

Panchamal Narayan Shenoy vs Basthi Venkatesha Shenoy on 20 February, 1970

Equivalent citations: 1971 AIR 942, 1970 SCR (3) 734, AIR 1971 SUPREME COURT 942

Author: C.A. Vaidyalingam

Bench: C.A. Vaidyalingam, S.M. Sikri, Vishishtha Bhargava

PETITIONER:
PANCHAMAL NARAYAN SHENOY

Vs.

RESPONDENT:
BASTHI VENKATESHA SHENOY

DATE OF JUDGMENT:
20/02/1970

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SIKRI, S.M.
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 942 1970 SCR (3) 734
1970 SCC (1) 499
CITATOR INFO :
RF 1979 SC1559 (5,10)
R 1987 SC2117 (32)

ACT:
Mysore Rent Control Act (Mys. 22 of 1961), s. 21(1)j--Reasonably and bona fide required for immediate demolition--Whether has reference to condition of premises.

HEADNOTE:
Under s. 21 (1) (j) of the Mysore Rent Control Act, 1961 the court may on an application order the recovery of possession of any premises in favour of the landlord, if "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 enacting a new building in place of the premises sought to be demolished,". The respondent-landlord applied under s. 21(1)(j) for eviction of the tenants appellants, claiming that the premises were reasonably and bona fide required by him for the immediate purpose of demolishing and erecting of a new building, that the premises were old and were not suitable for continued occupation. The respondent claimed to have obtained the necessary licence and to have made all preparations for demolishing the existing., building and erecting new building. The appellants-tenants contested the claim. The Rent Controller accepted the respondent landlord's claim and ordered eviction, which in appeal, and further revision to the High Court was upheld. In appeal to this Court for the appellant-tenant, it was contended that unless the landlord was able to establish that the condition of the building was such that it required immediate demolition and reconstruction, no eviction of the tenant could be ordered under s. 21 (1) (j). Rejecting this contention and dismissing the appeal,

HELD : The requirement contemplated under clause (j) of the proviso to sub-s. (1) is that of the landlord and it does not have any reference to the condition of the building as such. What is necessary under that clause is that the landlord must satisfy the Court that he reasonably and bona fide requires the premises for the immediate purpose of demolishing it and such demolition is for the purpose of erecting a new building in the place of the old one. No doubt, whether the landlord's requirement is reasonable and bona fide has to be judged in the light of the surrounding circumstances, which will include his means for reconstruction of the building, and other steps taken by him in that regard. [737 G, H]

In considering the reasonable and bona fide requirements of the -landlord under this clause, the desire of the landlord to put the property to a more profitable use after demolition and reconstruction is also a factor that may be taken into account in favour of the landlord. It is not necessary that the landlord should go further and establish under this clause that the condition of the building is such that it requires immediate demolition. [738 D]

Neta Ram v. Jiwan Lal, [1962] Supp. 2 S.C.R. 623, referred to.

Mehsin Bhai v. Hale & Company, (1964) II M.L.J. 147, contra observation disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1552 of 1966.

Appeal by-special leave from the judgment and order dated June 8, 1966 of the Mysore High Court in C.R.P. No. 1118 of 1964.

M. C. Chagla and R. Gopalakrishnan, for the appellant. M. R. Ramamurthi, S. S. Javali and M. Veerappa, for the respondent.

The Judgment of the Court was delivered by Vaidailyngam J. this appeal, by special leave, is against the judgment of the Mysore High Court, dated June 8, 1966 in Civil Revision Petition No. 1118 of 1964.

The respondent land-lord filed an application, dated July 6, 1962 under s. 21 (1) (j) of the Mysore Rent Control Act, 1961 (Mysore Act XXII of 1961) (hereinafter called the Act) before the Rent Controller for eviction of the tenants (the appellants herein) on the ground that the premises were reasonably and bonafide required by him for the immediate purpose of demolishing and erecting of a new building. According to the respondent the premises were old and were (not suitable for continued occupation. The respondent had also stated in his -application that he had obtained the necessary licence for erecting a new building after demolition of the existing building and that he had made all preparations for demolition and erection of new buildings on the site. The appellant-tenant contested the claim of the landlord on several grounds. He pleaded that the premises were not old and that it was quite suitable for occupation and it does not require any re-construction or remodelling. The allegations that the building was old and required to be reconstructed were not bona fide and had been made by the landlord only as a pretext for evicting the tenant. The tenant further pleaded that the requirement of the landlord was neither reasonable nor bona fide. In any event, the tenant claimed that he should be entitled to be paid the value of the improvements that had been effected by him.

The Rent Controller, by his order dated January 22, 1964 accepted the claim of the respondent and ordered eviction of the appellant granting the tenant one month's time for delivering vacant possession. Though the Consulting Engineer who gave evidence as P.W. 2 on behalf of the respondent had stated that the building was over 60 years old but nevertheless it could go on for about 15 years more, the Rent Controller actually found that the building was more than 50 years old and that it was an old-fashioned one. He further found that when the landlord desired to pull it down and put up a modern building thereon, it could not under the circumstances, be said that his claim was not bona fide or reasonable and that the intention of the landlord in pulling down the building and erecting a new one to get a better return was certainly understandable. The Rent Controller further found that the landlord had proved that he had sufficient means to construct the building and that he had also obtained the necessary sanction from the Municipality concerned for reconstruction of the building. In view of all these circumstances, the Rent Controller found that the requirement of the landlord was quite reasonable and bona fide. Regarding the claim of the tenant for payment of improvements before eviction is ordered, the Rent Controller found that such a claim, even if established, could not stand in the way of the landlord getting possession of the premises. Ultimately the application filed by the landlord was allowed.

The findings recorded by the Rent Controller were confirmed by the learned District Judge, by his judgment dated October 19, 1964 in A.S. No. 43 of 1964 taken before him by the tenant.

The revision filed by the appellant before the High Court was rejected by order dated June 8, 1966.

Mr. Chagla, learned counsel appearing for the appellant, contended that the interpretation placed by all the Courts on s. 21 (j) of the Act was erroneous. According to the learned counsel, unless the landlord was able to establish that the condition of the building was such that it required immediate demolition and re-construction, no eviction of the tenant could be ordered under s. 21 (1) (j) of the Act. On the findings of the Courts, based upon the evidence of the Engineer, that though the building was old it could continue to exist for another 15 years, it should have been held that the conditions mentioned in s. 21 (I)

(j) were not attracted to justify an order of eviction of the tenant.

Mr. Ramamurthi, learned counsel for the respondent, pointed out that in order to attract s. 21 (I) (j) it was not necessary that the landlord should establish that the condition of the building was such that it required to be demolished immediately. On the other hand, the sub-section made it clear that the requirement contemplated was that of the landlord and once his requirement had been held by all the Courts to be reasonable and bona fide, the order passed for eviction of the tenant was fully justified.

Having due regard to the scheme of the Act, we are satisfied that the interpretation placed upon S. 21(1)(j) by the High Court is correct.

Section 21 (1), while placing a general embargo against a landlord from evicting a tenant, recognises, in its. proviso the circumstances under which a landlord could seek recovery of possession of a premises. The ground upon which the landlord asked for eviction, in the present case, was based on s. 21 (1) (j). The material provision is as follows :

"21. (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:-

(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;

.....

According to Mr. Chagla, the words 'reasonably and bona fide required', occurring in this clause, must be interpreted to have reference to the condition of the building, the demolition of which is sought to be made and those words have no reference to any intention entertained by the landlord. The mere fact that a landlord may bona fide and reasonably entertain an idea of demolishing the building and reconstructing the same with a view to putting the property to a more profitable use after construction, will not satisfy the requirements of the said clause. That is, according to the learned counsel, the condition of the building must be such that it is immediately necessary to demolish it, in which case alone eviction under cl. (j) could be ordered.

We are not inclined to accept this construction sought to be placed by the appellant on the clause in question. The proviso to s. 21 (1) enumerates the various circumstances under which a landlord may seek to recover possession of the property from his tenant. The requirement contemplated under clause (j) of the proviso to sub-s. (1) is that of the landlord and it does not have any reference to the condition of the building as such. What is necessary under that clause is that the landlord must satisfy the Court that he reasonably and bona fide requires the premises for the immediate purpose of demolishing it and the demolition is for the purpose of erecting a new building in the place of the old one. No doubt, as to whether the landlord's requirement is reason-

able and bona fide has to be judged by the surrounding circumstances, which will include his means for reconstruction of the building, and other steps taken by him in that regard.

In considering the reasonable and bona fide requirement of the landlord under this clause, the desire of the landlord to put the property to a more profitable use -after demolition and reconstruction is also a factor that may be taken into account in favour of the landlord. In our opinion, it is not necessary that the landlord should go further and establish under this clause that the condition of the building is such that it requires immediate demolition. That the condition of the property may be such which requires immediate demolition is emphasized in cl. (k) of the proviso. When such a specific provision has been made in cl. (k), the condition of the building cannot come into the picture nor could it have been dealt with again in cl. (i). So the requirement under cl. (j) is that of the landlord and cannot have any reference to the building.

This Court, in *Neta Ram v. Jiwan Lal* (1) in interpreting no doubt a slightly differently worded provision in s. 13(3)(a)(iii) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 B.K. (8 of 2006 BK) held that one of the circumstances which could be taken into account in considering the requirements of the landlord with reference to the existing building is 'the possibility of its being put to a more profitable use after construction'. In the case 'before us all the Courts have concurrently held that the requirement of the landlord is reasonable and bona fide and that he had obtained the necessary sanction from the municipality concerned and that the landlord had also the means for reconstruction of the building. If the landlord does not commence demolition of the premises within the period specified in the order of the Court, the tenant is given a right under s. 26(1) to issue a notice to the landlord -of -his intention to occupy the premises from which he had been evicted and also to apply to the Court for relief if the landlord does not comply with his request. Again under s. 27, the tenant has got a right to occupy the new building on its completion provided he satisfies the requirements contained in that section. Under s. 28 (I), the

landlord is bound to intimate the tenant from whom he had received a notice under s. 27 the date on which the erection of the new building will be completed from which date the tenant will be entitled to occupy the same.

Mr. Chagla has referred us to a decision of the Madras High Court in *Mehsin Bhai v. Hate & Company* (2). The section which came up for consideration before the Madras High Court was s. 14(3) of the Madras Buildings (Lease and Rent Control) Act, 1960 (Act XVIII of 1960) which was as follows:

(1) [1962] Supp. 2 S.C.R. 623. (2) [1964] 2 , M.L.J. 147.

14(1)(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date."

That clause is substantially similar to s. 21(1)(j) of the Act. In the Madras case it is seen that the building from which the tenant was sought to be evicted was in good condition and there was no danger of its failing for another 20 years though the building was old. Under those circumstances when the landlord applied under s. 14(1) (h) of the Madras Act for eviction on the ground that he wished to demolish the building for the purpose of erecting a new building thereon, the High Court affirmed the decision of the Subordinate Court declining relief to the landlord. Though the learned Judge states that landlords may bona fide require such buildings, particularly old buildings in their own interest for demolition and reconstruction, he holds that it is equally possible that the mere fact that a building is old may be taken advantage of by a landlord to put forth such pretext, his real object being ulterior and not bona fide - for the purpose of reconstruction. We have no hesitation in agreeing with the learned Judge's observation that the landlord must prove the reasonableness and bona fide nature of his requirement. But, if the learned Judge intended to lay down a proposition of law that under s. 14 (I) (b) of the Madras Act, similar to s. 21 (1) (j) of the Act a landlord cannot recover possession of the property for the purpose of re- construction so as to put the property to a more profitable use, we are of the view that the decision of the Madras High Court must be considered to be erroneous. There is absolutely no justification for putting such a narrow interpretation on the clause in question.

Mr. Chagla further urged that before his client is evicted his, claim for compensation should have been considered by the Rent Controller. It is enough to say that, as pointed out by the High Court, that claim does not arise for consideration in these proceedings. We may also state that a further contention regarding the validity of the notice to quit issued by the landlord which was taken before the High Court - and held against the appellant, has not been canvassed before us.

In the result, the appeal fails and is dismissed with costs. The petitioner/appellant undertaken to vacate the premises within a month from today.

Y.P. Appeal dismissed.