

P. Orr And Sons (P) Ltd vs Associated Publishers (Madras) ... on 9 November, 1990

Equivalent citations: 1990 SCR, SUPL. (2) 615 1991 SCC (1) 301, AIR ONLINE 1990 SC 56, 1991 (1) SCC 301, 1991 HRR 45, (1990) 2 REN CR 648, (1991) 1 RENT LR 64, (1990) 2 MAD LJ 12, (1990) 2 MAD LW 547, (1990) 4 JT 374, (1991) 2 REN CJ 97, (1991) 1 APLJ 67, (1990) 4 JT 374 (SC)

Author: T.K. Thommen

Bench: T.K. Thommen, K.N. Saikia, N.M. Kasliwal

PETITIONER:

P. ORR AND SONS (P) LTD.

Vs.

RESPONDENT:

ASSOCIATED PUBLISHERS (MADRAS) LIMITED

DATE OF JUDGMENT 09/11/1990

BENCH:

THOMMEN, T.K. (J)

BENCH:

THOMMEN, T.K. (J)

SAIKIA, K.N. (J)

KASLIWAL, N.M. (J)

CITATION:

1990 SCR Supl. (2) 615 1991 SCC (1) 301

JT 1990 (4) 374 1990 SCALE (2) 960

ACT:

Rent Control and Eviction--Tamil Nadu Buildings (Lease and Rent Control) Act, 1960: Sections 10 and 14(1)(b) bona fide requirement and bona fide personal requirement demolition and reconstruction of building--Condition of building--Prime factor--Deterioration to crumbling state--Whether necessary--Absence of need for urgency by reason of sound condition of building--Whether negative bona fide character of the requirement for demolition.

Judicial Review: Findings of competent authority--When open to Court's interference--Appreciation of evidence and findings of facts--Authority empowered by statute--Final judge of facts--Court not to sit judgment thereon.

Words & Phrases: 'Immediate'--'Immediate Purpose'--Meaning of.

HEADNOTE:

The respondent-landlord filed a petition before the Rent Controller for eviction of the appellant-tenant under section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the ground that the condition of the building compelled immediate demolition and that the landlord wanted to put the property to the best possible use. The appellant-tenant denied the allegations and contended that the building was structurally safe, and that the stand taken by the respondent-landlord in the earlier proceedings under the Act falsified its claim. On the basis of evidence on record, the Rent Controller found that the building was structurally safe and sound. However, he held that the condition of the building as such was not decisive in deciding the question of bona fide requirement of the landlord under section 14(1)(b) of the Act. Accordingly, he passed an order of eviction. The tenant preferred an appeal. The appellate authority concurred with the Rent Controller and confirmed the order of eviction.

Aggrieved, the tenant approached the High Court. Confirming the findings of the authorities, the High Court held that though the

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building was structurally sound, it was required by the landlord for a legitimate scheme of demolition and reconstruction with a view to putting the property, to more profitable and better use.

Against the High Court's order, the tenant has preferred the present appeal, by special leave, contending that the respondent-landlord has sought eviction of the appellant solely in terms of section 14(1)(b) of the Act, which relate to the condition of the building compelling immediate demolition and since the condition of the building was not as such, the eviction could not have been ordered.

On behalf of the respondent-landlord it was contended that section 14(1)(b) of the Act referred to bona fide requirement of the landlord for demolition and reconstruction. It was also contended that due to various factors, if it became uneconomical to allow the old building to stand, notwithstanding its sound and safe condition, and a much larger profit could be derived from the larger reconstructed building, a prudent landlord would be perfectly justified in seeking eviction of the tenant under section 14(1)(b) of the Act.

Allowing the appeal, this Court,

HELD: 1.1 Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is satisfied only if the building is bona fide required by the landlord for the "immediate", i.e., direct, sole and timely purpose of demolishing it with a view to erecting a new building on the site

of the existing building. Various circumstances such as the capacity of the landlord, the size of 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 authority in considering an application for recovery; but the essential and overriding consideration which, in the general interests of the public and for the protection of the tenants from unreasonable eviction, the legislature has in mind the condition of the building that demands timely demolition by reason of the extent of damage to its structure, making it uneconomical or unsafe to undertake repairs. While the condition of the building by itself may not necessarily establish the bona fide requirement under clause (b), that condition is not only one of the various circumstances which may be taken into account by the Rent Controller but it is the essential condition. The Act does not accept the requirement by the landlord as a bona fide requirement within the meaning of the provision unless the condition of the building, in the context of the relevant circumstances,

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requires demolition. These are matters which are to be proved by evidence. [635H; 636A-D]

1.2 In order to satisfy the test under section 14(1)(b) the condition of the building need not have deteriorated to the extent of the building being in danger of crumbling down, but the condition must be such as to indicate a bona fide requirement for the timely, genuine and direct purpose of demolition and reconstruction. The personal requirement of the landlord or any member of his family for residence or business is not germane to section 14, and to import that concept for the construction of that section, as the High Court appears to have done, is to project section 10 into section 14, and that is an exercise which has no warrant in the law. [636E-F]

Metalware & Co. etc. v. Bansilal Sarma & Co. etc., [1979] 3 SCC 398; Neta Ram v. Jiwan Lal, [1962] Suppl. 2 SCR 623 relied on.

Mehsin Bhai v. Hale & Company G.T., Madras, [1964] 2 MLJ 147; K. Ramachandra Rao v. Krishnaswami Iyengar and Ors., [1976] 1 MLJ 267; K.P. Lonaopan and Sons v.S. Mohamed Iqbal, [1981] 1 MLJ 386 approved.

R.P. David and Anr. v. N. Denial and Ors., [1967] 1 MLJ 110; V.P. Selvaraj v. V. Narasimhe Rao, [1969] 1 MLJ 587; Bharat Trading Company v. K. Shanmugasundaram, [1982] 1 MLJ 94; Manakayal' Ammal & Ors. v. V.S. Sundaram and Ors., [1984] 1 MLJ 310; A.S. Sheikh Fathma and Ors. v. Omer Cloth State and Ors., AIR 1986 Madras 90 overruled.

Panchamal Narayan Shenoy v. Basthi Venkatesha Shenoy, [1970] 1 SCC 499 distinguished.

Mahboob Badsha v. M. Manga Devi and Anr., [1965] 2 MLJ 209; K.J Sivalingam v.S. Guruswamy and Anr., [1983] 2 MLJ 85

referred to.

2. In the construction of sections such as 10 and 14 of the Act, the Court must be guided by the overriding legislative object articulated in the Preamble to the Act, that 'the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the state of Tamil Nadu.' [636H; 637A]

Prabhakaran Nair and Ors. v. State of Tamil Nadu & Ors., [1987] 4 SCC 238 relied on.

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3. Section 14(1)(b), however, does not require instant demolition, but demolition within the specified time. "Immediate purpose", in the context in which the expression appears, relates to directness rather than speed, although absence of the letter negative the former. It denotes connection and timely action, but not instant action; yet delayed action is a sign of remoteness of purpose. The expression must be understood as a directly connected and timely purpose, and not a secondary or remote or premature purpose. Significantly, the clause does not say "for the purpose of immediately demolishing" which words might have denoted instant demolition. What section 14(1)(b) says is "immediate purpose of demolishing". The legislative intent is that the purpose should be immediate or direct and not mediate or remote or indirect or secondary. The condition of the building need not be such as to warrant instant demolition, but it must be grave enough to need timely action and rule out undue or protracted delay. The landlord is not expected to wait till the building is in imminent or immediate danger of crumbling down so as to necessitate recovery of possession for instant demolition. The purpose of demolition must of course be immediately or directly connected with the requirement so as not to be separated by any intervening consideration. Demolition for the purpose of erection of a new building must be the direct immediate, genuine and real requirement of the landlord. 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 element is proved by the condition of the building and other relevant circumstances. 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. 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. But a building which is sound and safe does not qualify for demolition in terms of section 14(1)(b). Any such building fails totally outside its ambit. [627B-H]

Black's Law Dictionary, 5th Edn: Concise Oxford Dictionary, New 7th Edn., referred to.

4. The requirement for demolition can be regarded as genuine and bona fide only when the condition of the existing building is such that a reasonable and prudent landlord would regard it to be uneconomical to repair it rather than demolish it and reconstruct a new building

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Apart from the condition of the building, the nature of the locality, the advantages arising from reconstruction the capacity of the landlord to erect a new building the demand for accommodation and other factors suggesting the bona fide character of the landlord's request for recovery of possession under section 14(1)(b) are relevant. Even where the condition of the building demands demolition, it is possible that, in view of the landlord's lack of capacity to rebuild or the futility of reconstruction by reason of the condition of the time and place, the authority may regard, without prejudice to whatever power there is to enforce repairs or demolition in certain circumstances, that the landlord's application lacks bona fide. The authority has to take into account the totality of the circumstances. [628H; 629A-C]

5. The absence of any provision to compel reinduction of the tenant after reconstruction or to compel reconstruction after demolition and the non-applicability of the Act for a period of five years after reconstruction make it imperative that the reasonableness of the landlord's requirement should be considered with care and caution, bearing in mind the fundamental legislative object to protect the tenant from unreasonable eviction. [628E-F]

6. The over-riding consideration underlying section 14(1)(b) is the bona fide need for demolishing the old building and erecting a new building, once the demolition of the old building is completed, for loss of time means not only loss of income, but probably also increased expenditure. This construction must necessarily lead to the inevitable conclusion that the condition of the building is a basic and essential requirement of section 14(1)(b). [628G-H]

7. The requisite circumstances warranting repairs under clause (a) or demolition under clause (b) of section 14(1) are matters for determination by the competent authority on the basis of relevant evidence and the applicable provisions of the law. In proceedings for judicial review, the Court does not sit in judgment over appreciation of evidence and finding of facts by the authority empowered by the statute. He is the final judge of facts, and so long as he has taken into account all relevant facts and has eschewed from his mind all irrelevant circumstances and has correctly understood and applied the law. including the rules of natural justice, his judgment is generally regarded as final and not open to challenge. On the other hand, where he has acted in excess of his jurisdiction or asked himself the wrong questions or misunderstood or misapplied the law or failed to consider the relevant circumstances, his conclusions are

liable to be reversed as perverse

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by a court exercising judicial review. Any repository of power must act in accordance with the law and on the basis of relevant evidence. He must be guided by reason and justice and not by private opinion. [629D-F]

8. In the present case the Rent Controller asked himself the wrong question. He did not think that the condition of building was relevant. He disregarded the clear admission of the landlord and other evidence as regards the sound condition of the building. The crucial condition for demolition was thus absent. The Controller was totally misguided as to the conclusions which he reached. So were the appellate authority and the High Court. [636F-G]

JUDGMENT: