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K.M. ABDUL RAZZAK

v

DAMODHARAN

MAY 2, 2000

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[V.N. KHARE AND S.N. PHUKAN, JJ.]

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 :

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S. 14(1)(b)—Landlord's application for eviction claiming building to be dilapidated and required for reconstruction—Rent Controller and appellate authority holding that building was not in dilapidated condition so as to require demolition and reconstruction—Landlord filing revision before High Court—Meanwhile legal position with regard to requirement u/s. 14(1)(b) changed by virtue of Supreme Court decision—High Court re-assessing evidence and holding that building was dilapidated, landlord required it bona fide for reconstruction and landlord had adequate funds for the purpose—Held, if there was a change in position of law, High Court should have sent the matter back to appellate authority—It is not permissible for High Court, in exercise of its revisionary jurisdiction to act as an appellate court to reappraise and reassess evidence afresh and to come to a different finding contrary to that recorded by court below—High Court while allowing the revision transgressed its jurisdiction—Matter sent back to appellate authority to decide the appeal in accordance with law.

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**Vijay Singh & Ors. v. Vijayalakshmi Ammal, [1996] 6 SCC 475, relied on.*

P. ORR and Sons (P) Ltd. v. Associated Publishers (Madras) Ltd., [1991] 1 SCC 310, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 602 of 2000.

From the Judgment and Order dated 22.3.99 of the Madras High Court in C.R.P. No. 1672 of 1995.

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S. Sivasubramanian, S. Aravindh, Senthil Jagadees and Rakesh K. Sharma for the Appellant.

Ms. V Mohana and Ashok Agrawal for the Respondent.

The following Order of the Court was delivered :

Appellant herein, is the tenant. The respondent-landlord filed a petition before the Rent Controller at Madurai for eviction of the appellant-tenant under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act'): The case of the landlord was that the building is in a dilapidated condition and, therefore, it requires demolition and reconstruction. The landlord also stated that he has sufficient funds to raise the new construction. The Rent Controller, before whom the aforesaid petition was filed, appointed an Advocate Commissioner to inspect the disputed premises and submit a report in respect thereof. The Commissioner inspected the premises with the help of a Chartered Engineer and submitted his report. In his report the Commissioner found that the premises was old one, but was not in a dilapidated condition so as to require demolition and reconstruction. Parties also led evidence in respect thereof. The Rent Controller after considering the entire material on record recorded a finding that building is not in a dilapidated condition so as to require demolition and reconstruction and, therefore, the landlord was not in a *bona fide* need of the premises. The Rent Controller recorded a further finding that the financial condition of the appellant is not such as he could raise construction after demolition. With these findings the petition filed by the landlord was dismissed. The landlord thereafter preferred an appeal before the appellate authority constituted under the Act. The appellate authority affirmed the findings of the Rent Controller as regards the condition of the premises. Consequently, the appeal was dismissed. The landlord thereafter preferred a revision under Section 25 of the Act before the High Court. The High Court, after reassessing the evidence was of the view that the building is in a dilapidated condition, the appellant has adequate funds to raise the construction, and further the landlord is in *bona fide* need of the premises. After recording the said findings the High Court set aside the judgment of the court below and allowed the revision. It is against the said judgment the tenant is in appeal before us.

Learned counsel, appearing for the appellant, urged that the High Court in exercise of its revisional power could not have reassessed or re-evaluated the evidence on record afresh and come to a different finding and thus, the judgment of the High Court deserves to be set aside. This has been disputed

A by learned counsel appearing for the respondent. He urged that, in view of the change in law, the High Court was perfectly justified in recording a different finding than what was recorded by the court below and the judgment does not suffer from any infirmity.

B Before we take up the arguments of the parties we would like to notice here the legal position prevailing at the time when the landlord filed a petition under Section 14(1)(b) of the Act. Section 14(1)(b) reads as under:

C “14(1)(b) - that the building in *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.

D Interpreting the aforesaid provision, this Court in the case of *P. ORR and Sons (P) Ltd. v. Associated Publishers (Madras) Ltd.*, [1991] 1 SCC 301 held that a landlord can succeed in an application under Section 14(1)(b) only when it is established that the building is in a dilapidated condition which requires immediate demolition. This was the legal position when the Rent Controller in the present case decided the application of the landlord for eviction of the appellant tenant. When the revision filed by the landlord was pending before the High Court the principle laid by this Court in the case of *P. ORR and Sons (P) Ltd.* (supra) for considering an application under section 14(1)(b) of the Act was slightly diluted because of the subsequent decision of this Court in *Vijay Singh & Ors. v. Vijayalakshmi Ammal*, [1996] 6 SCC 475. In *Vijay Singh's* case (supra), it was held that the Rent Controller while considering an application under Section 14(1)(b) has to take into account three elements which are illustrative i.e. (1) *bona fide* intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; and (3) the financial position of the landlord to construct a new building according to requirements of the building laws. These were some of the illustrative elements, which were to be taken into consideration before an order is passed under section 14(1)(b).

H At the time when the High Court came to decide the revision filed by the landlord, the position of law was that the Rent Controller was required to decide an application keeping in view the aforesaid illustrative principles. The principles of law laid down in *Vijay Singh's* case (supra), were that the

landlord was not only required to show that the building is in a dilapidated condition, but he was also to establish his *bona fide* intention for demolition and reconstruction as well as his financial position to reconstruct the building. Unless findings to that effect are recorded in favour of the landlord, an application under Section 14(1)(b) does not deserve to succeed. Here we find that the Rent Controller and the appellate authority both recorded concurrent finding of fact in favour of the tenant that the building was not in a dilapidated condition. If there was a change in position of law what was required by the High Court was to send the case back to the appellate authority to record a finding in respect of other illustrative elements which were required to be considered for grant of application under Section 14(1)(b) of the Act. Instead of remanding the matter to the appellate authority, the High Court has taken up the exercise to record findings on the aforesaid illustrative elements after re-appreciating the evidence which we think was not permissible under Section 25 of the Act. It is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as an appellate court to reappraise or reassess the evidence afresh as an appellate court and come to a different finding contrary to the finding recorded by the court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it under Section 25 of the Act.

We, therefore, set aside the judgment and order under appeal as well as of the appellate court and send the case back to the appellate authority to decide the appeal of the respondent in accordance with law.

The appeal is allowed. There shall be no order as to costs.

R.P.

Appeal allowed.

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