

K.S.Sunderaraju Chettiar vs M.R. Ramachandra Naidu on 18 February, 1994

Equivalent citations: 1994 AIR 2129, 1994 SCC (5) 14, AIR 1994 SUPREME COURT 2129, 1994 (5) SCC 14, 1994 AIR SCW 1905, (1994) 2 SCR 20 (SC), (1994) 1 JT 679 (SC), 1994 SCFBRC 156, 1994 HRR 557, 1994 (2) SCR 20, 1994 (2) UJ (SC) 208, (1994) 2 GUJ LH 323, (1994) 2 RENCJ 1, (1994) 2 RENCRC 236, (1994) 1 RENTLR 340

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:

K.S.SUNDERARAJU CHETTIAR

Vs.

RESPONDENT:

M.R. RAMACHANDRA NAIDU

DATE OF JUDGMENT 18/02/1994

BENCH:

RAY, G.N. (J)

BENCH:

RAY, G.N. (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1994 AIR 2129

1994 SCC (5) 14

JT 1994 (1) 679

1994 SCALE (1) 665

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by G.N. RAY, J.- Leave granted. Pursuant to the notice issued on the Special Leave Petition No. 1687 of 1993, the respondent has entered appearance through counsel and the counter-affidavit has also been filed.

2. The appellant landlord is the owner of the suit premises being Shop No. 142, Gandhiji Road, Mayiladuthurai, Tamil Nadu. On 15-6-1971, the appellant landlord leased out the premises in question to Shri G. Vasanthan on a monthly rental of Rs 400 with effect from 15-6-1971 and the appellant landlord sought eviction of the said tenant Vasanthan and filed a petition for eviction on 22-4-1975 under Section 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Rent Act) before the Rent Controller Mayiladuthurai. By an order dated 12-12-1975, the learned Rent Controller dismissed the said eviction proceeding being RCOP No. 9 of 1975. The appellant landlord preferred an appeal against the said order of the Rent Controller before the appellant authority. By order dated 31-8-1977, the appellant authority allowed the said appeal and directed the eviction of the said tenant Vasanthan. Thereafter, the appellant landlord on 29-8-1978, let out the suit premises to the respondent M.R. Ramachandra Naidu for a period of three years from 1-8-1978 to 31-8-1981 on a rental of Rs 750 per month. The period of lease was extended further for another term of three years with effect from 1-9-1981 to 31-8-1984. It is the case of the landlord that he required the suit premises for expansion of his own business and also the pawn broking business under the partnership of his wife and daughter-in-law. The appellant landlord served a notice dated 5-11-1984 upon the respondent tenant asking him to vacate the suit premises. The respondent tenant refused to vacate the suit premises and on 17-4-1985, the appellant landlord filed an eviction petition under Section 10(3)(a)(iii) of the Rent Act for eviction of the tenant on the ground that the appellant landlord required more space for running the said pawn broking shop as well as the business of his own. The appellant landlord also urges that since the suit premises were old and in a dilapidated condition the same required urgent demolition and construction and accordingly the tenant should also be evicted under Section 14(1)(b) of the Rent Act. By an order dated 5-10-1987, the learned Rent Controller allowed the said RCOP No. 37 of 1985 on the ground that the appellant landlord had made out a case under Section 10(3)(a)(iii) of the Rent Act and he required the suit premises bona fide for his own occupation. The Rent Controller, however, negated the case of the appellant landlord that he required the premises for demolition or construction under Section 14(1)(b) of the Rent Act. The respondent tenant thereafter filed RCA No. 4 of 1988 dated 26-4-1989. The appellant landlord also filed Cross Appeal being RCA No. 9 of 1988 against the dismissal of the appellant landlord's case for eviction under Section 14(1)(b) of the Rent Act. By a judgment and order dated 26-4-1988, the appellate authority dismissed RCA No. 4 of 1988 filed by the respondent tenant after endorsing the finding of the learned Rent Controller that the suit premises was bona fide required by the appellant landlord for his use and occupation. The learned appellate authority, however, dismissed the landlord's Cross Appeal being RCA No. 9 of 1988 by the same judgment. The respondent tenant thereafter filed Civil Revision Petition No. 1448 of 1989 in the High Court of Madras challenging the said eviction order under Section 10(3)(a)(iii) of the Rent Act. By an order dated 11-4-1990, the said Civil Revision Petition No. 1448 of 1989 was allowed by the High Court of Madras and the case was remanded to the appellate authority inter alia directing the appellate authority to dispose of the case afresh in accordance with law and ill terms of the directions contained in the said order. Thereafter, pursuant to the liberty granted by the High Court to both the parties to adduce further evidence before the appellate authority, fresh evidences both oral or documentary were adduced before the appellate authority. The appellate authority by a judgment and order dated 14-12-1990, dismissed the said RCA No. 4 of 1988 filed by the respondent tenant and confirmed the order of eviction passed by the learned Rent Controller. The respondent tenant thereafter filed a Civil Revision Petition being Civil Revision Petition No. 436 of 1991 in

February 199 1.

3. The said civil revision petition was allowed by the High Court by its order dated 11-12-1992 inter alia on the finding that the appellate authority had not decided the appeal after remand in conformity with the order of remand dated 11-4-1990 passed by the High Court. The appeal was remanded for the second time by the High Court before the appellate authority by directing inter alia that the said appeal should be disposed of by following the directions contained in the order of remand dated 11-4-1990. It is this second order of remand dated 11-12-1992 which has been challenged in the instant appeal by the appellant landlord.

4. Since the impugned second order of remand has been passed by the High Court inter alia on the finding that the appellate authority failed to dispose of the appeal in accordance with the directions contained in the earlier order of remand, it is necessary to advert to the observations made in the first order of remand in order to appreciate as to whether or not the appellate authority has failed to dispose of the appeal properly in accordance with the directions contained in the order of remand.

5. The High Court had noted in the first order of remand that in the notice for eviction the landlord stated about the requirement of the disputed premises on account of expanding his own business but in the eviction petition, the case for bona fide requirement of the landlord was founded not only for the requirement for expansion of his own business but also for the expansion the pawn broking business of the wife and daughter-in-law of the landlord and also for demolition and construction of the suit premises. The High Court observed that the landlord was not consistent with reference to the location of Govindammal and Company which was the pawn broking business in partnership of the wife and daughter-in-law of the landlord. The High Court also observed that it was not clear as to what exactly was the area that was required by the respondent for the said pawn broking business in jewellery which was purely a business of advancing money on the security of jewels. The High Court also observed that the appellate authority came to the finding that the said partnership business had expanded by looking at Exts. A-10, A-11 and A-12 but the High Court was of the view that in the absence of sufficient materials right from the date of the commencement of the business, it was not possible to make any finding about the improvement of the said business. The High Court also observed that even if the business had improved, the very nature of the business that the pledged jewels had to be secured either in the locker in the iron safe or in the bank, the requirement of a very large area for such business might not be bona fide. It was, therefore, necessary to determine whether the landlord required the suit premises after keeping in mind the nature of the said partnership business and the area already under the possession of the landlord. The High Court also observed that the trial court and the appellate authority did not accept the case for eviction on the ground of demolition and reconstruction. But even for the purpose of deciding bona fide requirement of the landlord, the entire circumstances under which the landlord had instituted the proceedings were required to be taken into account. Referring to a decision of this Court in Hameeda Hardware Stores v. B. Mohan Lal Sowcarl the High Court observed that it was clear from the said decision that when a landlord had sought eviction of a tenant from the non-residential premises under Section 10(3)(a)(iii) of the Act, the landlord was required to establish other ingredients referred to in the said judgment. It was held by the High Court that as the appellate authority had failed to consider not only the totality and (sic of) circumstances and the facts of the

case but also the bona fide on the part of the landlord in seeking eviction from the demised premises on account of alleged requirement of the said partnership business, the impugned order of the appellate authority was vitiated. The High Court, therefore, held in the order of first remand that :

"It is in these circumstances, the order of the appellate authority is set aside and the matter is remitted back to the appellate authority to consider the totality of the facts and circumstances of the case and the bona fide on the part of the respondent's requirement of the demised premises for the purpose of carrying on the business of Govindammal and Company, by the members of his family."

As aforesaid, the High Court directed that both the parties would be at liberty to file fresh evidence both oral and documentary in support of their case.

6. After the said first order of remand, the appellate authority held, on consideration of the materials on record including fresh evidences adduced, 1 (1988) 2 SCC 513: AIR 1988 SC 1060 that the grounds on which the eviction of the tenant was founded in the proceedings in question were not the identical grounds as indicated in the notice for eviction given by the landlord to the tenant because the case of the bona fide requirement on account of expansion of said partnership business had not been mentioned. The appellate authority, however, held that the tenants, both in the counter as well as in his oral evidence, had admitted that the landlord was running a jewellery shop in the name of Sunder Jewellery and also a pawn broker's business run by his wife and daughter-in-law at Door No. 141 in the name and style of S. Govindammal and Company. The appellate authority held that in view of the aforesaid admitted position and in view of the documents filed by the landlord which clearly established that such partnership business had in fact been run in Door No. 141, even though the landlord had not mentioned in the notice that the landlord required the suit premises also for the said partnership business run by his wife and daughter-in-law, the landlord was entitled to seek eviction on account of requirement of the said premises for the said business. The appellate authority also held that it was not the case that the said business in the name and style of Govindammal and Company had not been run at Door No. 141 prior to the giving of notice for eviction and such business was introduced only for the purpose of making a case for eviction. Accordingly, it could not be contended that claim for eviction on account of the said partnership business was not made with any good intention. The appellate authority also held that on perusal of Ext. 13 filed by the landlord it could be noted that the partnership agreement had been entered on 25-8-1988 and from Ext. 7 it transpired that the licence for the said business had been issued on 28-8-1982 by the Tehsildar at Myiladuthurai and from Exts. 8 and 9 it transpired that the said partnership firm had been registered on 24-5-1983 and from Ext. 10 it transpired that the said partnership firm was assessed for income tax and from Exts. 11 and 12 it appeared that the income tax had been assessed from the year 1985 onwards. The appellate authority, therefore, held that the running of the said partnership business in the said Door No. 141 was amply proved. The appellate authority also found that the jewellery shop of the landlord known as Sunder Jewellery was also being run in the said Door No.

141. The appellate authority, therefore, held that the landlord was entitled to claim eviction of the tenant bona fide on account of the said two business concerns. The appellate authority also held that

on perusal of the landlord's Exts. 30 to 37 and 43 to 50 pertaining to the accounts of the said Govindammal and Company which were filed after the said first order of remand, it was clearly established that the said partnership business namely Govindammal and Company had been slowly progressing from year 1983. Coming to the question of the location of the said business in pawn broking and also the business of the landlord known as Sunder Jewellery, the appellate authority held that much importance was not required to be attached as to the location of the pawn broking business in view of the fact that it was an admitted position that at Door No. 141 both the said two business establishments were being run. The appellate authority then took into consideration as to whether the landlord had other premises in his occupation in which requirement for running the said business concerns could be carried out. The appellate authority came to be finding that the tenant in his evidence had admitted that the newly constructed building of the landlord had not been fully completed and no shop was being run in the aforesaid building. The appellate authority, therefore, came to the finding that the landlord did not own any vacant building. Referring to a decision of this Court made in *Krishnan Nair v. Ghouse Basha*² the appellate authority inter alia came to the finding that a petition under Section 10(3)(a)(iii) of the Rent Act on account of requirement of a partnership business in which the members of the family of the landlord were partners with strangers, was admissible and the landlord was entitled to claim eviction of the tenant for running such partnership business with strangers. The appellate authority also took into consideration the case of bona fide requirement of the landlord in the context of not mentioning the requirement of the landlord on account of the said pawn broking business in the notice. The appellate authority, however, held that since admittedly both the said two businesses had been run in the said Door No. 141 and the said partnership business had existed even prior to giving notice for eviction to the tenant, it was established that the landlord's claim of requirement of the suit premises for expanding the said partnership business was based on bona fide intention. The appellate authority, however, held that the case of requirement of the disputed premises on account of expansion of the landlord's said business in the name and style of Sunder Jewellery was not acceptable but it was necessary to separate the said business in pawn broking in the name and style of Govindammal and Company from the other business of the landlord known as Sunder Jewellery. The appellate authority dismissed the claim of the landlord for eviction on the ground of rebuilding after considering the relevant evidence about the condition of the building. Accordingly, the appellate authority affirmed the order of eviction passed by the learned Rent Controller against the tenant under Section 10(3)(a)(iii) of the Rent Act.

7. As aforesaid, the said decision of the appellate authority after remand has been set aside by the High Court in revision inter alia on the finding that the appellate authority had not applied its mind about the exact location where the pawn broker's shop was situated and the appellate authority had also not taken into consideration the question of bona fide requirement of the landlord for the purpose of carrying on the said business in pawn broking having regard to the area under occupation of the tenant and the actual requirement for the said business in pawn broking. The High Court was of the view that the appellate authority was expected to go into the question whether the entire area under the occupation of the tenant was required or not. The High Court also observed that although the appellate authority referred to Exts. 30 to 37 and 43 to 50 and came to the finding that the said partnership business had been steadily improving from 1983, the appellate ² (1987) 4 SCC 404: AIR 1987 SC 2199 authority failed to indicate what were the documents under

the said exhibits and how the said documents were relevant. The High Court set aside the order of the appellate authority on the finding that the decision of the appellate authority was not only unsatisfactory but the same was also not in conformity with the earlier order of remand passed by the High Court. The High Court also held that the requirement of the building for demolition and reconstruction had not been seriously pressed before it and such question was, therefore, not required to be considered.

8. Mr Chidambaram, the learned Senior Counsel appearing for the landlord-appellant, has very strongly contended that the High Court passed the impugned order of remand for the second time without properly appreciating the facts and circumstances of the case and the materials on record and the import of the finding made by the appellate authority after first order of remand. He has submitted that the High Court has proceeded on hyper-technicality and set aside the well-reasoned order of the appellate authority simply on the ground that the observation made in the first order of remand had not been followed properly. He has submitted that even if it is assumed that the appellate authority had not made the finding strictly according to the observations made in the order of remand, if the ultimate finding of the appellate authority on the basis of the materials on record and the evidence adduced after the first order of remand is in conformity with the provisions of Section 10(3)(a)(iii) of the Rent Act, there was no occasion for the High Court to set aside the said order and send the matter back for redetermination of the case. The anxiety of the court- should be not to prolong the course of litigation but to achieve its finality as early as possible. He has submitted that the appellate authority has rightly held that the exact location of the said partnership business was not required to be determined because of the admitted position that both the said two business concerns namely Sunder Jewellery and Govindammal and Company had been run in Door No. 141. The real question required to be considered for the purpose of deciding the claim for eviction is whether there was necessity for expanding of the said two businesses and whether or not the landlord had any alternative suitable accommodation for carrying out the said two businesses consistent with the requirement of the same. Mr Chidambaram has also contended that the appellate authority has referred to the assessment orders passed by the income tax authority from 1985 onwards in respect of the said partnership business and with reference to such assessment orders, the appellate authority came to the finding that the business activities had been steadily increasing. It was, therefore, not at all necessary to specifically refer in the decision which exhibit related to what document. In any event, the materials were before the High Court and the High Court could look into the same and could appreciate as to whether or not the finding of the appellate authority about the steady expansion of the said business was justified or not. Mr Chidambaram has also submitted that in the notice for eviction the bona fide requirement of the suit premises also on account of the accommodation of the said partnership business was not mentioned. But such omission to mention the said fact was of little significance because in reality the said partnership business was in existence at the time of giving the notice for eviction and the said business was being run even at the time of disposal of the proceedings for eviction. He has, therefore, submitted that the appellate authority was justified in holding that there was no lack of bona fide on the part of the landlord in basing a claim for eviction also on account of said partnership business although such case was not mentioned in the notice because the said business was not brought into existence after institution of the said eviction suit but the same was there from before. The landlord, according to Mr Chidambaram, has led evidence to establish that for the said expanding business more space was

necessary and as the landlord did not have any other suitable accommodation for the said business, he bona fide required the suit premises. He has, therefore, submitted that the impugned order has resulted in gross failure of justice to the landlord-appellant and the same should be set aside and the order of eviction on concurrent finding of bona fide requirement of the landlord by the learned Rent Controller and the appellate authority should be upheld by this Court and the order of eviction passed by the appellate authority should be maintained.

9. The learned counsel for the tenant respondent has, however, disputed the said submissions of Mr Chidambaram. It has been contended by the learned counsel for the tenant respondent that for the purpose of coming to a finding as to whether or not the landlord has a bona fide requirement in basing a claim for eviction of the tenant under the Rent Act, the Court is required to look into all the facts and circumstances of the case. It has been contended by the learned counsel for the tenant that the previous tenant was evicted on the ground of building and reconstruction of the suit premises but the landlord deliberately failed to reconstruct the same and having obtained the possession, he inducted a new tenant. It is only for the purpose of evicting the tenant respondent for getting higher rent the claim for eviction on the ground of building and reconstruction has been made by the landlord but such claim has not been upheld. The learned counsel for the tenant has also submitted that the landlord did not bona fide require the suit premises is evident from the fact that there was no mention of requirement for the expansion of the said partnership business in the notice for eviction. Had there been any such requirement, the said fact should have been mentioned in the notice for eviction. Although the landlord really did not require the suit premises for the alleged purpose of expansion of the said business, the same was alleged mala fide in the petition for eviction. The omission to mention the said ground should be considered for the purpose of determining whether there was a real need for expansion of said business. It is precisely for the said reasons, all the antecedent facts and circumstances are required to be taken note of for the purpose of deciding the bona fide requirement of the landlord. The learned counsel has submitted that the Rent Act is essentially a beneficial legislation for protection of the tenant against the caprices and whims of the landlord. The avowed purpose of the legislation to give such protection will be frustrated if proper consideration as to the bona fide requirement of the landlord is not taken into consideration. The learned counsel for the tenant has also submitted that even if it is assumed that the said partnership business is expanding, it is necessary to determine the exact nature of business and the space required for carrying out such business consistent with the expansion of such business. The necessity for such determination of the requirement of space had been indicated in the first order of remand by the High Court but despite the same, the appellate authority failed and neglected to determine the same and simply on a finding that the business was improving and it required expansion, the decree for eviction had been passed against the tenant. In the aforesaid facts, the High Court was justified in setting aside the decree for eviction and sending the appeal to the appellate authority on remand for redetermination in accordance with the observation made in the first order of remand. No interference is, therefore, called for in this appeal and the same should be dismissed with exemplary cost.

10. After giving our careful consideration to the facts and circumstances of the case, it appears to us that non-mention of a reasonable ground for eviction in the notice for eviction on the basis of which a claim for eviction is later on founded usually raises a suspicion about the existence of such ground

but such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be well-founded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction. In our view, the appellate authority has rightly indicated in the facts of this case, that the partnership business under the name and style of Govindammal and Company was in existence even prior to giving notice for eviction by the landlord. Such partnership business was registered and the licence for the business was obtained and the business had been subjected to assessments made by the income tax authorities. Hence, such business was not brought into existence only for the purpose of making a foundation for eviction of the tenant with mala fide intention. Hence, in the facts and circumstances of the case, it cannot be reasonably held that the claim of bona fide requirement on account of the said partnership business is per se mala fide and should not be taken into consideration simply because the case for bona fide requirement on that account had not been mentioned in the notice for eviction. There is no manner of doubt that the bona fide requirement is required to be considered objectively with reference to the materials on record and it is necessary to determine the real intention of the landlord on the basis of evidence adduced in a case. If the materials on record clearly justify a case of bona fide requirement, there will be no occasion for the court to hold that the landlord did not require the premises bona fide simply because on a previous occasion the action of the landlord for bringing an eviction case was not bona fide. It should be borne in mind that cause for eviction is a recurring cause of action and even if the existence of such cause of action had not been found in a previous proceeding for eviction, the same cannot be discarded if such claim is established by cogent evidences adduced by the landlord in a subsequent proceeding. It will not be correct to hold that only because after a tenant was evicted by the landlord on the ground of reasonable requirement for building and reconstruction, the landlord did not make the alleged reconstruction but let out the premises to another tenant after obtaining possession, any subsequent eviction case for the said premises deserves to be dismissed in limine. The landlord, in our view, may bring an action for eviction of the tenant or subsequent cause of action justifying a case of bona fide requirement. Similarly, rejection of a case for building and reconstruction by itself will not disentitle the landlord to get an order of eviction if the eviction on such ground can be founded in a changed circumstance. We may also indicate here that the contention that the Rent Act is a legislation for protecting a tenant will be oversimplification of the legislative import of the Rent Act. In our view, it will be more appropriate to hold that the Rent Act regulates the incidence of tenancy and inter se rights and obligations of the landlord and tenant.

11. In our view, Mr Chidambaram is justified in his submission that the High Court has acted with hyper- technicality in discarding the finding of the appellate authority about the continuous expansion of the said partnership business. The appellate authority has referred to the exhibits including the income tax assessment orders for the purpose of coming to the finding that the said business had been gradually expanding. In the aforesaid facts, it was not proper to discard such finding of the appellate authority by indicating that the exhibits had not been elaborated in detail. In any event, such exhibits were before the High Court for its consideration and in the anxiety to dispose of a lis as early as practicable, the High Court should have looked into the records and considered the justification of the finding made by the appellate authority. It appears to us that the

appellate authority has referred to the assessment orders from 1985 and has come to the finding that the said assessment orders indicated that the business was expanding. It is nobody's case that the documents did not indicate such expansion in business activities. Such finding, therefore, appears to be justified.

12. Since the eviction proceeding is pending for long, it would have been only desirable if the same could have been concluded before this Court. But the requirement of space for the said partnership businesses consistent with the nature of business and expanding activities had not been gone into by the appellate authority and the relevant materials are also not before us. We may also indicate here that the appellate authority has specifically held that for the expansion of the business of the landlord styled as Sunder Jewellery no further space was required but the partnership business in pawn broking was required to be separated. Such finding has not been challenged before the High Court and also before us. It therefore appears to us that the said pawn broking business requires to be run separately. Hence, we uphold the order of remand to the limited extent, namely, that the appellate authority on the basis of materials already on record would consider the actual requirement of space for the said partnership business consistent with the nature of business styled as Govindammal and Company after keeping in view, the expanding activities in such business. If on such consideration, the appellate authority comes to the finding that the landlord bona fide requires the disputed premises for running the said business in a separate enclosure, the order of eviction under Section 10(3)(a)(iii) of the Rent Act should be passed by the appellate authority. Since parties have already led evidence pursuant to the liberty given by the High Court in the first order of remand, no further evidence should be allowed to be led by either of the parties. This order will, however, not preclude the tenant respondent to give additional evidence, if any, in support of the contention that there had been change in the circumstances after the impugned decision of the High Court under which the landlord has already got in his possession suitable alternative accommodation which will satisfy the requirement of the landlord for running the aforesaid business concerns. As the matter is pending for long, we direct the appellate authority to dispose of this matter within three months from the date of the receipt of this order. In the facts and circumstances of the case, there will be no order as to costs.