

Sathishkumar Vs Selvadurai

Court: Madras High Court

Date of Decision: Jan. 5, 2010

Acts Referred: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 & Section 14(1)(b)

Citation: (2010) 2 CTC 189

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: N. Manokaran, for the Appellant; P. Valliappan, for the Respondent

Final Decision: Dismissed

Judgement

M. Jeyapaul, J.

The revision petitioners are the tenants under the respondent, who laid Rent Control Original Petitions seeking eviction on

the ground that the building is required for demolition and reconstruction u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act.

The petitioners/tenants filed Petitions in the respective R.C.O.Ps. praying for appointment of Advocate Commissioner to note down the physical

features and file a report alongwith plan.

2. It has been contended by the petitioners in the aforesaid Petitions that the shops let out for commercial purpose have been decorated with costly

tiles, lamps and show cases spending huge amount. The nature of the building could be assessed only by an Advocate Commissioner appointed by

this Court. Therefore, the petitioners have sought for appointment of Advocate Commissioner for the aforesaid purpose.

3. The respondent, who is the landlord, resisted the Applications filed by the tenants for appointment of Advocate Commissioner on the ground

that the decorations made in the premises by the petitioners would not support the counter case of the tenants. To note down the nature of the

building, appointment of Advocate Commissioner is quite unwarranted.

4. The learned counsel appearing for the petitioners would submit that the age and condition of the building will have to be decided in a Petition

filed by the landlord invoking the provision u/s 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act and unless a Commissioner is

appointed to note down the age and condition of the building, the petitioners may not be in a position to establish their case. No prejudice also will

be caused to the landlord, it is submitted.

5. The learned counsel appearing for the respondent/landlord would submit that the age and condition of the building are not the main criteria for

deciding the Petition filed for eviction u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act. It is his further submission that the

building is more than 40 years old even as per the own showing of the tenants, inasmuch as they have been in possession in their capacity as

tenants for more than 40 years. The decorations made by the petitioners to attract the customers would not disentitle the landlord from seeking the

premises for demolition and reconstruction when the requirement for demolition and reconstruction is found to be bona fide. Therefore, he would

submit that the Trial Court has rightly dismissed the Petitions filed by the tenants seeking appointment of Advocate Commissioner.

6. The issue as to whether the age and condition of the building are sine qua non for seeking eviction u/s 14(1)(b) of the Act was considered by the

Supreme Court in Shakeelulr Rahman Vs. Syed Mehdi Ispahani, . It has been held therein as follows:

The main contention of the learned counsel for the appellant is that the High Court interfered with the concurrent finding of the lower authorities in

regard to the age of the building which is illegal. No exception can be taken to the contention, but it does not alter the result. As noted above, both

Rent Controller and the Appellate Authority proceeded on the basis as if age and condition of the building are the sine qua non for application of

Section 14(1)(b) of the Act, based on the view expressed in P.Orr and Sons case (supra). But in view of the decision rendered by the Constitution

Bench in Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, , though age and condition of the building sought to be demolished are relevant factors to

test bona fides of the landlord, they are not determinative of the issue. Though we do not approve the High Court's approach in interfering with the

concurrent findings of fact, yet we do not consider it necessary or just to interfere with the order under challenge, as on the other concurrent

findings of facts recorded by the lower authorities, referred to above, a finding of bona fide requirement of the landlord has been recorded by the

High Court which is affirmed by us. The findings is sufficient to sustain the order under challenge.

7. It has been categorically held therein that the age and condition of the building may be relevant factors to test the bona fides of the landlord, but,

they are not determinative of the issue whether the building is required for demolition and reconstruction by the landlord.

8. Admittedly, the building is more than 40 years old. The petitioners have been in occupation of the premises ranging from 15 to 40 years.

Admittedly, they have made extensive decorations in the shop premises to attract the customers. Therefore, there is no necessity to appoint an

Advocate Commissioner to fix the age of the building as it is modestly admitted that it is more than 40 years old. Further, as per the aforesaid

decision cited by the learned counsel appearing for the respondent-landlord, the age and condition of the building are not sine qua non for getting

the relief u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Even if the landlord disputes the decorations made by the tenants

in occupation for the purpose attracting the customers, appointment of Advocate Commissioner to note down the physical features and

decorations made by the petitioners would not in any way be relevant for the purpose of determining the issues involved u/s 14(1)(b) of the Tamil

Nadu Buildings (Lease and Rent Control) Act.

9. The Rent Controller will have to see whether there is any bona fide in the requirement projected by the landlord for demolition and

reconstruction of the premises. Of course, the Rent Controller also will have to see the efforts taken by the landlord for the purpose of putting up

construction immediately after demolition. Inasmuch as the age and condition of the building are not determinative of the issue involved u/s 14(1)

(b), the question of appointment of Advocate Commissioner to note down the physical features is quite unwarranted in the considered opinion of this

Court.

10. It is also found that trial has already begun. The learned counsel appearing for the landlord would submit that approved plan for construction of

the building was already produced before the Trial Court. The requirements u/s 14(1)(b) will have to be established by the respondent/landlord to

get the relief under the aforesaid provision of law. In view of the above, there is no warrant for interference with the order passed by the Trial

Court. It is also found that the petitioners have not sought for appointment of Advocate Commissioner to fix the age of the building. They have

sought for appointment of Advocate Commissioner only to note down the physical features which may not in any way help them to put forth their

counter case effectively. Therefore, the Civil Revision Petitions fail and stand dismissed. There is no order as to costs. The connected

Miscellaneous Petitions also stand dismissed.