished on the basis of the order passed by the Controller under Section 14(1)(b). The Constitution Bench summed up the view of the law in the following words:-

"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

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."

We may refer to two decisions of Madras High Court. In S. Raju and others Vs. K. Nathamani, 1998 (3) LW 214, the Constitution Bench decision has been followed and it has been held that when new buildings with modern amenities have come up in that locality, naturally the building in question may become unsuitable to the surroundings and a liability, in its present condition, to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden for ever. Tenants may be satisfied with the present state of the building since they have to pay only a nominal rent but the Rent Control Legislation, beneficial to the landlord and the tenant both, should be interpreted in that way. For the purpose of proving his bona fides the landlord need only show that he has got the capacity to raise the necessary funds. In A.N. Srinivasa Thevar Vs. Sundarambal alias Prema W/o. Chandrakumar, 1995 (2) LW 14, even before the decision by Constitution Bench in Vijay Singh's case was available, it was held in the light of the decision in P. Orr & Sons that the availability of the following factors was sufficient to make out a case of bona fide requirement under Section 14(1)(b): "(a) Capacity of the landlord to demolish and to reconstruct is undisputed and also proved satisfactorily; (b) The size of the existing building occupies only one third of the site, leaving two third behind vacant and unutilized; (c) Demand for additional space: The demised premises is situated in a busy locality. Therefore, there is a great demand for additional space in the locality which could be met by demolishing the existing small building and putting up a larger building providing for future development vertically also, by building pucca terraced building; (d) The economic advantage: A modern construction of a larger building shall certainly yield better revenue and also appreciate in value, when compared to the asbestos sheet roofed old building." In that case, it was observed that the existing building was an old, out-model asbestos sheet building proposed to be replaced with better and modern building which would provide for better quality accommodation to the needs of the present days as the preservation of such building in a busy locality of a town shall not only be an eyesore but also against the souring public demand for additional space. Viewed from the angle of general interest of the public which, according to the decision in P. Orr & Sons is one of the considerations, it was observed that a big site should yield to a larger modern building with an increased and enlarged accommodation having better facilities to solve the ever increasing demand for more space. Stalling growth and development for the sake of one tenant who is in occupation of an old model building constructed with mud and mortar and asbestos sheets occupying only one third of the site was held to be not conducive to public interest. We approve the statement of law and the approach adopted by Madras High Court in both the abovesaid decisions. The structural and physical features and the nature of the construction of the building cannot be ignored. Even in P. Orr & Sons, this Court was of opinion that various

circumstances, such as the capacity of the landlord, size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors, justifying investment of capital on reconstruction may be taken into account by the concerned authorities, while considering the requirement for reconstruction of the building as the essential and overriding consideration in the general interest of the public and for the protection of the tenant from unreasonable eviction.

Reverting back to the case at hand, we find that the six tenants are not in full occupation of the entire space available. The landlord proposes to construct a new and modern building in busy commercial locality of a rising city. The landlord requires a part of the newly constructed building for his own personal use and such part of the newly constructed building as would be in excess of his own requirement he is willing to let out at current rate of rent to his tenants which would obviously augment his earnings. The newly constructed double storeyed building, would certainly provide much more total accommodation than what is available. In such circumstances the offer of the tenant that they are prepared to pay the rent at the current rate, the one which the landlord expects on reconstruction, becomes irrelevant and should not have prevailed with the High Court.

For the foregoing reasons, we are of the opinion that the High Court ought not to have interfered with the decision of the appellate authority. The appeals are allowed. Judgment of the High Court is set aside and that of the appellate authority restored. However, in view of the time that has already been lost in the litigation and to protect the interest of the tenants and certainly to allay their fears, it is directed that the executing Court shall, before directing the tenants to be evicted and possession being given to the landlord, direct the landlord to file plans of proposed construction, duly approved by the local authority, and give an undertaking in terms of Section 14(2)(b) of the Act. No order as to costs.

.....J
(R.C. LAHOTI)

..J.
(P.VENKATARAMA REDDI)

April 9, 2002.