

JAGAT PAL DHAWAN
v.
KAHAN SINGH (DEAD) BY LRS. AND ORS.

NOVEMBER 21, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Rent Control and Eviction:

Himachal Pradesh Urban Rent Control Act, 1987—Section 14(3)(c) and (5)—Eviction on ground of bonafide requirement for reconstruction of building—Plea that the building in view of its age and nature of construction has outlived its utility—Denial of eviction by courts below—On appeal—Held, section 14(5) protects the interest of the tenant by guarding malafide evictions—However, in the facts of the case, landlord has made out a case for eviction.

Appellant-landlord filed suit under Section 14(3)(c) of Himachal Pradesh Urban Rent Control Act, 1987 on the ground of bonafide requirement for reconstruction of the tenanted building and thereafter shifting his residence therein. The building was more than 100 years old, constructed in mud mortar and slate roofing. Tenant-respondent questioned the *bona fide* of the landlord.

Trial Court dismissed the suit holding that requirement of the landlord could not be said to be *bona fide* as the building did not need reconstruction. First Appellate Court upheld the judgment of Trial Court. High Court, in revision denied eviction on the grounds that (i) once building is in good condition, the burden to prove need of reconstruction is on the landlord (ii) the building plans were not approved by Municipal Committee, (iii) there is no evidence to show that neighbours having common walls with the building had consented to demolish and reconstruct the walls, and (iv) availability of funds for reconstruction was not proved.

In appeal to this Court, appellant brought to the notice of the Court the permission of Municipal Council sanctioning building plan, and filed documents showing availability of funds.

Allowing the appeal, the Court

HELD: 1. In the facts and circumstances of the case, the landlord

A has clearly made out a case for eviction under Section 14(3)(c) of Himachal Pradesh Urban Rent Control Act, 1987 and denial of eviction of the respondent has occasioned failure of justice to the appellant. Relief of eviction as sought for could not have been denied to the appellant. There is no material available to hold that the landlord has something else in his mind such as getting rid of the tenant without raising construction.

B Sub-section (5) of Section 14 of the Act protects the interest of the tenant by guarding against *mala fide* eviction. The tenant-respondent is directed to vacate the tenancy premises as the same are required *bona fide* by the landlord-appellant for carrying out building or rebuilding under Section 14(1)(c) of the Act which cannot be carried out without the building being vacated. [305-B, C; 307-E, F, G; 308-A]

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2. Section 14(3)(c) provides *inter alia* that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required *bona fide* by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However, depending on the facts and circumstances of a given case, the Court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the *bona fides* of the landlord. [305-C-E]

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F *P. Orr. and Sons (P) v. Associated Publishers (Madras) Ltd.*, [1991] 1 SCC 301; *Vijay Singh and Ors. v. Vijayalakshmi Ammal*, [1996] 6 SCC 475; *R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors.*, [2002] 4 SCC 437 and *Harrington House School v. S.M. Ispahani and Anr.*, [2002] 5 SCC 229, referred to.

G 3. The locality where the premises are situated has, with the lapse of time, become a busy commercial locality. The structure of the building is more than 100 years old. It is in mud mortar and with slates' roofing. Instead of outdated two floor space, the landlord proposes to construct a modern three-storeyed building which would obviously provide additional space and much better return to the landlord. The landlord has stated that

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he had no other residential house of his own available with him and having reconstructed the building he would like to shift his residence too in his own newly constructed house. The *bona fides* of such a requirement could not have been doubted solely on the ground that the structure of the building, though old and outdated, had not gone so weak as was needed to be demolished immediately. [306-E-G]

4. So far as the neighbours are concerned, none has objected to the proposed reconstruction. In any case that is a matter to be settled by the landlord with his neighbours. However, the fact that appellant was prepared to raise additional walls of his own next to the common walls, and rest his entire structure on such walls, obviates the need of proving consent of the adjoining building owners for the proposed reconstruction.

[306-G, H; 307-A]

5. So far as the building plans are concerned, it is not the case of the tenant-respondent that the building, as proposed, cannot under the local law be permitted to be built. However, this aspect loses all its significance in view of Municipal Council sanctioning the building plan.

6. The plaintiff-appellant had deposed that he had the requisite financial capacity to undertake the proposed reconstruction and this part of the testimony was not challenged in cross-examination by the tenant-respondent. However, documents have been filed in this Court showing availability of funds. Thus, the availability of funds with the appellant to cover the cost of proposed construction cannot also be doubted.

[307-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5023 of 1998.

From the Judgment and Order dated 22.8.1997 of the Himachal Pradesh High Court in C.R. No. 205 of 1994.

Pankaj Kalra, for the Appellant.

Jagdeep Dhankhar, Dr. Sushil Balwada, Devendra Singh and Surya Kant, (NP) for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The landlord-plaintiff whose prayer seeking eviction

A of his tenant under Clause (c) of sub-Section (3) of Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter 'the act; for short) has been refused, is in appeal by special leave.

B The suit premises are non-residential consisting of one room and verandah on the ground floor, and one room on the first floor, in building no.10/11, situated in Mohalla Tarna, Seri Bazar, Mandi. The premises are owned by the appellant and held by the respondent on tenancy since 1950s. The premises are constructed of mud mortar with cement plaster on the inner sides of the walls. The top has a roof of slates. The structure is about 100 years old.

C On 28.5.1988, the landlord initiated proceedings under Section 14(3)(c) of the Act alleging that the premises are *bona fide* required by the landlord for reconstruction into three storeyed structure which cannot be carried out without the demised premises being vacated. According to the landlord, the demised premises, looking to their age and nature of construction, had outlived their utility. The requirement and its *bona fides* were questioned by the tenant-respondent who submitted that the structure of the building was safe and certainly not dangerous and hence did not stand in need of any reconstruction.

E The Trial Court relied on the decision of this Court in *Metalware and Co. etc. v. Bansilal Sarma & Co. etc.*, [1979] 3 SCC 398 and held that the condition of the building whether it was good and sound or decrepit or dilapidated was of significance and relevant for determining the *bona fides* of the requirement for reconstruction. Inasmuch as the structure of the building was not in need of being demolished, the requirement of the landlord for reconstruction could not be said to be *bona fide*. The Appellate Court too agreed with the Trial Court. The High Court has rested its conclusion against the landlord-appellate on three factors:-

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- (i) that once the building is found to be in good condition, then the burden is on the landlord to show that he still needs it for reconstruction:
 - G (ii) that the building plans produced by the landlord before the Court were not shown to have been approved by the Municipal Committee without which the construction could not be carried out.
 - H (iii) that the side walls were common walls with the adjacent building owners and the landlord had adduced no evidence to show that

he had their consent to demolish and reconstruct the walls; and A

- (iv) that the availability of funds for carrying out reconstruction was not proved.

The learned counsel for the appellant has submitted that none of the reasons assigned by the High Court or any of the Courts below could have been relevant to deny the relief prayed for by the landlord. Examined in the backdrop of the relevant material available on record including documents of undoubted veracity brought to the notice of this Court the landlord has clearly made out a case for eviction under Section 14(3)(c) of the Act and denial of eviction of the respondent has occasioned failure of justice to the appellant. B

Section 14(3)(c) provides *inter alia* that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required *bona fide* by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However still, suffice it to observe, depending on the facts and circumstances of a given case, the Court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be *bona fide*. C D E F

Metalware & Co.'s case deals with Section 14 of Tamil Nadu Building (Lease and Rent Control) Act, 1960 where recovery of possession by landlord from the tenant is contemplated if the building is *bona fide* required for the immediate purpose of demolishing it (emphasis supplied). This Court held in *Metalware & Co.'s* case that a building which, looking at its age and nature of construction, was not required to be demolished then the necessary ingredient of the provision was not satisfied. *Metalware & Co.'s* case is a two-Judge Bench decision which was considered by a three-Judges Bench in *P. Orr & Sons (P.) Ltd. v. Associated Publishers (Madras) Ltd.*, [1991] 1 SCC 301 wherein this Court clarified that condition of the building cannot H

A alone be the determining factor of *bona fides* of the landlord though it may be taken into consideration as one of the various 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.

B The Constitution Bench in *Vijay Singh and Ors. v. Vijayalaksmi Ammal*, [1996] 6 SCC 475, authoritatively pronounced that for granting permission under Section 14(1)(b) of Tamil Nadu Act the relevant factors are (i) *bona fide* intention of the landlord far from the sole object only to get rid of the tenants; (ii) the age and condition of the building; and (iii) financial position of the landlord to demolish and erect a new building. However the Constitution Bench cautioned that these are only some of the illustrative factors to be taken into consideration alongwith other factors and no Court can fix any limit in respect of the age and condition of the building.

C So is the view taken in *R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors.*, [2002] 4 SCC 437 and in *Harrington House School v. S.M. Isphani and Anr.*, [2002] 5 SCC 229. The fact that demolition and reconstruction would result in modernization, making additional space available and/or would augment the earning of the landlord are relevant factors for determining the *bona fides* of the requirement for demolition and reconstruction.

E The locality where the premises are situated has, with the lapse of time, become a busy commercial locality. The structure of the building is more than 100 years old. It is in mud mortar and with slates' roofing. Instead of outdated two floor space, the landlord proposes to construct a modern three-storeyed building which would obviously provide additional space and much better return to the landlord. The landlord has stated that he had no other residential house of his own available with him and having reconstructed the building he would like to shift his residence too in his own newly constructed house. The *bona fides* of such a requirement could not have been doubted solely on the ground that the structure of the building, though old and outdated, had not gone so weak as was needed to be demolished immediately.

F So far as the neighbours are concerned, none has objected to the proposed reconstruction. In any case that is a matter to be settled by the landlord with his neighbours. The learned counsel for the appellant submitted during the course of hearing, and rightly in our opinion, that even if the neighbours were not agreeable to have the common wall demolished and replaced by a

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new wall the appellant was prepared to raise additional walls of his own next to the common walls, if any, and rest his entire structure on such walls. This obviates the need of proving consent of the adjoining building owners for the proposed reconstruction. A

So far as the building plans are concerned, it is not the case of the tenant-respondent that the building, as proposed, cannot under the local law be permitted to be built. However, this aspect loses all its significance inasmuch as on behalf of the appellant permission No. NPAP/Mandi/97/1389 dated 30.6.1998 issued by Municipal Council, Mandi, H.P. has been brought to the notice of this Court showing that the building plans proposed by the appellant have been sanctioned under Section 203 of the H.P. Municipal Council Adhiniyam, 1994 during the pendency of these proceedings. B C

So far as the funds are concerned, the plaintiff-appellant had deposed that he had the requisite financial capacity to undertake the proposed reconstruction and this part of the testimony was not challenged in cross examination by the tenant-respondent. However, documents have been filed in this Court showing availability of an amount of Rs. 1,20,000 invested by appellant in Indira Vikas Patra of five years duration on 24.9.1988 having a value of Rs. 2,40,000 on maturity. So also there are six years National Saving Certificates of Rs. 30,000 purchased on 30th March, 1983 with a value Rs. 60,450 on maturity. The appellant has Rs. 25,000 in FDR and Rs. 6,247 in savings bank. The proposed construction, according to the appellant, would need about a lakh of rupees. Thus, the availability of funds with the appellant to cover the cost of proposed construction cannot also be doubted. D E

In the abovesaid circumstances we are clearly of the opinion that relief of eviction as sought for could not have been denied to the appellant. There is no material available to hold that the landlord has something else in his mind such as getting rid of the tenant without raising construction. Sub-Section (5) of Section 14 of the Act protects the interest of the tenant by guarding against *malafide* evictions. It provides that where a landlord has obtained possession of the building or rented land for the purpose of building or rebuilding and puts the building to any other use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly. This provision would not permit the building from which the tenant is being evicted being subjected to any other user or misuse. F G H

- A** The appeal deserves to be allowed. The orders of the High Court and the Courts below are set aside. Instead the tenant-respondent is directed to vacate the tenancy premises as the same are required bona fide by the landlord-appellant for carrying out building or rebuilding under Section 14 (1)(c) of the Act which cannot be carried out without the building being vacated. The tenant is allowed four months time for vacating the premises subject to his
- B** filing the usual undertaking within a period of three weeks from today before the executing Court undertaking to deliver vacant and peaceful possession over the suit premises to the landlord-appellant on the expiry of the time granted and in between clearing and continuing to clear all the arrears of rent and not creating any third party interest. Costs as incurred

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K.K.T.

Appeal allowed.