P.S. Pareed Kaka & Ors vs Shafee Ahmed Saheb on 23 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2049, 2004 AIR SCW 1937, 2004 AIR - KANT. H. C. R. 1314, 2004 (2) SLT 865, (2004) 18 ALLINDCAS 235 (SC), 2004 (3) SCALE 535, 2004 (2) HRR 260, 2004 (3) ACE 549, 2004 (5) SCC 241, 2004 (2) ALL CJ 1260, 2004 SCFBRC 202, (2004) 2 CTC 364 (SC), 2004 HRR 2 260, (2004) 2 KER LT 130, (2004) 3 MAD LW 754, (2004) 1 RENCR 503, (2004) 1 RENTLR 745, (2004) 2 WLC(SC)CVL 199, (2004) 98 CUT LT 318, (2004) 3 ANDHLD 12, (2004) 2 SUPREME 622, (2004) 3 ICC 167, (2004) 3 SCALE 535, (2004) 56 ALL LR 122, (2004) 3 KCCR 1393, (2004) 1 RENCJ 107, (2004) 18 INDLD 140

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Bench: R. C. Lahoti, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  3856-3858 of 1999

PETITIONER:
P.S. Pareed Kaka & Ors.

RESPONDENT:
Shafee Ahmed Saheb

DATE OF JUDGMENT: 23/03/2004

BENCH:
R. C. Lahoti & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T Dr. AR. Lakshmanan, J.

The matter arises under the Karnataka Rent Control Act, 1961. The unsuccessful tenants are the appellants in these appeals. The respondent/landlord filed rent control petitions before the Court of Small Causes against the appellants, inter alia, under the provisions of Section 21 (h) and (j) of the Karnataka Rent Control Act. The Court of Small Causes dismissed the petitions. The landlord filed revision petitions, inter alia, challenging the order of the Court of Small Causes. On 19.11.1998, the High Court allowed all the revision petitions by a common judgment and directed that the tenants shall vacate and deliver the premises under their respective occupation to the landlord. Aggrieved by the impugned judgment of the High Court, the tenants have approached this Court seeking special leave to appeal.

We heard Mr. P.B. Menon, learned senior counsel for the appellants and Mr. Shakil Ahmed Syed, learned counsel for the respondent. Mr. Menon submitted five submissions in support of his contention. They are:

> 1. The High Court has no jurisdiction to re-appreciate and evaluate the evidence on record which has resulted in arriving at the conclusion which is manifest in the impugned judgment and on this ground the impugned judgment/order ought to be set aside by this Court.
>
> 2. The High Court has failed to render a correct finding on the comparative hardship.
>
> 3. The reasoning and finding of the High Court on each and every point referred to in the impugned judgment is bad in law, perverse and against the weight of the evidence on record of the case and as such has resulted in substantial failure and miscarriage of justice to the petitioners.
>
> 4. The High Court was not right in law in holding that the landlord proved his bonafide requirement of the premises in question.
>
> 5. The finding of the High Court that the building is not in a dilapidated condition is against the real facts.

Learned counsel for the respondent took us through the pleadings and the order and judgment passed by the Rent Controller and also by the High Court. According to him, the High Court has jurisdiction under Section 50 to interfere with the findings of fact and that the High Court is justified in interfering with the trial courts finding based on abundant materials. He would also submit that other findings rendered by the High Court in ordering eviction are unassailable and supported by cogent and convincing reasons. He would pray for the dismissal of the special leave petition. As already noticed, the eviction petition was filed under Section 21(h) and (j) which reads thus:-

> "21. Protection of tenants against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant:
>
> Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:-
>
> (a) ..

xxxx xxxx xxxx

(h) that the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust; or

(i) xxxx

(j) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting a new building in place of the premises sought to be demolished; or

(k) xxxxxx"

> We reproduce hereunder Section 50 of the Act (Revision) in order to appreciate the arguments advanced by counsel appearing on either side in regard to the scope and ambit of the revisional jurisdiction of the High Court. "50. Revision.- (1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14,15,16or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.
>
> (2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause
>
> (iii) of clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as he thinks fit. The order of the District Judge shall be final.
>
> (3) The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be."

As seen earlier, the Rent Controller passed a common order rejecting all the petitions filed by the landlord. The rejection was challenged by filing revisions under Section 50 of the Rent Control Act. According to the landlord, the accommodation available in the Nala road premises was insufficient, that the Nala road property is not situated in a good locality; that it was situated in an unhygienic area and facing a drain emitting bad stench; that his family were feeling frequently sick due to the unhygienic atmosphere on the foul smell emanated therefrom. Therefore, he wanted the schedule premises for his own use and occupation for residential purposes. The landlord also contended that the premises in question was more than 100 years old and is not fit for human habitation and certain portions of the property had also collapsed and, therefore, the entire premises was required for the immediate purpose of demolition and for reconstruction of a residential house to suit his needs for the purpose of his residence.

The tenants resisted the petitions. They contended that the premises at Nala road belonged to landlord and had adequate comfortable accommodation to meet the landlord's requirement as his family consisted of only himself and his wife; that it was situated in a good locality; that the area was not unhygienic having regard to the fact that the drain facing the said property was not as open sewer drain, but a strong water drain with a covered sewer drain below it and that it did not emit any bad odour and that, therefore, the need put-forth by the landlord is not bona fide and reasonable. They also contended that no hardship will be caused to the landlord if orders of eviction were not passed as he was comfortably residing at Nala road property. All the tenants contended that they will be put to hardship if they are evicted from the property.

The trial Court held that the landlord did not require the petition schedule premises for demolition and reconstruction or for his own use. Consequently, it did not consider the question of comparative hardship and partial eviction. The Rent Controller held that the landlord did not prove that the property was in a dilapidated condition. The Court also held that the premises No. 26 at Nala road where the landlord was residing was more spacious than the new building which he intended to construct at No. 71 Labbay Masjid street of which the petition schedule premises were all portions and as the landlord did not have any children and his family consisted of only himself and his wife, premises at Nala road which consisted of 2 bed-rooms, one hall, one office room etc. was sufficient to meet his requirements. In regard to the unhygienic atmosphere at Nala road the trial Court found that the premises in question was earlier in the occupation of a tenant that the landlord had purchased the said property and filed an eviction petition against the tenant at Nala road on the ground that he require it for his own use and thereafter occupied the premises, and the landlord having known fully well the existence of a Nala soak drain and having obtained possession of his property for his own use cannot now contend that the said premises is not situated in a good locality or that it is unhygienic. The trial Court, in our view, has completely misdirected itself in considering what is bonafide and what is reasonable. The findings on other issues also are not satisfactory.

The main ground on which the landlord wanted the petition schedule premises is because he wanted to shift from Nala road premises which was situated in unhygienic locality and facing a drain. He also contended that he wanted to demolish the more than 100 year old building of which the petition schedule premises were all portions and then put up a residential house for his own use and occupy the same for his residence. The trial Court has miserably failed to consider whether the need as putforth is bona fide, reasonable or not. The High Court on a reappreciation of the evidence came to the conclusion that the need is bona fide and the building require demolition and reconstruction. The evidence tendered consistently shows that all the witnesses have clearly admitted that the Nala road property where the landlord is residing faces a drain and that the area is unhygienic and he does not want to stay near a drain. The tenants have admitted the same in their evidence. It cannot be said that the decision of the landlord to leave the premises and to shift to a premises away from the drain is unreasonable or unjust. The evidence let in will clearly show that there is sufficient cause for the landlord to shift his residence to a new premises and reside there. In fact, the reasonableness can also be decided from the offer made by the landlord that if all the tenants vacate the petition schedule premises by consent the landlord is willing to even demolish and construct shops and residential portions for the tenants in the Nala road property and give them on rent. Of course, the said offer has not been accepted by all the tenants. It is contended on behalf of the

learned counsel for the tenants that the landlord had obtained vacant possession of the Nala road property by evicting the previous tenants and move into the Nala road property. It is only after living in the Nala road property the landlord came to know the disadvantages, namely, the bad smell from the open drain and the unhygienic surroundings the mere fact that he had filed an eviction petition against the earlier tenant of the Nala road property is not a ground to hold that the landlord should continue to live in the said property undergoing hardship and inconvenience.

This brings us to the need for the petition schedule premises. It is in evidence that the premises is very old and the building therein is dilapidated and portions of the building have also collapsed. It is also in evidence that the rear outhouse building has already collapsed. In these circumstances, it cannot be said that the said need is not bona fide or unreasonable. It is not for the tenants to suggest that there is no need to demolish the existing building and construct the new building. The landlord, in our view, is entitled to make use of his property for any reasonable purpose. If the landlord chooses to use it for residential purpose, the tenants cannot say that he should not do so to using for commercial purposes. We, therefore, hold that the landlord has made out the need clearly.

Learned counsel for the tenants submitted that the family of the landlord consists of only the landlord and his wife and he has no children and, therefore, he does not require the petition schedule premises. This contention cannot at all be countenanced. If the landlord wants to live by constructing a house in the petition schedule premises the mere fact that he does not have any children does not mean that he and his wife should not shift to the petition schedule premises. It is also not in dispute that the landlord has got ample financial resources to demolish the building in question reconstruct and occupy the same. The tenants have also admitted that the building is very old and one of them admits that it is more than 100 years old.

Law is well settled on this aspect. Even if the building is in a good condition, if it is not suitable for the requirement of the landlord, he can always demolish even a good building and put up a new building to suit his requirements. It is not necessary for the landlord to prove that the condition of the building is such that it require immediate demolition particularly when the premises is required by the landlord. Therefore, it has to be held that the finding of the trial Court cannot be sustained and the High Court on reappreciation of the evidence, rightly so, held that the landlord has established that his need for all the four petition schedule premises is bona fide and reasonable.

In R.V.E. Venkatachala Gounder vs. Venkatesha Gupta and Others [AIR 2002 SC 1733] one of us (R.C.Lahoti, J.) speaking for the Bench while dealing with the similar provision under the Tamil Nadu Building (Lease and Rent Control) Act has observed as under:-

> "The building in question was located in busy business locality. It was 30 years old constructed of stones, bricks and mortar. The roof was partially of cement sheets and partially of tiles. The building occupied only a portion of the landlords total land. It was not dilapidated and damaged. The landlord to augment his income wanted to demolish and reconstruct new building on his entire land. The proposed new building was to be a double storeyed modern building of cement concrete providing 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 could not be a ground to refuse eviction decree to the landlord."

Again in para 11, this Court while approving the judgment of the Madras High Court (AR. Lakshmanan, J. as he then was) in A.N. Srinivasa Thevar vs. Sundarambal @ Prema W/o Chandrakumar 1995 (2) Mad LW 14 has observed as under:

> "In A.N. Srinivasa Thevar v. Sundarambal alias Prema W/o Chandrakumar 1995 (2) Mad 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 S.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 unutilised; (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 above said decisions."

The observations made by the single Judge of the Madras High Court (AR. Lakshmanan,J. as he then was) in A.N. Srinivasa Thevar (supra) can also be beneficially looked into in the present context :

> "In the present case, the landlady/respondent has specifically stated in her petition that the building consists of brick built structure covered by Asbestos sheet. Further, the premises does not yield good return, and in the present condition it has not been properly utilised. Hence, she intends to demolish the existing structure and construct

> a new building with better utility and for good return. As stated already, the building is situate at Kamaraj Salai, which is admittedly a busy locality. It is borne out from the evidence of both the landlady/respondent and the tenant/petitioner that there is a large vacant space behind the existing building. A cumulative reading of all the above facts would make it clear that in a busy locality in Pondicherry town, the demised premises which is more than 30 years old, with asbestos roof, occupying one third of the site leaving two third of the site vacant, behind the building."

In Harrington House School vs. S.M. Ispahani and another [AIR 2002 SC 2268] one of us (R.C. Lahoti, J.) speaking for the Bench after analysing the entire facts and circumstances and the law on the subject rendered a finding to the following effect:

> "In the present case it has been found that the building is an old construction requiring demolition and reconstruction. Out of the total area of the property only a part is built up and substantial portion is lying open and vacant. There is pressure of population on the developing city and several multi-storey complexes have come up in the vicinity of the property. There is nothing to cast a shadow of doubt in the bona fides of the landlords pleading an immediate need for demolition followed by reconstruction. No fault can be found with the finding of fact arrived at by the High Court. The decision by the Appellate Court was rendered on 25th February, 1994 when three-Judge Bench decision of this Court in P.Orr & Sons (supra) was holding the field and in view of the construction placed by this Court in P.Orr & Sons the Appellate Court was persuaded to deny eviction in spite of the findings of facts being for the landlord. The High Court has rightly set aside the judgment of the Appellate Authority and ordered eviction following the law laid down by the Constitution Bench in Vijay Singh & Ors. case. It is true that the landlords have not pleaded and relied on the age and condition of the building as one of the components of their bona fides but that is immaterial. The age and condition of the building has been determined and is available for assessing the bona fides of the landlords' need."

In Vijay Singh and Others vs. Vijayalakshmi Ammal (1996) 6 SCC 475, this Court has observed in para 10 as follows:-

> "On reading Section 14(1)(b) along with Section 16 it can be said that for eviction of a tenant on the ground of demolition of the building for erecting a new building, the building need not be dilapidated or dangerous for human habitation. If that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub-section (1) of Section 16 contemplates that permission has been granted by the Rent Controller under Section 14(1)(b) for demolition of the building, but if such demolition is not carried out in terms of the order and undertaking, then the Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and conditions. If the building is dangerous and dilapidated requiring immediate demolition for safety, then there is no question of the Rent Controller directing the landlord to put the

> tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord to commence the demolition within the period prescribed. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restrictive provisions of the Act for a period of five years from the date on which the construction of such new building is completed and notified to the local authorities concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. 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 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."

The next question that arises for consideration is comparative hardship. Learned counsel for the landlord has contended that the Nala road premises is unsuitable because it is unhygienic and, therefore, he wants to shift to the petitions schedule premises. It is not the case of the tenants that the landlord has any other premises of his own. The landlord, in our view, will be put to hardship if he is not able to shift to the petition schedule premises. The tenants also will not be put to any hardship at all as elaborately discussed by the High Court in para 20, 20.1, 20.2 and 20.3 with reference to each tenancy. The evidence would clearly go to show that none of the tenants will be put to hardship if they are evicted from the respective premises in their occupation. Learned counsel for the tenants argue that the High Court can interfere only if there is any mis-carriage of justice due to mistake of law and that the finding of the lower Court as to bona fide requirements etc. cannot be interefered with by the High Court by reappreciating evidence which is impermissible in law. In support of his contention, he relied on the decision of this Court in Phiroze Bamanji Desai vs. Chandrakant M. Patel & Ors. [1974] 3 SCR 267]. The above decision will be of any assistance to the tenants. The judgment is not only distinguishable on facts but also on law. On the other hand, this Court in Kempaiah vs. Lingaiah and Others (2001) 8 SCC 718 held that the revisional powers of the High Court, under the Karnataka Rent Control Act, are wider than the powers conferred upon it under Section 115 of the Code of Civil Procedure and the High Court is not precluded to appreciate the evidence for arriving at the conclusion regarding the bona fide requirement etc. We have already

extracted Section 50 of the Rent Control Act. The said Section is widely couched. The High Court while exercising jurisdiction under Section 50 may at any time call for and examine any order passed or proceedings taken by the Court of Small Causes or the Court of Civil Judge or any order passed by the Controller under Section 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it things fit. Under Section 115 C.P.C. the High Court has got power to revise the order passed by the Courts subordinate to it. It cannot be disputed that the Rent Controller is a subordinate Court and is liable to the revisional jurisdiction of the High Court. Hence, the High Court has powers to entertain a revision and reappreciate the evidence and dispose of the same. The High Court has jurisdiction to go into the legality or correctness of the decision which, in our view, includes the power to reappreciate evidence and that the High Court can interfere with the findings of fact also. This apart, the jurisdiction of the High Court under Section 50 is to examine the legality and correctness of the order of the trial Court. The examination as to the correctness involves appreciation of evidence and that the High Court can interfere if the finding of the Rent Controller is entirely improbable.

For the aforesaid reasons, the tenants are not entitled to succeed in these appeals and the appeals stand dismissed. However, the tenants will have three month's time to vacate the premises in their respective occupation and subject to the filing of an usual undertaking within two weeks from this date failing which the landlord is at liberty to levy execution and proceed further in accordance with law. No costs.