

P. ORR AND SONS (P) LTD.

v.

ASSOCIATED PUBLISHERS (MADRAS) LIMITED

NOVEMBER 9, 1990

[T. KOCHU THOMMEN, K.N. SAIKIA AND
N.M. KASLIWAL, JJ.]

Rent Control and Eviction—Tamil Nadu Buildings (Lease and Rent Control) Act, 1960: Sections 10 and 14(1)(b) bona fide requirement and bona fide personal requirement demolition and reconstruction of building—Condition of building—Prime factor—Deterioration to crumbling state—Whether necessary—Absence of need for urgency by reason of sound condition of building—Whether negative bona fide character of the requirement for demolition.

Judicial Review: Findings of competent authority—When open to Court's interference—Appreciation of evidence and findings of facts—Authority empowered by statute—Final judge of facts—Court not to sit in judgment thereon.

Words & Phrases: 'Immediate'—'Immediate Purpose'—Meaning of.

The respondent-landlord filed a petition before the Rent Controller for eviction of the appellant-tenant under section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 on the ground that the condition of the building compelled immediate demolition and that the landlord wanted to put the property to the best possible use. The appellant-tenant denied the allegations and contended that the building was structurally safe, and that the stand taken by the respondent-landlord in the earlier proceedings under the Act falsified its claim. On the basis of evidence on record, the Rent Controller found that the building was structurally safe and sound. However, he held that the condition of the building as such was not decisive in deciding the question of *bona fide* requirement of the landlord under section 14(1)(b) of the Act. Accordingly, he passed an order of eviction. The tenant preferred an appeal. The appellate authority concurred with the Rent Controller and confirmed the order of eviction.

Aggrieved, the tenant approached the High Court. Confirming the findings of the authorities, the High Court held that though the

A building was structurally sound, it was required by the landlord for a legitimate scheme of demolition and reconstruction with a view to putting the property, to more profitable and better use.

B Against the High Court's order, the tenant has preferred the present appeal, by special leave, contending that the respondent-landlord has sought eviction of the appellant solely in terms of section 14(1)(b) of the Act, which relate to the condition of the building compelling immediate demolition and since the condition of the building was not as such, the eviction could not have been ordered.

C On behalf of the respondent-landlord it was contended that section 14(1)(b) of the Act referred to *bona fide* requirement of the landlord for demolition and reconstruction. It was also contended that due to various factors, if it became uneconomical to allow the old building to stand, notwithstanding its sound and safe condition, and a much larger profit could be derived from the larger reconstructed building, a prudent landlord would be perfectly justified in seeking eviction of the tenant under section 14(1)(b) of the Act.

D Allowing the appeal, this Court,

HELD: 1.1 Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is satisfied only if the building is *bona fide* required by the landlord for the "immediate", i.e., direct, sole and timely purpose of demolishing it with a view to erecting a new building on the site of the existing building. Various circumstances such as the capacity of the landlord, the size of existing building, the demand for additional space, the condition of the place, the economic advantage and other factors justifying investment of capital on reconstruction may be taken into account by the concerned authority in considering an application for recovery; but the essential and overriding consideration which, in the general interests of the public and for the protection of the tenants from unreasonable eviction, the legislature has in mind the condition of the building that demands timely demolition by reason of the extent of damage to its structure, making it uneconomical or unsafe to undertake repairs. While the condition of the building by itself may not necessarily establish the *bona fide* requirement under clause (b), that condition is not only one of the various circumstances which may be taken into account by the Rent Controller but it is the essential condition. The Act does not accept the requirement by the landlord as a *bona fide* requirement within the meaning of the provision unless the condition of the building, in the context of the relevant circumstances,

requires demolition. These are matters which are to be proved by evidence. [635H; 636A-D]

1.2 In order to satisfy the test under section 14(1)(b) the condition of the building need not have deteriorated to the extent of the building being in danger of crumbling down, but the condition must be such as to indicate a *bona fide* requirement for the timely, genuine and direct purpose of demolition and reconstruction. The personal requirement of the landlord or any member of his family for residence or business is not germane to section 14, and to import that concept for the construction of that section, as the High Court appears to have done, is to project section 10 into section 14, and that is an exercise which has no warrant in the law. [636E-F]

Metalware & Co. etc. v. Bansilal Sarma & Co. etc., [1979] 3 SCC 398; *Neta Ram v. Jiwan Lal*, [1962] Suppl. 2 SCR 623 relied on.

Mehsin Bhai v. Hale & Company G.T., Madras, [1964] 2 MLJ 147; *K. Ramachandra Rao v. Krishnaswami Iyengar and Ors.*, [1976] 1 MLJ 267; *K.P. Lonaopan and Sons v. S. Mohamed Iqbal*, [1981] 1 MLJ 386 approved.

R.P. David and Anr. v. N. Denial and Ors., [1967] 1 MLJ 110; *V.P. Selvaraj v. V. Narasimhe Rao*, [1969] 1 MLJ 587; *Bharat Trading Company v. K. Shanmughasundaram*, [1982] 1 MLJ 94; *Manakayal' Ammal & Ors. v. V.S. Sundaram and Ors.*, [1984] 1 MLJ 310; *A.S. Sheikh Fathma and Ors. v. Omer Cloth State and Ors.*, AIR 1986 Madras 90 overruled.

Panchamal Narayan Shenoy v. Basthi Venkatesha Shenoy, [1970] 1 SCC 499 distinguished.

Mahboob Badsha v. M. Manga Devi and Anr., [1965] 2 MLJ 209; *K.J. Sivalingam v. S. Guruswamy and Anr.*, [1983] 2 MLJ 85 referred to.

2. In the construction of sections such as 10 and 14 of the Act, the Court must be guided by the overriding legislative object articulated in the Preamble to the Act, that "the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the state of Tamil Nadu." [636H; 637A]

Prabhakaran Nair and Ors. v. State of Tamil Nadu & Ors., [1987] 4 SCC 238 relied on.

A 3. Section 14(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 negative 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 words might have denoted 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 or permitted purpose. The direct and immediate nexus between these two element is proved by the condition 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 *bona fide* 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. [627B-H]

G *Black's Law Dictionary, 5th Edn: Concise Oxford Dictionary, New 7th Edn., referred to.*

H 4. The requirement for demolition can be regarded as genuine and *bona fide* only when the condition of the existing building is such that a reasonable and prudent landlord would regard it to be uneconomical to repair it rather than demolish it and reconstruct a new building

Apart from the condition of the building, the nature of the locality, the advantages arising from reconstruction the capacity of the landlord to erect a new building the demand for accommodation and other factors suggesting the *bona fide* character of the landlord's request for recovery of possession under section 14(1)(b) are relevant. Even where the condition of the building demands demolition, it is possible that, in view of the landlord's lack of capacity to rebuild or the futility of reconstruction by reason of the condition of the time and place, the authority may regard, without prejudice to whatever power there is to enforce repairs or demolition in certain circumstances, that the landlord's application lacks *bona fide*. The authority has to take into account the totality of the circumstances. [628H; 629A-C]

5. The absence of any provision to compel reinduction of the tenant after reconstruction or to compel reconstruction after demolition and the non-applicability of the Act for a period of five years after reconstruction make it imperative that the reasonableness of the landlord's requirement should be considered with care and caution, bearing in mind the fundamental legislative object to protect the tenant from unreasonable eviction. [628E-F]

6. The over-riding consideration underlying section 14(1)(b) is the *bona fide* need for demolishing the old building and erecting a new building, once the demolition of the old building is completed, for loss of time means not only loss of income, but probably also increased expenditure. This construction must necessarily lead to the inevitable conclusion that the condition of the building is a basic and essential requirement of section 14(1)(b). [628G-H]

7. The requisite circumstances warranting repairs under clause (a) or demolition under clause (b) of section 14(1) are matters for determination by the competent authority on the basis of relevant evidence and the applicable provisions of the law. In proceedings for judicial review, the Court does not sit in judgment over appreciation of evidence and finding of facts by the authority empowered by the statute. He is the final judge of facts, and so long as he has taken into account all relevant facts and has eschewed from his mind all irrelevant circumstances and has correctly understood and applied the law, including the rules of natural justice, his judgment is generally regarded as final and not open to challenge. On the other hand, where he has acted in excess of his jurisdiction or asked himself the wrong questions or misunderstood or misapplied the law or failed to consider the relevant circumstances, his conclusions are liable to be reversed as perverse

A by a court exercising judicial review. Any repository of power must act in accordance with the law and on the basis of relevant evidence. He must be guided by reason and justice and not by private opinion. [629D-F]

B 8. In the present case the Rent Controller asked himself the wrong question. He did not think that the condition of building was relevant. He disregarded the clear admission of the landlord and other evidence as regards the sound condition of the building. The crucial condition for demolition was thus absent. The Controller was totally misguided as to the conclusions which he reached. So were the appellate authority and the High Court. [636F-G]

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5226 of 1990.

From the Judgment and Order dated 15.6.1990 of the Madras High Court in C.R.P. No. 3064 of 1989.

D P. Chidambaram, Gopal Subramaniam, C.A. Sundaram and Mukul Mudgal for the Appellant.

T.S. Krishnamurthy Iyer, S. Sukumaran, D.N. Mishra and J.B. Dadachanji for the Respondent.

E The Judgment of the Court was delivered by

THOMMEN, J. Leave granted.

F This appeal by a tenant arises from the judgment of the Madras High Court in C.R.P. No. 3064 of 1979 dismissing the appellant's petition challenging the order of the appellate authority in R.C.A. No. 108 of 1989 whereby the order of eviction made against the appellant by the Rent Controller in R.C.O.P. No. 2083 of 1986 was confirmed.

G The respondent-landlord filed petition for eviction of the appellant-tenant on the ground specified under section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act"). The landlord contended:

H "The petitioner company as the owner of the premises had conceived the idea of putting the said premises to better use consistent with the locational advantages which is enjoyed by the property. The building which now exists on

the premises is admittedly more than 100 years old and is in an old structure which is liable to crumble on its own at any time. The present structure apart from being old, is not also in a manner which is consistent with the area and the general nature of buildings in the adjoining locality. Anna Salai in Madras is admittedly one of the prime location from business point of view and land in this area is scarce. It is, therefore, not only in the interest of the petitioner but also in general public interest that such a location should be put to the best use. The petitioner as the owner of the property is entitled to have the property put to the best possible use".

Denying the allegation regarding the condition of the building, the tenant stated—

“..... the allegation in para 4 that the building ‘is an old structure which is liable to crumble on its own at any time’ is palpably false to the knowledge of the petitioner themselves and is backed up by Engineering calculations furnished by them earlier. On earlier occasions the petitioner filed H.R.C. No. 2837 of 1978 under Section 4 of Act 18 of 1960 and averred in para 4 ‘..... the building is a pucca structure built up with first Class materials. Though the building is an old one there cannot be any doubt about its strength and durability and the accommodation that is available to the Respondent is very spacious and convenient’. Thiru C.R. Narayana Rao, Architect, Engineer and (consultant) who had been engaged by the Petitioners earlier to inspect the petition property and submit his Valuation Report, had by his Report dated 6.1.1983 at para 5 stated. ‘The age of the building is about 106 years as on date of valuation (24.3.1982). Though the age is 106 years the building is structurally sound’. Again the Petitioners have stated in their petition H.R.C. No. 2450 of 1982 filed against the Respondents that ‘Though the building is an old one there cannot be any doubt about its strength, structure and durability’. The averments of the petitioner made earlier would falsify the present claim and there is no need or urgency to invoke the provisions of Section 14(1) (b) of the Act 18 of 1960 and as amended subsequently and it is a clear abuse of the process of Court and lacks in *bona fides*”.

A On the basis of these pleadings and the evidence on record, particularly the admissions made on behalf of the landlord in earlier proceedings in H.R.C. No. 2837 of 1973 and H.R.C. No. 2450 of 1982, the statutory authorities concurrently found that the condition of the building was not unsound, as pleaded by the landlord, but it was, on the other hand, structurally safe and sound. Though a hundred and more years of age, there was no doubt about its strength or durability. However, they held that the condition of the building as such was not decisive in deciding the question whether the building was *bona fide* required by the landlord in terms of section 14 (1) (b) of the Act. Confirming the findings of the authorities and rejecting the objections of the tenant, the High Court held that, though the building was structurally sound, the landlord required it for a legitimate scheme of demolition and reconstruction with a view to putting the property to more profitable and better use. The High Court stated:-

D “Lack of *bona fides* cannot be inferred from a mere exaggerated statement in the petition for eviction with regard to the condition of the building. It has to be remembered that the language of Section 14 (1) (b) of the Act is clearly wide enough to cover cases where the landlord *bona fide* requires the building for a legitimate Proposal of scheme to demolish an existing building and reconstruct it into a bigger, more productive and higher income yielding one Therefore, though the condition of the building is not dilapidated, the respondent’s claim can be certainly entertained on the ground of putting the property into a profitable and better use”.

F The building in question is generally known as “P. Orr and Sons”. It is one of the landmarks of the Madras City representing a style of architecture that was once in fashion. It stands on, what is generally known as, the Mount Road, but now renamed as Anna Salai. The site of the building is indeed valuable. It demolished and reconstructed, the landlord would undoubtedly be in a position to earn much larger profits. Any prudent businessman having sufficient funds, as the landlord undoubtedly has, will want to demolish the building for economic gains. The question, however, is whether, as found by the High Court, eviction can be allowed under section 14 (1) (b) solely for the purpose of the landlord’s economic gains and without regard to the condition of the building or the fundamental legislative intent to protect the tenant from unreasonable eviction.

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It is pointed out on behalf of the tenant that eviction has been sought by the landlord solely in terms of section 14 (1) (b) of the Act and not any other provision. That provision, counsel submits, is concerned solely with the condition of the building. It is that condition which determines whether the building is *bona fide* required by the landlord for the purpose of demolishing it. What is material is not the personal requirement of the landlord. If the condition of the building does not warrant immediate demolition, the landlord is not entitled to seek eviction under that provision. A landlord may be possessed of funds and the requisite sanction for reconstruction of a bigger and economically more attractive building, but if the existing building which is sought to be demolished for the purpose of reconstruction is sound and safe and, therefore, not in need of demolition, the section, which is intended to protect the legitimate interest of the tenant, would not permit his eviction merely to suit the economic interest of the landlord. The sole criterion for eviction under section 14, counsel says, is the condition of the building compelling immediate demolition. On the other hand, counsel points out, the *bona fide* personal requirements of the landlord are protected by section 10 of the Act. In ordering eviction under that provision, the condition of the building is irrelevant. All that is required is for the landlord to prove his personal requirements in terms of sub-section (3) or (3A), or, the lapses or misdeeds or breaches on the part of the tenant as stated in sub-section (2) of section 10. The landlord has not, however, sought relief under section 10, but solely under section 14. Nor do the facts alleged attract section 10.

Counsel for the landlord, on the other hand, submits that the condition of the building is, if at all, only one of the various factors which will have to be taken into account by the concerned authority in considering an application for recovery of possession under section 14(1)(b). If other circumstances are present, the condition of the building is not a vital or even a necessary consideration for the exercise of power under that provision. Section 14(1)(b), counsel submits, refers to the *bona fide* requirement of the landlord for demolition and reconstruction. If by reason of the small size of the building, the growing importance of the locality, the greater demand for accommodation and various other factors, it has become uneconomical to allow the old building to stand, notwithstanding its sound and safe condition, or its impressive facade and style, and a much larger profit can be derived from the rents which a larger reconstructed building will yield, then, counsel says, a prudent landlord having sufficient means to erect a larger building is perfectly justified in seeking eviction under section

- A 14(1)(b), and his requirement is, by every economic test, reasonable and *bona fide* and that requirement comes well within the ambit of clause (e) of the sub-section.

- We would now refer to the relevant provisions of the Act. Section 10 deals with “eviction of tenants”, while section 14 deals with “recovery of possession by landlord for repairs or for reconstruction”. Section 10 states “A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16”. Section 10 allows eviction of a tenant either because of the lapses or breaches of contract and the like on the part of the tenant [Sub-section (2)] or because of the personal requirements of the landlord or any member of his family [sub-sections (3) and (3A)]. Where eviction is sought on any of the grounds specified under sub-section (3) or (3A) of section 10, the claim of the landlord must arise from his *bona fide* requirements. These requirements are personal to himself or any member of his family. They are, unlike those under section 14, not connected with the condition of the building, but are connected with the personal need of the landlord or a member of his family.
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- While the legislative object that has inspired the enactment in question is the control of rents and prevention of unreasonable eviction of tenants, the legislature seeks to balance the rival interests of the landlords and tenants, and to protect the legitimate interests of both. The overriding consideration is to protect and safeguard the weaker as against the stronger, the more affluent, the more powerful. While the landlord is assured of a fair rent—meaning a rent which is fair to both parties—and of reasonable opportunity for eviction of the tenant on permissible grounds, the tenant is protected against unjustifiable demands for higher rent or against unreasonable eviction.
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- While section 10 refers to the *bona fide* requirement of the landlord, section 14 speaks of the building being *bona fide* required by the landlord for repairs under clause (a) or for demolition under clause (b). What section 14 speaks of is a requirement emanating from the condition of the building, and the *bona fide* character of the requirement is decided with reference to that condition as well as other factors germane to that requirement, such as the ability of the landlord to carry out the repairs or reconstruction, the location of the building, and other conditions indicating the reasonableness of the demand for recovery of possession for further investment; but the overriding consideration, whether it is a case of repair or reconstruction, is the condi-
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tion of the building itself. Section 14, in so far as it is material, reads:

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“14. Recovery of possession by landlord for repairs or for reconstruction.—(1) Notwithstanding anything contained in this Act, but subject to the provisions of sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied—

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(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; or

(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,

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pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

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(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

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(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.

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- A (4)
- (5)

B Section 14 begins with a *non obstante* clause. The provisions of the section override any other provision of the Act, but subject to the provisions of sections 12 and 13 concerning a building in respect of "which the Government shall be deemed to be the tenant", and with which we are not concerned. Both the clauses of sub-section (1) of section 14 open with the words "that the building is *bona fide* required by the landlord". While clause (a) refers to the *bona fide* requirement by the landlord for carrying out repairs which cannot be done without the building being vacated, clause (b) refers to the *bona fide* requirement by the landlord for the "immediate purpose" of demolition. The "immediate purpose" of demolition is for the purpose of erecting a new building on the site of the building sought to be demolished.

D While section 10 does not speak of anything being required to be done for the building, section 14 speaks only of what is required to be done for the building. The condition of the building may be such that repairs are required, and recovery of possession can be had for that purpose in terms of and subject to the provisions of sections 14 and 15. The tenant has a right in terms of these provisions to reoccupy the building after repairs. This requirement of the landlord for recovery must be *bona fide* in the sense that the condition of the building justifies the requirement. Ordinarily, every building is required to be repaired from time to time, but such repairs can be done without the tenant vacating the building. But where the character and extent of the repairs and their need and urgency are such that they cannot be done without the building being vacated, temporary recovery of possession of the building is allowed under section 14(1)(a), but subject to the other provisions of that section and section 15. Section 14(2)(a) required that the landlord shall give an undertaking to allow the tenant to reoccupy the building within three months of his vacating it or within such further time as the Controller may allow.

G Section 14(1)(b) in terms of which a tenant is evicted—and perhaps permanently—speaks of the "immediate purpose of demolishing" the building with a view to reconstruction. "Immediate" means "at once; without delay". "Immediate" also means "directly connected; not secondary or remote"; "not separated by any intervening medium" (Black's Law Dictionary 5th Edition; the Concise Oxford Dictionary, New 7th Edition). This clause no doubt denotes urgency.

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Section 14(2)(b) stipulates that the landlord should give an 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) will result in the imposition of penalty under section 33(3)(b). Section 14(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 words might have denoted 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 or permitted purpose. The direct and immediate nexus between these two elements is proved by the condition 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 *bona fide* 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.

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A It may be noticed that clause (a) of sub-section (2) of section 14 provides that the landlord should give an undertaking that he would, on completion of the repairs, offer the building to the tenant who delivered possession in terms of clause (a) of sub-section (1) for his reoccupation within three months or within such further time as the Controller may allow, and when the landlord has failed to so act in accordance with his undertaking, section 15 authorises the Controller to direct that the tenant be put back in possession of the building on the original terms and conditions. Clause (b) of sub-section (2) of section 14, however, only speaks of an undertaking by the landlord that he would substantially commence the demolition of any material portion of the building within one month and complete the same within 3 months from the date of recovery of possession or within such further period as the Controller may allow. Section 16 allows the tenant the right to reoccupy the building on the original terms and conditions of the lease if the landlord has failed to act in accordance with his undertaking under section 14(2)(b). But the section does not speak of any undertaking by the landlord to reinduct the tenant in the new building erected by him. Nor does the Act contain any provision for enforcement of the landlord's expressed intention to erect a building on the site of the demolished building. Once a building is totally demolished, and a new building is erected in its place, the Act would cease to apply to the new building for a period of five years from the date of its completion [section 16(2)].

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The absence of any provision to compel reinduction of the tenant after reconstruction or to compel reconstruction after demolition and the non-applicability of the Act for a period of five years after reconstruction make it imperative that the reasonableness of the landlord's requirement should be considered with care and caution, bearing in mind the fundamental legislative object to protect the tenant from unreasonable eviction.

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The overriding consideration underlying section 14(1)(b) is the *bona fide* need for demolishing the old building and erecting a new building in its place. Ordinarily a prudent landlord would brook no delay in erecting a new building, once the demolition of the old building is completed, for loss of time means not only loss of income, but probably also increased expenditure. This construction must necessarily lead to the inevitable conclusion that the condition of the building is a basic and essential requirement of section 14(1)(b).

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H The requirement for demolition can be regarded as genuine and

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bona fide only when the condition of the existing building is such that a reasonable and prudent landlord would regard it to be uneconomical to repair it rather than demolish it and reconstruct a new building. Apart from the condition of the building, the nature of the locality, the advantage arising from reconstruction, the capacity of the landlord to erect a new building, the demand for accommodation and other factors suggesting the *bona fide* character of the landlord's request for recovery of possession under section 14(1)(b) are relevant. Even where the condition of the building demands demolition, it is possible that, in view of the landlord's lack of capacity to rebuild or the futility of reconstruction by reason of the condition of the time and place, the authority may regard, without prejudice to whatever power there is to enforce repairs or demolition in certain circumstances, that the landlord's application lacks *bona fide*. The authority has to take into account the totality of the circumstances.

The requisite circumstances warranting repairs under clause (a) or demolition under clause (b) of section 14(1) are matters for determination by the competent authority on the basis of relevant evidence and the applicable provisions of the law. In proceedings for judicial review, the Court does not sit in judgment over appreciation of evidence and findings of facts by the authority empowered by the statute. He is the final judge of facts, and so long as he has taken into account all relevant facts and has eschewed from his mind all irrelevant circumstances and has correctly understood and applied the law, including the rules of natural justice, his judgment is generally regarded as final and not open to challenge. On the other hand, where he has acted in excess of his jurisdiction or asked himself the wrong questions or misunderstood or misapplied the law or failed to consider the relevant circumstances or allowed himself to be persuaded by irrelevant circumstances, his conclusions are liable to be reversed as perverse by a court exercising judicial review. Any repository of power must act in accordance with the law and on the basis of relevant evidence. He must be guided by reason such justice and not by private opinion.

We shall now examine some of the decisions construing the relevant provisions. In *Metalware & Co. etc. v. Bansilal Sarma & Co. etc.*, [1979] 3 SCC 398, this Court had occasion to consider the scope of section 14(1)(b) of the Act. The contention of the landlord that the condition of the building was not relevant to attract that provision was rejected. This Court stated—

A “ but we fail to appreciate how the state or 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 *bona fide* requirement of the landlord . . . ’ ”

B This Court then cited with approval the following observation of M. Anantanarayanan, J. of the Madras High Court in *Mehsin Bhai v. Hale & Company G.T., Madras*, [1964] 2 MLJ 147:

C “What the section really required is that the landlord must satisfy the Court that the building was *bona fide* required by him, for the immediate purpose of demolition. I am totally unable to see how the present state of the building, and the extent to which it could stand without immediate demolition and reconstruction, in the future, are not relevant considerations in assessing the *bona fides* of the landlord”

D This Court then concluded—

E “Having regard to the above discussion on the construction of Section 14(1)(b) of the Act, particularly in the light of its scheme, we are clearly of the view that the *existing condition of the building* far from being totally irrelevant is a vital factor which will have to be considered while pronouncing upon the *bona fide* requirement of the landlord under that provision which has to be done by having regard to ‘all the circumstances’ and since in the instant case all the courts have totally ignored this vital factor we feel that their conclusion on the question of *bona fide* requirement of the landlord deserves to be set aside”

(emphasis supplied)

G It would be helpful to read another passage from the judgment of Anantanarayanan, J. in *Mehsin Bhai v. Hale and Company, G.T. Madras*, [1964] 2 MLJ 147:

H “. . . . On the other hand, it is equally possible that the mere fact that the building is old, is taken advantage of by the landlord to put forward such pretext, his real object being ulterior, and not *bona fide* for the purpose of reconstruction. The Courts have to apply several criteria, and to

judge upon the totality of the facts. But the Courts cannot exclude the possibility that the *ancient or relatively old character of the building, which may nevertheless be in quite a good and sound condition*, is being taken advantage of by a landlord in order to make such an application with an ulterior purpose, which purpose might be, for instance, to obtain far more advantageous terms of rent in the future. What the section really contemplates is a *bona fide* requirement; that necessarily implied that it is in the interests of the landlord to demolish and reconstruct the building, and that the fact that the building is old is not merely a pretext for advancing the application, with the object of evicting the tenant, and of obtaining higher rentals . . .” (Page 148) (emphasis supplied)

In *Neta Ram v. Jiwan Lal*, [1962] Supp. 2 SCR 623, this Court had occasion to consider the scope of section 13 of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 B.K. (8 of 2006 BK), the provisions of which are *in pari materia* with section 14(1)(b). This Court stated—

“ . . . the Controller has to be satisfied about the genuineness of the claim. To reach this conclusion, obviously the Controller must be satisfied about the reality of the claim made by the landlord, and this can only be established by looking at all the surrounding circumstances, such as the *condition of the building*, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him. The clause speaks not of the *bona fides* of the landlord, but says, on the other hand, that the claim of the landlord that he requires the building for reconstruction and re-erection must be *bona fide*, that is to say, honest in the circumstances. 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 It is well known that Rent Restriction Acts were passed in view of the shortage of houses and the high rents which were being demanded by the landlords. The very purpose of the Rent

A Restriction Acts 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 the circumstances viz., that the houses need reconstruction or that they have the means to reconstruct them etc*

B” (Pages 629-30)

(emphasis supplied)

C This Court thus held that the condition of the building was a matter of vital consideration, and that if the building was in a good state the landlord would not be allowed to recover for the purpose of demolition merely because he had the capacity and there was the possibility of economic gain.

D In *K. Ramachandra Rao v. Krishnaswami Iyengar and Others*, [1976] 1 MLJ 267, A. Varadarajan, J. of the Madras High Court (as he then was) observed:

E “ In my view, 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 it for purposes of immediate demolition 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”

F (Page 268)

G In *K.P. Lonappan and Sons v. S. Mohamed Iqbal*, [1981] 1 MLJ 386 P.R. Gokulakrishnan, C.J. followed the same line of reasoning as was adopted by the Madras High Court in the earlier cases cited above. The learned Judge stated:

H “ The authorities below had applied their mind regarding the existing condition of the building and had correctly come to the conclusion that the building requires demolition and reconstruction” (Page 387)

This line of reasoning of the learned Judges of the Madras High Court seems to be consistent with what we have stated above in regard to the vital importance of the condition of the building for the purpose of invoking the power of the statutory authority under section 14(1)(b) of the Act.

However, this Court had in *Panchamal Narayan Shenoy v. Basthi Venkatesha Shenoy*, [1970] 1 SCC 499 expressed a certain view on which much reliance is placed by the landlord's counsel. In considering section 21(1)(j) of the Mysore Rent Control Act, 1961 (Mysore Act XXII of 1961), this Court stated—

“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 subsection (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 reasonable and *bona fida* 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 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 emphasised in clause (k) of the proviso. *When such a specific provision has been made in clause (k)* the condition of the building cannot come into the picture nor could it have been dealt with again in clause (j). So the requirement under clause (j) is that of the landlord and cannot have any reference to the building.”

(emphasis supplied)

These observations show that the Court was dealing with clause (j) of section 21(1) of the Mysore Act which is not *in pari materia* with

A section 14(1)(b) in so far as clause (j) did not contain the ingredients of clause (k) of that sub-section which deals with demolition by reason of the condition of the building. It is for that reason that this Court stated that the condition of the building was not relevant for the purpose of clause (j) of section 21(1) of the Mysore Act. The observation in that case must, therefore, be understood to be limited to be construction of the relevant section of the Mysore Act and it is not helpful in the construction of section 14(1)(b) which is in question here, and which, as we have pointed out above, is not *in pari materia*.

C It must now be pointed out that in certain decisions of the Madras High Court views have been expressed which do not emphasise the overriding importance of the condition of the building in respect of an application for recovery under section 14(1)(b).

D In *Mahboob Badsha v. M. Manga Devi and Another*, [1965] 2 MLJ 209, Ramamurti, J. expressed the view that the condition of the building was only one of the various considerations for the purpose of making an order under section 14(1)(b). The learned Judge, however, stated:

E “... 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 demolish the building or whether the provision is invoked merely with a view to evict the tenant ...” (page 213)

F The learned Judge thus regarded that the condition of the building was one of the important matters to be considered, but did not seem to accept it as a vital consideration for the exercise of power under section 14(1)(b).

In *K.J. Sivalingam v. S. Guruswamy and Another*, [1983] 2 MLJ 85, Nainar Sundaram, J. stated:

G “... 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 an 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 ...” (Page 85)

H

The learned Judge rightly held that it was not necessary for the landlord to prove that the building was about to crumble down. He observed that the condition of the building was a relevant factor, but he did not, however, seem to accept the view that it was a vital factor. If these decisions are to be understood as having disregarded the overriding importance of the condition of the building, they have not correctly laid down the law.

In certain other decisions of the Madras High Court, an extreme view, which is certainly the wrong view, appears to have been expressed to the effect that the condition of the building, being only one of the various circumstances which could be taken into account by the authority acting under section 14(1)(b), he could make an order for recovery of the building even if the condition of the building did not require demolition, provided the other conditions were satisfied. In *R.P. David and Another v. N. Daniel (died) and Others*, [1967] 1 MLJ 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” (Page 111)

Similar view had been expressed by the Madras High Court in *V.P. Selvaraj v. V. Narasimha Rao*, [1969] 1 MLJ 587; *Bharat Trading Company v. K. Shanmughasundaram*, [1982] 1 MLJ 94; *Kanakavali Ammal and Others v. V.S. Sundaram and Others*, [1984] 1 MLJ 310 and *A.S. Shaik Fathima and Others v. Omer Cloth Store and Others*, AIR 1986 Madras 90 and certain other cases. These decisions, in so far as they have disregarded the vital importance of the condition of the building as a necessary circumstance for the landlord to prove before the Controller could make an order under section 14(1)(b) directing the tenant to deliver possession of the building for the purpose of demolition, have not correctly stated the law on the point.

We accordingly hold that section 14(1)(b) is satisfied only if the building is *bona fide* required by the landlord for the “immediate”, i.e., direct, sole and timely purpose of demolishing it with a view to erecting a new building on the site of the existing building. Various

- A circumstances such as the capacity of the landlord, the size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors justifying investment of capital on reconstruction may be taken into account by the concerned authority in considering an application for recovery; but the essential and overriding consideration which, in the general interests
- B of the public and for the protection of the tenants from unreasonable eviction, the legislature has in mind is the condition of the building that demands timely demolition by reason of the extent of damage to its structure making it uneconomical or unsafe to undertake repairs. While the condition of the building by itself may not necessarily establish the *bona fide* requirement under clause (b), that condition is
- C not only one of the various circumstances which may be taken into account by the Controller, but it is the essential condition in the absence of which it would not be possible for the landlord to prove that he has a *bona fide* requirement which is timely, directly and solely for the purpose of demolition of the building. The Act does not accept the requirement by the landlord as a *bona fide* requirement within the
- D meaning of the provision unless the condition of the building, in the context of the relevant circumstances, requires demolition. These are matters which are to be proved by evidence.

- In must, however, be emphasised, that in order to satisfy the test under section 14(1)(b), the condition of the building need not have
- E deteriorated to the extent of the building being in danger of crumbling down, but the condition must be such as to indicate a *bona fide* requirement for the timely, genuine and direct purpose of demolition and reconstruction. The personal requirement of the landlord or any member of his family for residence or business is not germane to section 14, and to import that concept for the construction of that section,
- F as the High Court appears to have done, is to project section 10 into section 14, and that is an exercise which has no warrant in the law.

- The Controller in the present case asked himself the wrong question. He did not think that the condition of the building was relevant. He disregarded the clear admission of the landlord and other evidence
- G as regards the sound condition of the building. The crucial condition for demolition was thus absent. The Controller was totally misguided as to the conclusions which he reached. So were the appellate authority and the High Court.

- We must emphasise once again that in the construction of sections such as 10 and 14 of the Act, the Court must be guided by the
- H

overriding legislative object articulated in the Preamble to the Act, that is "the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu". It is with reference to this Preamble that Sabyasachi Mukharji, J., as he then was, in *Prabhakaran Nair and Others v. State of Tamil Nadu and Others*, [1987] 4 SCC 238 observed:

" the provisions of the Act imposed restrictions on the landlord's right under the common law or the Transfer of Property Act of evict the tenant after termination of his tenancy. The rationale of these restrictions on the landlord's rights is the acute shortage of accommodation and the consequent need to give protection to the tenants against unrestricted eviction. The nature, the form and the extent of the restrictions to be imposed on the landlord's right and the consequent extent of protection to be given to the tenants is a matter of legislative policy and judgment"

Accordingly we set aside the judgment under appeal. The landlord's petition for eviction shall stand dismissed. The appeal is allowed in the above terms with costs throughout.

G.N.

Appeal allowed.