

Supreme Court of India

Vijay Singh Etc. Etc vs Vijayalakshmi Ammal on 10 October, 1996

Author: N Singh

Bench: Kuldip Singh, M.M.Punchhi, N.P.Singh, M.K.Mukherjee, S.Saghir Ahmad

CASE NO. :

Appeal (civil) 5948 of 1990

PETITIONER:

VIJAY SINGH ETC. ETC.

RESPONDENT:

VIJAYALAKSHMI AMMAL

DATE OF JUDGMENT: 10/10/1996

BENCH:

KULDIP SINGH & M.M.PUNCHHI & N.P.SINGH & M.K.MUKHERJEE & S.SAGHIR AHMAD

JUDGMENT:

JUDGMENT DELIVERED BY:

N.P. Singh, J.

N.P. Singh, J.

These appeal have been filed on behalf of the tenants of premises bearing No. 76 in Car street, Thirupapuliur i the State of Tamil Nadu. According to the appellants, the said premises had been let out for no-residential purposes and the appellants had been paying the monthly rent regularly. The respondent, who is the landlady (hereinafter referred to as the 'respondent') filed petitions before the Rent Controller for eviction of the appellants under Section 14 (1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the 'Act'). It was alleged in the petitions aforesaid that the building in question was an old one and was situated in a very busy locality of the town where a number of buildings in and around the building in question had been demolished and shopping complex and had been constructed with modern amenities, and as such the respondent also wanted to demolished the entire building in order the construct a new shopping complex for which necessary permissions from municipal authorities and already been obtained. It was also claimed on behalfs of the respondent that she had sufficient financial resources for construction of the new building. An undertaking was given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of three month from the date the said respondent recovery possession of the building those petitions were rested on behalf of the appellants saying that the building was not an old one and it can stand fort many more years to come. It was also denied that the respondent had sufficient financial resources to construct a new shopping complex. By a common order the Rent Controller came to the conclusion that the requirement of the entire building for purpose of demolition and reconstruction by the respondent was bonafide and as such the respondent was entitled to and order of eviction of the appellants from the respective portions in their possession.

Appeals filed on behalf of the appellants against the said order were dismissed by the appellant authority affirming the findings recorded by the Rent Controller. Civil revision applications filed on behalf of the appellants before the High Court were dismissed at the stage of admission itself saying that in view of the concurrent findings of the courts below in respect of the bonafide requirement of the respondent for purpose of demolition and reconstruction there was no occasion for interference by the High Court on the civil revision petitions filed on behalf of the appellants.

The aforesaid orders are being questioned in these appeals on the ground that the Rent Controller could not have directed eviction merely on the ground that the respondent wanted to demolish the building in question for reconstruction of a new shopping complex; any such order could have been passed only after the respondent had satisfied the Rent Controller, that the requirements and conditions prescribed under Section 14(1)(b) of the Act have been fulfilled. The relevant portion of section 14 provides:

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

(1) Notwithstanding anything contained in this Act, but subject to the provisions of Section 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.

(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.

(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 re-occupation 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."

It may be mentioned that Sections 12 and 13 referred to in sub-section (1) of Section 14 relate to buildings in respect of which their Government shall be deemed to be the tenant and the authorised officer has been vested with the power to pass an order directing the allottee to deliver possession of the building to the landlord before a specified date. We are not concerned with the provisions of Sections 12 and 13 so far the present appeals are concerned.

On a plain reading of clause (a) of sub-section (1) of Section 14 it appears that it is applicable when the landlord requires possession of the building of carrying out repairs which cannot be carried out without the building being vacated. so far clause (b) of sub-section (1) of Section 14 is concerned it contemplates a situating where there is a bonafide requirement of the building by the landlord 'for the immediate purpose of demolishing it' and 'such demolition is to be made for purpose of erecting a new building on the site'. It may be pointed out that in view of clause (a) of sub-section (2) of Section 14, where the building by the landlord 'for the immediate purpose of erecting a new building on the site'. It may be pointed out that in view of clause (a) of a sub-section (2) of section 14, where the building has been vacated for repairs the building has to be ordered to the tenant who had delivered possession in pursuance of an order of the Rent Controller for re-occupation. No such condition has been prescribed where order of eviction has been passed under clause (a) of sub-section (1) of Section 14. i.e.. for immediate purpose of demolishing it in order to erect a new building on the site. In other words, once the Rent Controller is satisfied that the requirement of the landlord of the building for immediate purpose of demolition and reconstruction was bonafide, there is no scope for passing an order directing the landlord to allow any portion of the constructed building to be re-occupied by the tenant who had been evicted. In this background, the question which falls for consideration is an to whether for eviction of the tenant of the building under section 14(1)(b) the landlord has to satisfy the Rent Controller that the condition of the building is such that it is immediately required to be demolished. whether the expression 'immediate purpose of demolishing' has any nexus with the age and condition of the building or it indicates only the immediate need and urgency of the landlord to demolish such building in order to reconstruct a new one on the same site. It it is held that section 14 (1)(b) vest power in the Rent Controller to direct the tenant to deliver possession of the building to the landlord no sooner the Rent Controller is satisfied that the landlord is in a position to immediately demolish the building in question in order to construct a new building on the said site, it will go against the fundamental concept of statutory regulation of the landlord-tenant relationship in urban areas, where special provision have been made different from the rights and obligations of the landlord and tenant number the Transfer of Properties Act. With the Population explosion and cry for a roof in the urban areas a situation was created where the legislatures of different States had to enact Acts regulating the conditions on which premises in such areas are to be let out and tenants are to be evicted. By and large there is no uniformity in the provisions applicable to different States. as such from time to time this Court has to construe the scope of special provisions of a particular state and to say what is the object behind the same. So far Section 14(1)(b) is concerned, in the case of Metalware and Co. etc. v. Bansilal Sarma and Co. etc. (1979) 3 SCC 398 it was said:

"As stated earlier it cannot be disputed that the phrase used in Section 14(1)(b) of The Act is "the building is bona fide required buy The landlord" for the immediate purpose of demolition and reconstruction and the same clearly refers to the bonafide

requirement of The landlord, it is also true that the requirement in terms is not that the building should need immediate demolition and reconstruction. But we fail to appreciate how The state of condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would be a totally irrelevant factor while determining "the Rent Controller will have to take into account all The surrounding circumstances including not merely the factor of the landlord being possessed of sufficient means or funds to undertake The project and step taken by him in that regard but also the existing condition of The building, its age and situation and possibility of otherwise of its being put to a more profitable use after reconstruction. All these factors being relevant must enter the verdict of the Rent Controller on the question of the bonafide requirement of The landlord under Section 14(1)(b). In a sense if the building happens to be decrepit or dilapidated it will redially make for the bona fide requirement of the landlord though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely a landlord being possessed of sufficient means to undertake The project to demolition and reconstruction by itself may not be sufficient to establish his bonafide requirement if the building happens to be a very relevant construction in a perfectly sound condition and its situation may prevent its being put to a more profitable use after reconstruction. In any case these latter factors may cast a serious doubt on the landlord's bona fide requirement. It is, Therefore, cleared to us that the age and condition of the building would certainly be a relevant factor which will have to be taken into count while pronouncing upon the bona fide requirement of the landlord under Section 14(1)(b) of The act and the same cannot be ignored."

Again a three judges Bench in the case of P.Orr and sons (p) Ltd. V. Associated Publisher (Madras) Limited, (1991) 1 SCC 301 Said:

"Section 14(1)(b) in terms of which a tenant is evicted - and perhaps permanently speaks of the "immediate" Means "at once' without delay", "Immediate" also means "directly connected; not secondary or remote", "not separated by any intervening medium" (Black's Las Dictionary, 5th edn.) Concise Oxford Dictionary, New 7th edn.).

This clause no doubt denotes urgency. Section 14(2)(b) stipulates that the land lord should give and undertaking to substantially commence demolition of any material portion of the building within one month and complete the same within three months from the date of recovery of possession of the building or within such further time as the Controller may allow. Breach of this undertaking or a consequential order under Section 16(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 latter negatives 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 word might have dented 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 of permitted purpose. The direct and immediate nexuses between these two elements is proved by the conditions 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 bonafide 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 falls totally outside its ambit."

The framers of the Act should have made their intention more specific and clear while enacting Section 14(1)(b) of the Act, instead of leaving it to the Courts to interpret the same from time to time. It is not clear and specific whether the expression 'Immediate purpose of demolishing' is linked with the condition of the building or with the need of the landlord to demolish an existing building in order to erect a new building on that site. As the Act purports to give protection to the tenants from eviction it cannot be held that the time for eviction is to be decided at the will and desire of the landlord. Therefore the expression 'immediate purpose for demolishing' cannot be read to mean the immediate need and urgency of the landlord. But at the same time it cannot be linked only with the dilapidated and dangerous condition of the building. the age and condition of the buildings has to be taken note of while judging the question of bona fide requirement of the landlord under Section 14 (1)(b). But the question is as to where to draw the line? Whether it should not only be old but dilapidated at the same time being unsafe for human habitation? If that was the requirement for passing an order of eviction, then why the framer of the Act have put the other condition that such demolition is to be made for purpose of erecting a new building on the site ? There are Acts in some States where one of the grounds for eviction of the tenant is that condition of the building is such that it has to be demolished. But in those Acts there is no requirement or condition to erect a new building on the same site. But in the Present Act the condition of erecting a building on the site of the old building is a must. The Rent controller has been vested with the power

to direct the tenant to deliver the possession of the building to the landlord only after he is satisfied that after demolition of the old building a new building shall be erected. That is apparent not only from section 14(1)(b) but from Section 16 also which provides:

"16. Tenant 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. I within fifteen days from the date of receipt of such notice, the landlord does not but him possession of the building on the original terms and conditions, the tenant may make an application to the Controller with eight weeks of the date on which he but 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 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.

In view of sub-section (1) of Section 16 if the work of demolishing any material portion of the building is not substantially commenced by the landlord within the period of one month in accordance with his under taking under clause

(b) of sub-section (2) of Section 14, the tenant may give landlord notice of his intention to occupy the building the possession of which he has delivered. Thereafter Controller can direct the landlord to put the tenant in possession of the building on the original terms and conditions. If Section 14 (1)(b) of Act is interpreted to cover only buildings which are dilapidated and dangerous for human habitation, sub-section (1) of Section 16 not have provided for reinduction of the tenant in such a building on original terms and conditions.

From sub-section (2) of Section 16 which was introduced by Act 23 of 1973 it appears that the framers of the Act desired to encourage erection of new buildings in place of the buildings which had been totally demolished on basis of the order passed by the Controller under Section 14(1)(b), otherwise there was not occasion to make a provision that if any building is totally demolished and a new building is created in its place, all provisions of the said Act shall cease to apply to such new building for a period of five years from the date on which the construction of new such building is completed and notified to the local authority concerned. It can be said that object of sub-section (2) of Section 16 is that for five years the landlord should be free from the restrictive provisions of the Act in respect of letting out the premises. There is no provision for reinduction of the tenant who had been evicted on basis of the order passed under Section 14(1)(b) by the Rent Controller after

erection of the new building.

The Madras High Court which had occasions to deal with the said Section has not expressed opinions which can be said to be unanimous on the nature of requirement of section 14(1)(b). In the case of R.P. David v. N. Daniel, (1967) 1 Mad LJ 110, Chandra Reddy, C.J., speaking for the Bench of two Judges stated :

"The only requirement of Section 14(1)(b) is the honest desire of the landlord to demolish the building 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. There is nothing in the language of this clause to warrant the view that the building should be old and decrepit....."

In Mahboob Badsha v. M. Manga Devi, (1965) 2 Mad LJ 209, the learned judge stated:

"In my opinion the proper view to take of this provision is that whenever the condition of the building is not such as to require immediate demolition the case of the landlord should be scrutinised to find out whether he bona fide intends to immediately provision is invoked merely with a view to evict the tenant....."

In K.J. Sivalingam v. S. Guruswamy, (1983) 2 Mad LJ. 85 The Learned judge said:

"While the age and condition of the buildings are relevant factors to be taken into account, it is not possible to insist that the condition of the building must be such that there is imminent threat of the same crumbling down in the near future and only in such a contingency, the landlord could resort to the process under Section 14(1)(b) of the Act....."

In The case of K. Ramachandra Rao V. Krishnaswami Iyengar, (1976) 1 mad LJ 267 it was observed:

"....In my view, it is not possible to hold that the requirement of a landlord who has not doubt the means and has obtained the necessary licence from the concerned authorities is bona fide where his case in the petition for eviction is that the building is old and in a dilapidated condition and that he therefore requires it for purpose of immediate demolition and reconstruction and that allegation has not been substantiated but has been found to be other wise in that the building has been found to be in a sound condition although it is about 50 years old....."

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 for the building for erecting a new building the building need not be dilapidated or dangerous for human habitation. It 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 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 Rent Controller directing 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 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 bonafide or not. For recording a finding that requirement for demolition was bonafide, the Rent Controller has to take into account : (1) bonafide intention of the landlord for 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.

It appears from the facts of the present appeal that the building in question was an old one and was situated in a very busy locality of the town where a number of buildings in and around the building in question had been demolished and shopping complex had been constructed with modern amenities. The respondent also wanted to demolish the entire building in order to construct a new shopping complex for which necessary permission from the municipal authorities had already been obtained. It had also been claimed on behalf of the respondent that she had sufficient financial resources for constructions for the new building. An undertaking had also been given on behalf of the respondent that the work of demolition of the building would commence within one month and would be completed before the expiry of the three months from the date the said respondent recovered possession of the building. Taking all the circumstances into consideration, the Controller had passed an order in terms of Section 14 (1)(b) of the Act directing the appellants who were tenants in the building in question to deliver possession of the building to the respondent. According to us, all relevant factors have been taken into consideration and there is no scope for any interference by this Court. As such we are left with no option but to dismiss these appeals. The appeals are accordingly dismissed. There shall be no order as to costs.