

**Bharat Trading Company, a Partnership Firm Through One of Its Partners K. Palanimalayan and anr. Vs. K. Shanmughasundaram**

**LegalCrystal Citation :** [legalcrystal.com/804605](http://legalcrystal.com/804605)

**Court :** Chennai

**Decided On :** Sep-08-1981

**Reported in :** (1982)1MLJ94

**Appellant :** Bharat Trading Company, a Partnership Firm Through One of Its Partners K. Palanimalayan and anr.

**Respondent :** K. Shanmughasundaram

**Judgement :**

R. Sengottuvelan, J.

1. The Civil Revision Petition is filed by the Bharat Trading Company through one of its Partners K. Palanimalayan, to evict the tenants in respect of the petition mentioned premises hearing Door Nos. 40 and 40-A, North Veli Street, Madurai in which they are conducting a business in automobile spare parts. Originally the landlord, the respondent herein, filed an application in R.C.O.P. No. 373 of 1976 on the file of the Court of the Rent 'Controller and the District Munsif, Madurai Town for the eviction of the tenants on the ground that the landlord required the premises for demolition and reconstruction under Section 14 (1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, hereinafter referred to as the Act. The case of the landlord before the Rent Controller is that the petition-mentioned building is old and that he intended to demolish the old construction and proposed to erect a new building. The building is situate in an important locality. He requires the building bona fide for the purpose of demolition and reconstruction and he has also given the necessary statutory undertaking regarding the demolition as per the provisions laid down in the Act. On the other hand the tenants contended before the Rent Controller that the premises to a pucca building and there is no need to demolish the same because the condition of the building is good. The tenants paid an advance of Rs. 2,330 to the vendor of the landlord and the same will have to be credited to the account of the tenants. It is also the case of the tenants that from the inception of the building they have maintained the same at their cost and that in 1952 they put up two rooms in the upstairs to the knowledge of the predecessor-in-title of the landlord measuring 23' X 10' and that construction is a terraced one and that the latrine which was in the backyard has been shifted to the third room of the building at an expense of Rs. 1,845. It is also the case of the tenants that these constructions were made with the permission of the erstwhile landlord. The plea of the tenants is that after the purchase of the petition-mentioned building by the present landlord he demanded a higher rent and on the refusal of the tenant to pay such higher rent, the landlord filed the rent control petition to evict the tenants somehow. The learned Rent Controller after examining the oral and documentary evidence let in this case came to the conclusion that the landlord had not established that the premises is old and

dilapidated and that the claim of the landlord for eviction on the ground of demolition and reconstruction is not bona fide and disallowed the rent control petition. As against the orders of the Rent Controller the landlord filed an appeal in C.M. A. No. 200 of 1978 on the file of the appellate authority and the Principal Subordinate Judge, Madurai and the appellate authority came to the conclusion that there is sufficient evidence to show that the building is old. The learned appellate authority observed that even if the building is not old as observed by the Rent Controller, from the said facts alone, it cannot be concluded that the requirement of the building for demolition and reconstruction is not bona fide since the landlord had proved his means to undertake such reconstruction. The learned appellate authority also observed that the motive of the landlord is quite immaterial if the landlord required the building for the immediate purpose of demolition and reconstruction. The appellate Court also held that in view of the undertaking given by the landlord under Section 14(1)(b) of the Act, if the landlord fails to demolish the building within the prescribed time the tenants can seek the recovery of possession under Section 16 of Act and allowed the appeal and ordered the action of the tenants under Section 14(1)(b) of the Act. As against the said order of the appellate authority this civil revision petition has been filed by the tenants.

2. The main contention urged on behalf of the tenants in this civil revision petition is that the building is in a sound condition and the soundness of the building has been vouchsafed by a qualified Engineer who has given a certificate, Exhibit B-1, and who was examined as R.W. 1 before the Rent Controller and that the claim of the landlord that he requires the premises for the purpose of demolition and reconstruction is not bona fide. The case of the landlord before the Rent Controller is that the building was constructed prior to 1919 and hence the building is nearly more than 50 years old. As against this the evidence on behalf of the tenant is that the age of the building is not known. In the absence of evidence to the contrary the evidence let in on behalf of the landlord that the building is more than 50 years old, will have to be accepted.

3. The second contention urged on behalf of the tenants is based upon the document Exhibit A-7, filed by the landlord, to show that the building was in existence even as early as in the year 1919. Exhibit A-7 is a document in favour of the predecessor in title of the landlord in respect of the petition-mentioned premises. It is pointed out by the learned Advocate for the civil revision petitioners that in the document Exhibit A-7, the entire structure of the building is a tiled one but the building at present is of terraced roofing and this discrepancy in the description of the property itself shows that the building must have been reconstructed subsequent to 1919 and therefore the condition of the building does not warrant the demolition and reconstruction. There is no evidence to show as to when the roofs were converted from tiled roofs into terraced roofs. In the absence of positive evidence in this regard it is not possible to accept the above contention on behalf of the civil revision petitioners, and in respect of a claim under Section 14(1)(b) we are more concerned with the existing condition of the building.

4. The third contention on behalf of the civil revision petitioners is based upon the Supreme Court decision reported in *Metalware and Co. etc. v. Bansilal Sarma and Ors* : [1979]3SCR1107 , to the effect that the existing condition of the building is a vital factor in considering the bona fide requirement of the landlord for the purpose of demolition and reconstruction. Reliance is placed on behalf of the civil revision petitioner in the case reported in *Neta Ram v. Jiwan Lal* : AIR1963SC499 , where the Supreme Court observed as follows:

It is impossible therefore to hold that the investigation by the Controller should be confined only to the existence of an intention to reconstruct in the mind of the landlord. This intention must be honestly held in relation to the surrounding circumstances. The very purpose of the Restriction Act would be defeated, if the landlords were to come forward and to get tenants turned out, on the bare plea that they want to reconstruct the houses, without first establishing, that the plea is bona fide with regard to all circumstances, viz., that the houses need reconstruction or that they have the means to reconstruct them.

In considering whether the claim of the landlord for the purpose of demolition and reconstruction is bona fide we will have to see whether the conclusion arrived at by the appellate authority that the claim of the landlord is bona fide is based upon a correct appreciation of the evidence in this case. Admittedly the building is more than 50 years old and the tenancy itself is 30 years old and it is the case of R.S. 2, that the tenants had put up certain rooms in the first floor even in the year 1951. I fence the fact that the building is an old one cannot be disputed. The tenants engaged an Engineer by name one Section Ramanathan, to report about the condition of the building and he gave the report which is marked as Exhibit B-1 and he was examined as R.W. 1. Exhibit B-1 is in the form of a questionnaire and apart from stating that the building is structurally sound no other details relevant for consideration are given in Exhibit B-1. R. W. 1 in his evidence also admits that he inspected the building at the instance, of the son of the occupier of the building, who is also an Engineer and who wanted a stability certificate regarding the building. It is also the evidence of R.W. 1, that the purpose for which the stability certificate was required was not disclosed by the son of the occupier of the building. R.W. 1 also admits that in the certificate given by him viz., Exhibit B-1, he had not noted the condition of the wood, rafters, doors, windows and beams. He also admits that the building must have been constructed in portions and that the oldest portion of the building might have been constructed about 60 to 70 years back. According to him the portions marked as A to H in the Commissioner's plan constitute the oldest portions. The portions marked as A to H in the Commissioner's plan, viz., Exhibit C-2, constitute the main portions of the building. Thus even from the evidence of the Engineer as R.W. 1, it is seen that the case of the landlord that the building is an old one is made out. In a case of a claim under Section 14(1)(b) of the Act it is not necessary for the landlord to establish that the building is in such a condition that it will crumble down in the near future. The landlord is entitled to demolish even a building which is not likely crumble down in the near future provided that he had a bona fide intention of demolishing the building and constatct a new building in that place. The condition of the building is relevant only for ascertaining the bona fides of the landlord in the sense that no landlord will demolish a building which is in good condition unless for a better return from the same. Only in this view we will have to examine the condition of the building and see whether the condition of the building is such that no landlord will embark upon the project of demolition and reconstruction. In this case as already stated the building is more than 50 years old. The main portion of the building is more than 60 years old and it is in evidence that the tenants are in occupation of the building for more than 50 years. A Commissioner was appointed at the instance of the tenants to inspect the building his report about the condition of the building is marked as Exhibit G-1 and the plan submitted by him is marked as Exhibit C-2. The Commissioner has noted several features which show that the building is an old one. The Commissioner has found in the main hall marked as T in the plan Exhibit C-2 all the 15 rafters are replaced and the ceiling is newly plastered and that there is a crack running continuously east to west in the ceiling, which has

been plastered with cement. The Commissioner found that the plastering in several places had given away. The rafters in several portions of the building are found to be moth-eaten. According to the Commissioner the condition of the building cannot be said to be strong, and appears to be an old building and the plastering of the walls are not in a good condition and the rafters are moth-eaten. No objection seems to have been filed by the tenants to the Commissioner's report. The report also had been allowed to be marked without calling the Commissioner for cross-examination. From the report of the Commissioner it cannot be said that the building is in such a sound condition in respect of which the demolition and reconstruction is not needed.

5. My attention is drawn to the decision of a single Judge of this Court reported in *K. Ramachandra Rao v. Krishnaswatri Iyengar and Ors.* : (1976)1MLJ267 : 89 L.W. 127, referred to by the learned Rent Controller, where it has been held that it is not possible to hold that the requirement of a landlord who has no 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 for purposes of immediate demolition and reconstruction and! that allegation has not been substantiated but has been found to be otherwise in that the building has been found to be in a sound condition although it is about 50 years old. But in this case from the Commissioner's report it is seen that the condition of the building is not sound and hence the observation in the above case cannot be said to apply to the facts of this case. In a Division Bench decision of this Court reported in *H. P. David and another v. N. Daniel and Ors.* (1967) 1 M.L.J. 110, it has been observed that the only requirement of Section 14(1)(6) 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. The expression 'bona fide' occurring in that clause cannot, sustain the opinion that it is only when a building is old and in a dilapidated condition that it could be demolished for the purpose of putting up a new construction so as to attract Clause (b) of Section 14(i). The impact of the section is that the desire on the intention to demolish and rebuild should be honestly entertained by the landlord. It should not be a device to evict the tenant. In the case reported in *Mahboob Badsha v. M. Manga Devi and Anr.* (1965) 2 M.L.J. 209, a single Judge of this Court observed that there is nothing in the language of Section 14(1)(b) to warrant the interpretation that the words 'bona fide required by the landlord' is referable only to the condition of the building ruling out every other consideration. It must not be forgotten that the Madras Buildings (Lease and Rent Control) Act is in essence expropriatory in character involving serious curtailment of the rights of owners of properties and therefore Courts should not give any undue or wide interpretation to the provision beyond what the express language of the provision warrants, in consonance with the avowed object of the legislation, namely, unreasonable eviction of tenants. There is nothing in the object of the enactment or in the language of Section 14(1)(b), which compels or necessarily warrants the view that once a building is let out, the landlord can never obtain possession of the property either for better investment or for improvement in the sense that the tenant acquires a permanent right, as it were, subject only to the dilapidated condition of the building. The condition of the building is obviously an objective test to be established by evidence and capable of verification by personal local inspection. If the crux of the question centres round the physical state or condition of the building, there will be very little scope for the notion of a bona fide requirement. There is no warrant for reading the words: 'bona fide required by the landlord' in Section 14(1)(b) as

equivalent to 'building bona fide requiring demolition'. Either the building requires demolition or it does not. But it is not possible to have an occupation of a building bona fide requiring demolition. A decrepit building no doubt may call for immediate demolition and without anything more the landlord could be said to have satisfied the requirement or condition of his bona fide requiring the building for immediate demolition. But the terms of the section are clearly wide enough to cover cases where the landlord bona fide requires a building for the expansion of his own business or for legitimate purposes. A concrete and immediate proposal or scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income-yielding one cannot by any means be said to be mala fide. The proper view to take of Section 14(1)(b) would be that whenever the condition of the building is not such as to require immediate demolition the easel of the landlord should be scrutinised to find out whether he bona fide intends to immediately demolish the building or whether the provision is invoked merely with a view to evict the tenant. In that context the plans or schemes of the landlord, his resources, his getting sanction from the Municipal authorities for the reconstruction, etc., would have a bearing as tending to establish the bona fide requirement of the landlord. Section 14(1)(b) is not rendered inapplicable merely because the building is not old or dilapidated but is in a good condition. In other words, if the intention of the landlord for demolition and reconstruction is proved to be genuine; and not spurious or specious, he will be entitled to obtain an order for eviction under Section 14(1)(b), whether or not the condition of the building is such as to require immediate demolition, the age and dilapidated condition of the building not being a sine qua non for such eviction. In the case reported in *Panchamal Narayan Shenoy v. Basthi Venkatesha Shenoy* : [1970]3SCR734 , while dealing with a case arising under the Mysore Rent Control Act, 1961, the Supreme Court observed as follows:

The proviso to Section 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-section (1) (analogous to Section 14(1)(b) of the Act) 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 reasonable 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.

6. In the case reported in *Pappu Animal by Agent Paul Nadar v. Messrs. Lab Chemicals and P.S. Palani Chetty* : AIR1978Mad272 , *Nainar Sundaram, J.*, held that where the landlord has got means to carry out the work of demolition and reconstruction and where there was no finding that the building is in a sound condition so that that factor may be taken into consideration to negative the bona fides of the landlord, the landlord is entitled to an order of eviction under Section 14(1)(b) of the Act. We have to apply the principles laid down in the above decisions

to the facts of this case. The landlord had proved his means beyond doubt. Apart from producing Rs. 35,000 in Court he has produced balance statement in the Bank account under Exhibit A-6 which shows the balance of Rs. 9,267. Apart from that the landlord had produced the sale deeds Exhibits A-4, A-5 and A-7 in respect of the properties standing in his name and in the name of his wife showing that he has got the means to undertake demolition. He, has also submitted plans to the Corporation and had the same sanctioned under Exhibit A-3 and the same had also been renewed as per Exhibit A-9. The condition of the building is also such that the claim of the landlord for the purposes of demolition and reconstruction is not rendered mala fide. In dealing with a case with similar facts in the case reported in Messrs. K.P. Lonappanand Sons v. S. Mohammed Iqbal (1981) 94 L.W. 282 Gokulakrishnan, O. CJ., observed as follows:

In this case, there is a clear finding by the Courts below that the building is an old one and from the evidence it is clear that it had cracks on the floor and on the walls and the wooden frames are partially eaten away and have become hollow in certain places. The Courts below have also assessed the age of the building as 50 to 55 years. The fact that this building got partially damaged due to the fire accident in the adjacent building was also taken into consideration by the Courts below. On these facts, there, is a definite finding that the building is an old one and it requires demolition and reconstruction. I am therefore of the opinion that the authorities below have applied their mind regarding the existing condition of the building and have correctly come to the conclusion that the building requires demolition and reconstruction.

7. Even the Supreme Court in the decision reported in Metcldware and Co. etc. v. Bansilal Sarma and Ors. etc. : [1979]3SCR1107 , observed that the existing condition of the building is a relevant factor to be considered in assessing the bona fides of the landlord in the matter of a claim under Section 14(1)(b) of the Act.

8. Under the circumstances taking into consideration the condition of the building, the means of the landlord and the situation of the property, vis., in a busy commercial locality and the fact that the landlord had already submitted a plan and had the same sanctioned, the claim of the landlord cannot be said to be mala fide. All the indications point out that the claim of the landlord for the purpose of demolition and reconstruction is bona fide and the finding of the appellate Court in this regard cannot be said to be incorrect. Hence the civil revision petition is dismissed. In view of the fact that the tenants are conducting the business for a considerable time it is a fit case where six months time will have to be granted for delivery of possession. Hence, six months time is granted to the tenants for delivery of possession to the landlord. There will be no order as to costs.