

IN THE COURT OF THE RENT CONTROL APPELLATE AUTHORITY CUM –
PRINCIPAL SUBORDINATE JUDGE OF ERODE.

PRESENT:- Thiru.K.HARIHARAN, M.L.,
Principal Subordinate Judge

Friday this the 29th day of November 2019
(Thiruvalluvar Aandu 2050 - Sri Vigari Aandu – Karthigai Thingal 13th day)

R.C.A.No.1/2017

1. D.Rajasekar (died)
(amended as per order in
IA 4/19 dt 30.8.19)
2. R. Malarvizhi
3. R. Parameswaran
(2nd and 3rd petitioners impleaded
as per order in IA 3/19 dt 6.7.19 and
amended as per order in IA 4/19
dt.30.8.19)

..Appellants/Respondents

/ vs /

1. Subramaniam,
 2. S.Kamala,
 3. S.Sadasivam,
 4. B.Kavitha.
- (Respondents represented by their power of
attorney holder N.Vasudevan.)

..Respondents/Petitioners

The Rent Control Appeal is against the Fair and Final in
RCOP.No.16/2015 passed by the Rent Controller–cum-I Additional District
Munsif, Erode dated 20.01.2017.

Between:

1. Subramaniam,
 2. S.Kamala,
 3. S.Sadasivam,
 4. B.Kavitha.
- (Petitioners represented by their power of
attorney holder N.Vasudevan.)

..Petitioners/Landlords.

/ vs /

D.Rajasekar.

...Respondent/Tenant.

The Rent Control Appeal is coming on 15.11.2019 for final hearing before
this court in the presence of Thiru.D.Ramesh, Advocate for the Appellants and
of Thiru.V.Balasubramanian, Advocate for the Respondents and upon hearing
the arguments on both sides and upon perusing the connected material

records and having stood over till this day for consideration, this court delivered the following:

ORDER

Petition dated 16.04.2015 and 01.07.2015 filed under section 10(2)(1), 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act 1960, by the petitioners/landlords praying this court, directing the respondent/tenant to vacate and surrender vacant possession of the petition mentioned building to the petitioner and for costs.

2. The petition averments which are essential for the disposal of the petition is as follows:-

The property belongs to the petitioners. The owners are residents of Karur. They executed a power of attorney deed to one Vasudevan on 10.11.2014. The buildings bearing door No.60 to 68 in Pon Street and it is a non residential buildings and except 67 which is a house, monthly rent for the building fixed is Rs.2150/- which has to be paid on the 1st day of English Calender month. On 10.11.2014 the 1st petitioner and his family members executed a power of attorney deed 10.11.2014 and authorized the power agent to collect the rents from the tenants and initiate action in court of law for eviction against the tenants and for the possession of the lease hold rights. The petitioners requires the entire building immediately for demolition and reconstruction. During 1980s the 1st petitioner on behalf of the landlords initiate steps seeking to evict the tenants for eviction on the ground of demolition and reconstruction and has failed by then. Presently, the 1st petitioner plans for demolition and reconstruction of the entire building and has got approval from the local body afresh. The power agent also had the knowledge of the same. On 11.09.2014 itself the constructive possession and administration of the lease hold was handed over to the petitioner/power agent by the Subramaniam. The petitioners claimed that they got sufficient means to reconstruct the building. On 03.12.2014 the 1st petitioner introduced the power agent to every tenants and sent a letter confirming the same and all of them has received the letters. The petitioners/landlords has also giving the undertaking that within one month of the order they shall pulled down the

building and commence the construction of new building if it was ordered. In spite of the urgent demand of demolition and reconstruction by the petitioners the respondents has not come forward to vacate the property. Hence on 14.03.2015 the petitioner issued a lawyer's notice terminating the tenancy and called upon the tenants to vacate and surrender the vacant position of the property and also for the arrears of rent. The respondents received the notice on 16.03.2015 and has given a false reply on 24.03.2015 through his counsel. The allegations of the reply notice is false. It is also contented that the averments mentioned in the reply notice regarding the spending of Rs.5,00,000/- and other facts were all false. The respondents used to pay rents to the landlord Subramaniam and he never visit the tenants for collection of the rents. The non payment of rents is sought to be noted as an act of wilful default. Further the respondents were careless and tendering the monthly rents and has committed the act of wilful default. On 13.04.2015 the petitioner/power agent received 3 money orders from the respondents for the payment of rent for the month of November, December 2014 and January to March 2015. Hence, the petition is sought to be allowed seeking to evict the respondents on the ground of demolition and reconstruction and on the ground of wilful default.

3. By refuting the petition averments in its entirety the respondent had filed separate counter the sum and substance of the counter which are essential for the disposal of the appeal is that:

The relationship of the landlord and tenant is admitted by the respondent and mentioned that he used to pay the rent for every month without fail for which the landlords were not issued receipts. During November 2014 the landlord demanded to vacate the shop immediately as if the landlord proposed to sell the property for which the respondent refused. Further the landlord also refused to receive the rent from November 2014. Immediately the respondent issued money order for Rs.2150/- for the rent of November 2014, the same was also refused by the landlord. Subsequently, Rs.6750/- was sent to the landlord for the rent of November, December 2014 and January 2015 the same was also refused by the petitioner. Further for the

notice given by the landlord the respondent has given the reply and sought the bank particulars to deposit the rent. For which the petitioner had not responded hence the rent of November 2014 to March 2015 was sent through the money order and the same was received by the power agent. Further the respondent continued to sent the rent to the power agent of the petitioner through money order every month. Till date he receives the rent. Hence no arrears of rent as on today. It is mentioned that the respondent came to know that the petitioner has sold the leased out premises to one Vasudevan and received consideration. Only for the purpose of evicting the tenants the power of attorney in favour of the Vasudevan and filed the eviction petition against the respondent through the power agent. The intention behind the formation of power of attorney deed mentioned as not true and genuine. As already the property is sold, the petitioner seeking for demolition and reconstruction by showing the plan approval is mentioned as false. On the above ground the petition is sought to be dismissed. Further the respondent has also mentioned that he is ready to make payment of enhanced rent. The petition averments are mentioned as false and not a bona fide one and sought to dismiss the petition.

4. Before the trial court, on the side of the petitioner, P.W.1 was examined and Ex.P1 to P15 were marked, on the side of the respondent R.W.1 was examined and Ex.R1 to R22 were marked.

5. After the completion of the enquiry the Rent Controller has allowed the petition. Against which the appeal is preferred. For discussion the parties are referred to in this appeal as per their litigative status.

6. **The grounds of appeal is as follows:-**

It is mentioned that the ground of wilful default has been dismissed by the Rent Controller and the Rent Controller ordered for eviction of the tenant for the ground of demolition and reconstruction. It is mentioned that the power of attorney deed is not a valid one and the same is mentioned to have been not consider by the Rent Controller and the same is also alleged to have been created collusively by the respondents only with intention to evict the tenants. It is mentioned that the entire sale consideration of

Rs.1,25,00,000/- was received by the power agent and mentioned that the power of attorney carries the every particulars of sale deed. The findings rendered by the Rent Controller it is mentioned as not correct as the trial court has failed to decide as to legal points of power of attorney deed. It is mentioned that the respondent/landlord admitted that earlier an RCOP was filed for eviction of the appellant in the year 1979 and mentioned that the Rent Controller has not properly decided on the point of resjudicata after perusing the documents marked on the side of the respondents. It is mentioned that the trial court has not rendered a finding as to the parties genuine need and requirement of the landlord for demolition and reconstruction of the building without adducing any proof regarding the same and sought to dismiss the rent control proceedings which were allowed under 14(1)(b) of the Rent control act.

7. The point for consideration is:-

1. Whether the power of attorney agent is competent to seek for the relief of demolition and reconstruction on behalf of the landlords?
2. Whether the rent control petitions is barred by the principles of resjudicata?
3. Whether the order of the trial court ordering demolition and reconstruction is not correct?
4. Whether the dismissal of the petition on the ground of wilful default could be put under challenge in this appeal?
5. Whether the appeal could be allowed?

8. Point No.1:

Admittedly the appellant is tenant in the property. Till the month of November 2014 the rent were paid to the 1st petitioner/landlord. The petition for eviction was sought for against the 6 tenants including the appellant whereas the building is one. All the 6 tenants are running jewelery shop in their respective shops. Originally the appellants were tenants under one Radharukmaniammal. The 1st petitioner is the adopted son of Radharukmaniammal to whom the building was bequeathed. By which the 1st

petitioner has become the owner of the property. The petitioners 2 to 4 are his heirs. For more than 80 years the properties were mentioned to have been leased out to the tenants from the period of their forefathers. Admittedly the building is old building. As per Ex.P1 power of attorney deed the 1st petitioner and all his legal heirs who are the petitioners 2 to 4 are mentioned to have executed a power of attorney deed to the power agent one Vasudevan. After the formation of the deed the power of attorney agent was entrusted with the management of the property as per the deed.

9. Further the power of attorney holder was introduced to the tenants in the month of December 2014 and they were called to pay their rents of their respective premises to the power of attorney agent including the appellant. But the tenants continued to deposit the rent to the 1st petitioner. But he refused to receive it. Hence during March 2015 the power of attorney holder has called upon the tenants to deposit the rent including the appellant. Subsequently, all the tenants paid the rent to the power of attorney holder on 10.04.2015. But subsequent to that the petition for eviction of tenants including the appellant was preferred by the power of attorney holder on behalf of the landlords. At the time of filing the rent control petitions the petitioner has sought the permission of the court to conduct the proceeding on behalf of the landlord as agent. The same was permitted by the court prior to issuing of notice to the respondents and the same remained unchallenged all along the proceedings before the Rent Controller and till now.

10. The tenants including the appellant has placed their challenge on the power of attorney deed as the power of attorney holder was not given authority to file the petition and on the sole ground the rent control proceedings were sought to be dismissed. Apart from that it was the contention from all the tenants including the appellant was that the power of attorney deed itself is not a valid document and it is described as a sale agreement. Further it was also challenged that it was only an agreement for loan by some tenants. Though the petitions were filed against the tenants individually the property is one and same in which all the tenants are leased out with specific portion of the shop where they run their business. Hence the

contentions of all the tenants irrespective of each other does have impact on the other. Hence all the contentions raised were considered in common. In the circumstances the prime point for consideration in the appeal itself is that whether the order of trial court would be sustainable against all the tenants for demolition and reconstruction.

11. The 1st point for consideration is whether the petition could be maintainable which is filed by the power agent. For which this court would consider to extract the authority granted to the power agent by the landlords pertaining to the property as in the Ex.P1 the same is extracted as below; at page No.6 para No.

”...எங்கள் நால்வரினால் வயோதிகம் காரணமாகவும் கரூரிலேயே நிரந்தரமாக குடியிருந்து வருவதாலும் வாடகை வசூல் செய்வதிலும் கட்டிட வேலைகளை முன்னின்று கட்டுவதற்கும் மற்றும் விற்பனை சம்பந்தப்பட்ட காரியங்களை எங்களால் நேரில் இருந்து செய்து வர இயலாத காரணத்தால் இந்த ரத்து செய்ய இயலாத பொது அதிகாரப் பத்திரத்தை தங்களுக்கு எழுதிக் கொடுத்துள்ளோம்.”

at page No.7

”....இதனடியிற்கண்ட சொத்தை ஈரோடு மாநகராட்சியால் அங்கீகரிக்கப்பட்ட வரைபடத்தை கொண்டு இடித்து மாறுதல்கள் அபிவிருத்தி செய்யவும், வாடகைதாரர்கள் மீது கோர்ட்டு வழக்கு தொடர வக்கீல் வைத்து வழக்குகள் தொடரவும், எதிர் வழக்காடவும், வக்காலத்துக்களில் கையெழுத்து போடவும், சாட்சியம் அளிக்கவும், மேல்முறையீடு செய்யவும், பைசல் செய்யவும், இதனடியில் கண்ட சொத்து சம்பந்தப்பட்ட சகல சர்க்கார் அலுவலகங்களிலும் எங்களுக்காக ஆஜராகி கையொப்பம் செய்யவும் போன்ற இதனடியில்கண்ட சொத்து சம்பந்தப்பட்ட சகல காரியங்களையும் தாங்களே எங்களுக்காக செய்து வரவேண்டியது.”

12. The above portion of the power of attorney deed is considered vital with respect to the authority granted to the power of attorney holder Vasudevan by the landlords. Admittedly, the tenants had paid the rent to the power of attorney holder. The power of attorney holder has also collected the

rent. Under the above circumstances, the power of attorney holder could also become a person who would be covered under the definition of landlord as per section 2(6) of the Rent control Act.

13. Further Section 10(8) of the rent control act provides for eviction of tenants by the agent. This court would consider to extract **the legal implications of section 10(8) of Rent control Act as found in the Commentaries on the Tamilnadu Buildings Lease and Rent Control Act by V.N.Krishnamoorthy (VIth edition reprint 2009) at page Nos. 512 to 520** pertaining to the power agent filing the petition on behalf of the landlord.

14. Applicability of section 10(8) for the petitions preferred under section 14 of the rent control act.

- i. Eviction mentioned in section 10(8) cannot be confined to eviction under section 10 alone but also eviction under section 14 to 16 of the rent control act. (Syed Ibrahim vs. Sundaresan 1972 TNLJ 259 at 260)
- ii. Where the power of attorney holder gives an undertaking as required by section 14 the petition for demolition is maintainable. (Jameena Beevi vs Easwarlal Patel 1979 (2) MLJ 355 and 360)
- iii. Power of attorney executed by two co-owners empowering the agent to file the eviction petition. Other co-owners are joining as petitioners. Person appointing the agent or person nominated as the agent not disputing the power. Some of the co-owners are personally on record. While so, the tenant is not entitled to dispute the validity of the power of attorney. Any defect in the power of attorney would not materially affect the eviction petition. (Akbar Ali and four others vs Donlan Rodrigo and another, 2000-1-CTC-287).
- iv. **Categories of landlords:**

The person dealt with under the section can be divided into three categories.

- a. The person who owns the buildings as absolute owner.
 - b. A person who owns it as a co-owner along with another co-owner and other co-owners.
 - c. A person who acts on behalf or for benefit of the beneficial owner of the building such as agent, trustee or guardian. (Vasudevan vs Ramachandran 1980-TNLJ-106 and 108)
- v. Reading of section 10 would go to show that only one category of landlord mentioned in section 2(6) would come within the ambit of section 10(8) of the act viz., an agent who is collecting rent or entitled to collect rents. The other categories of persons who are under inclusive definition of section 2(6) would not come within section 10(8) (Mehboob Sheriff (decd.) and others vs. Abdul Khudoos and others, 1995 (1) MLJ 120).
- vi. Written consent when required under section 10(8). "Merely" therefore qualifies the extent of the power of the agent and where such power is limited only to receive the rent or entitled to receive the rent, such an agent cannot apply for eviction of the tenant unless he is armed with further powers in the shape of written consent of the landlord (Pahaljmal Khatumal vs. T.V.Bros., 1961 (1) MLJ 150 at 151).
- vii. Where the undertaking given by the power of attorney agent is one which satisfies the requirements of section 14(2)(b) of the Act and that such an undertaking binds the principal in view of the express recitals in the power of attorney and that no more undertaking was necessary from the landlords themselves and such an undertaking would bind the landlords (Jameema Beevi vs. Easwarlal Patel, 1979 (2) MLJ 355 at 360).

15. From conjoint reading of the above extracted portion and position of law and this court applied to the present appeal. Admittedly, the landlords

have not disputed the appointment of power agent at any point of time. Nor they questioned the initiation of proceedings before the court. Morefully, the power agent was given authority as extracted as above from Ex.P1 would show that the power agent was given authority to institute proceedings including demolition and reconstruction and even for to sell the property. From the reading of the power of attorney deed the power conferred to the power agent is wider in amplitude. Hence, the contentions that the power agent was not conferred the power to maintain the petition for eviction on the ground of demolition and reconstruction would in the considered view of the court in the given circumstances is not sustainable.

16. The nature of the power of attorney deed was challenged by the appellants and they also doubted the recitals and implications of the power of attorney deed and challenged the same that it was only a sale agreement or a loan agreement. Any defect in the power of attorney deed would have in the considered view of this court except for limited purpose pertaining to the authority of the power agent for the rest of the circumstances it is for the parties to the deed to decide as to the ingredients of the deed but not by the tenants. Hence the tenants challenging the terms agreed between the landlord or between the power agent would in the considered view of this court is not sustainable, as the same is to be decided between the parties who agree over the transactions. To put it further the tenants remain in the property only for the limited purpose for paying the rent and the tenants would not be in a position to expect the terms under which the landlord decides to deal with the property within the four corners of law. At the same time, the tenants are at liberty to challenge the same when it is legally sustainable. But in the circumstances in this petition except regarding the authority granted to the power agent the landlord would be at liberty to decide on the rest of the aspects subject to the rent control laws. Hence as per Ex.P1 deed only for the reason of grant of authority under the Ex.P1 to deal with the property by the landlords the petition in the considered view of this court filed by the landlords is considered as maintainable. Hence the finding rendered by the Rent Controller on this aspect is not found with any infirmity.

17. **Point No.2:**

For the filing of the rent control proceedings by the Radharukmaniammal the erstwhile landlord in RCOP 7/1979 for the relief of demolition and reconstruction which was dismissed by the Rent Controller. The same was upheld until the revision filed before the Hon'ble High Court. It is the contentions that the filing of the subsequent application for the same relief of demolition and reconstruction which was earlier dismissed is sought to be treated as the present petition is barred by the principles of resjudicata. The Rent Controller has rendered for the reason that any change in circumstances in filing the subsequent petition for the demolition and reconstruction would not stand as a barrier on the point of resjudicata.

18. The legal implications on section 19 rent control act is as follows page No. 654 to 662:

- i. Two important requisites must be present for applying this section. One is that there must be identity of issues in the two proceedings and the other is that the former proceeding must have been decided on the very issues which arise in the later proceedings (Srinivasan vs. Arumugham, 1994 LW 310 at 312)
- ii. It is very well known that in the doctrine of resjudicata no magic is involved but it is essentially a pragmatic principle which has to be applied on the facts and circumstances of each case. (R.J.Mehta vs. Prottam Singh, 1979 (2) MLJ 19 at 21).

19. The petition for eviction on the ground of demolition and reconstruction was dismissed by the Rent Controller /district munsif in RCOP 7/1979 to 11/1979 and 14/1979 pertaining to the respondents is on the ground of bonafide requirement. The petitioner in the petition in RCOP 7/1979 and in other petitions was Radharukmaniammal which was filed in the year 1979 i.e., prior to 34 years of filing this petition. The bonafide requirement of the landlord is an individual act which was not subsequently continued. But after the death of the Radharukmaniammal the 1st petitioner has become the

owner of the property and also the landlord. Later on he has initiated for steps for demolition and reconstruction by applying for plan. Further he has also paid with Rs.1,25,00,000/- and has executed an irrevocable power of attorney Ex.P1. The above all the circumstances would put this court to consider that the change in circumstances has taken place. Morefully, the appellants while deposing before this court has categorically admitted that the change in circumstances has taken place pertaining to the property. Hence, this court would consider that the finding of the Rent Controller that the petition is not barred by resjudicata is correct and this court holds that the petition is not barred due to principles of resjudicata due to the orders of the Rent Controller in RCOP 7/1979 to 11/1979 and in RCOP 14/1979.

20. Point No.3:

The contentions of the tenants including the appellants in common is that the landlords seeking for demolition is not a bona fide one. Further it is contented that the power of attorney agent was not authorized to seek for demolition on behalf of the landlords. It is also the contention that the power of attorney agent was not given authority for demolition and reconstruction. Again the nature of the power of attorney deed was disputed. It was also the contentions on the side of the appellants that the possession of the property is not with the landlord and cannot seek for eviction of tenants on the ground of demolition. Further the wherewithal of the landlord was also disputed. On the above grounds the order of the Rent Controller ordering eviction on the ground of demolition is sought to be set aside.

21. The contentions of the landlord represented by the power attorney agent is that the order of the Rent Controller was correct and mentioned that only on the bona fide grounds the order of demolition is mentioned to have been sought. Further it is submitted that the petition is maintainable and sought to dismiss the appeal. Before going into appraisal of the contentions on the both sides this court would find it appropriate to appraise the legal aspects of the petition for demolition filed by the power of attorney agent and the circumstances under which the landlord could seek for eviction on the ground of demolition and reconstruction.

22. **Landlords who can ask for demolition:**

“Where the attorney has the power to file an application without any further written consent by the landlord even in cases of eviction sought under section 14(1)(b) and is authorized to reconstruct, alter, remodel or renovate the landlady's building and to incur the necessary expenses for the purposes of engaging qualified workmen. This power given under the power of attorney, is enough to safely and reasonably conclude that the agent has been authorized to demolish the building and to reconstruct the same. It is common knowledge that reconstruction could not be done without demolition. (Jameena Beevi vs. Easwarlal Patel, 1979 (2) MLJ 355 at 359). In case the power of attorney agent gives an undertaking as required by section 14(2)(b) the petition for demolition is maintainable (Jameena Beevi vs. Easwarlal Patel, 1979 (2) MLJ 355 at 359).”

23. **Circumstances under which demolition can be sought:**

In *Vijaya Singh vs. Vijayalakshmi Ammal*, 1996 (2) CTC 586, the Supreme Court has laid down the following guidelines as to what are the relevant materials to be taken into account to find out whether requirement of the landlord is bona fide or not. The Supreme Court has held as-

- “(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;
- (3) The financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act.”

24. **Condition of the building:**

It is the settled position of law that in order to seek eviction of the tenant under section 14(1)(b) of the Act, it is not necessary that the building should be dangerous and dilapidated condition, requiring immediate demolition though it is necessary to find out the condition of the building. In a number of

decisions, it has been held that condition of the building is not so essential and even if the building may not be much dangerous, if it is shown that the building is bona fide required by the landlord for immediate purpose of demolition, eviction could be ordered. (See Kutlappan (died) vs. Civil Advocates Clerks' Association, 1997 (2) CTC 41; Saraswathiammal (died) vs. Mallikarjun Raja, 1997 (1) CTC 280; M/s.Mohammed & Sons vs. Abbadhai Jodhpurwala, 2000 (1) MLJ 747; Habibullah vs. Mohammed Sultan, 2004(2) CTC 270; Sherwood Educational Society vs. Abid Namazie, 1997 (1) LW 323; Ammaiyappa Transport vs. N.S.Rajulu, 2002(4) CTC 123).

25. Raising of funds:

In Venugopal vs. Karuppusami, 2006(2) CTC 615; 2006(3) MLJ 29, the Supreme Court has observed that,

“...In the instant case, we find that the property owned by the landlord, whatever may have been its value in the past, has acquired commercial value and, therefore, the landlord wishes to demolish the old single storey structure and to construct a multi-storeyed building which may fetch him higher rent, apart from serving his own needs. The landlord had already applied to the competent authorities and got the plans approved. Taking into consideration all these reasons, we are convinced that the landlord bona fide intends to demolish the old building and to construct a new one. Raising funds for erecting a structure in a commercial centre is not at all difficult when a large number of builders, financiers as well as banks are willing to advance funds to erect new structures in commercial areas.”

26. Relevant test -

“Motive of landlord with regard to demolition and reconstruction is wholly irrelevant, if intention of landlord is proved to be genuine and not spurious or suspicious, landlord is entitled to get order of eviction under this section. Irrespective of age and condition of building the landlord is entitled to evict the tenant if petition for demolition and reconstruction is relevant

factor to test the bona fides of the landlord. (S.Thangaswamy vs. R.Vinayakamurthy, 1996 (2) CTC 105 = 1996 (2) LW 534).

27. In a petition for eviction under section 14(1)(b), the landlord makes use of the building temporarily by letting it out. It is not a reason to doubt the bona fides of the landlord. Similarly, plea by the tenant that the landlady has gone into the box only in one case, in a batch of cases and let in evidence and that she has not been examined in all the cases and therefore bona fides are not proved, held, unsustainable (Venugopal and others vs. Fathima Beevi and another, 1996 (2) LW 772).

28. In a petition for eviction under section 14(1)(b), it is not necessary that the landlord alone should invest the amount. Financial assistance can be availed of from other persons. Licence or sanctioned plan may lapse pending the proceedings in court. It is not necessary that the landlord should be renewing it periodically (Ammal Pillai and others vs. Varadarajulu Complex etc., 1997 (1) LW 364 = 1997 1 MLJ-626).

29. In a petition for eviction on the ground of demolition and reconstruction, no court can fix any limit in respect of the age and condition of the building. Factors like locality in which the building is situate, definite advantage to landlord if new building is put up with modern amenity and developing nature of locality are also relevant considerations. Regarding the means of the landlord, the landlord is not expected to produce entire money in court and bona fides are established if the landlord enters into an agreement with a financier. (S.Kuttappan and another vs. Civil Advocates Clerks' Association, 1997 (2) CTC 41 = 1998 (1) MLJ 260 = 1998 (1) LW 53).

30. The basic criteria to order eviction is "bona fide" requirement. Bona fides can be assessed from available circumstances in each case. The conduct of landlady in refusing to receive rents leading to filing of petition to deposit rents into court and landlady filing a second eviction petition when one sought for under the ground of demolition and reconstruction filed earlier was pending and further eviction petition filed on the ground of sub-letting and acts of waste and change in user being dismissed are all indicating that bona fides was lacking in requirement. Bona fides not satisfactorily proved. Reliance of courts

below on letter of tenant to indicate bona fides of landlady held improper. Eviction order set aside. (Kolla Ravindra (alias) K. Ravi vs. Suseela Baid, 2007 (4) CTC 786 : 2007 (5) MLJ 1372).

31. In support of the contentions for demolition and reconstruction on the side of the respondents the Judgment of the Hon'ble High Court decided in Harikrishnan Daga represented by his LRs vs. Loknath Rao dated 07.08.2013 was relied on.

32. Whereas on the side of the appellant the main challenge was the power of attorney deed and it was the contention that the power of attorney deed was not a bona fide document. In support the Judgment of Hon'ble Supreme Court in 2011 (8) MLJ 43 SC were relied on.

33. From the submissions of the appellants, from the rival submissions of the respondents and from the appraisal of the legal position this court would consider that for claiming demolition and reconstruction by the landlord primarily it should be a bona fide one. The demolition and reconstruction should not be sought only with intention to vacate the tenants. Now in this petition this court would consider whether the landlords has acted in a way only with intention to evict the tenants have created the power of attorney deed was considered. Before looking into the aspects of the power of attorney deed this court also considered that as a rent control appellate tribunal the scope of looking into the validity of the power of attorney deed or nature of the power of attorney deed in the considered view of this court would not come within the ambit of this court. At the same time, the landlord who is the owner of the property comes forward to or think fit to deal with his property the way which he decides. The tenants cannot expect the landlord to act in a particular way in dealing with the property by the landlord. The tenants are in occupation of the property only for the payment of rent. It could be reasonably presumed that the landlord let out the property to the tenants for the ultimate benefit of himself for having income in the form of rent. At times, every need of the landlord cannot be met out only from the rents which he collects from the property. Hence he would be in a position either he likes or dislikes nor he wishes to take care of his personal needs he would be in a position to deal with

the property which as an owner he is always competent to do subject to the laws which governs the act.

34. Likewise, the tenants in a business concerns are the persons who are probably the bread winners of their family. Who puts all the efforts for years together in running their business must have taken much care and pain in developing their business and have created bond over the place in which they have been occupied. Likewise, the public at large might also know the building not for the sake of the building but for the identity given by the business which is manned by tenants. So pertaining to a property which is let out neither landlord nor the tenant is less important. At the same time, the tenants have the choice to run their business in the alternative place but the landlord cannot be expected to do that when he has no other property nor he can look for any other better means from any other source. The tenants if they were the better persons in their respective business instead of the place they are given the importance for the quality in their business which they perform. Which at no point of time would cause no impediment for them in running their business in alternative place if they choose. In these circumstances, the welfare of the landlord in the present commercial world to some extent stands in the higher pedestal. Even though it should be within the purport of law.

35. In general, a petition for demolition and reconstruction should be weighed and viewed in the circumstances of each case. Coming to the present petition, the Rent Controller has ordered for the demolition and reconstruction as sought for by the landlord. As already discussed the case of a demolition and reconstruction should be validly decided on fulfilling of three ingredients.

- (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;
- (3) The financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act.

36. The prime point for consideration is that the demolition and reconstruction should not have been sought only with intention to evict the

tenants to fulfill the aspect of bona fides of the landlord. During the month of November 2014 the landlord enters into a power of attorney deed and receives Rs.1,25,00,000/- from the power of attorney agent for his personal needs and introduces the power of attorney agent to the tenants. To whom the tenants initially relegates to give the rent. Subsequently, after the issuance of notice deposits the rent with the power of attorney agent. The landlord also gives the power to the power agent for the demolition and reconstruction of the building. To some extent the wordings of the power of attorney deed was challenged by the tenant that the power of attorney deed was executed only to effect repair and renovation of the building. Later on the building was sought to be demolished by the power agent on behalf of the landlord. During the proceedings before the Rent Controller nor before this forum the landlord has never come forward to challenge the same. It was also the contention that the power of attorney deed is not a power of attorney deed and it is only a sale agreement. But when coming to the limited scope of the rent control laws pertaining to the power granted to the power agent by the landlord the deed is clear to the extent that the power of attorney agent would collect the rent and can renovate and develop the building and also was empowered to institute proceedings before the court and for all other acts. Hence, from the wordings of the power of attorney deed only because the landlord has entered into the deed with the power of attorney agent after receiving the amount, the same could not be treated as lack of bona fides. The landlord as the owner of the building has let out the property for several decades to the tenants and who are in possession of the property by renovating the building according to their needs even without the prior permission of the landlords for payment of rent for sum of Rs.2150/-. Admittedly the property is located in the prime commercial location and which is also a building of more than 80 years. Except the total sum of Rs.18700/- from all the 6 tenants the landlord could not expect any better source of income from the leased out premises. Hence under these circumstances, the landlord going for a next step to develop his property or to have a better source of income or better income from dealing with the property could not be construed as lack of bona fides.

37. The next ground which requires by the landlord for seeking the demolition and reconstruction is the age of the building and the financial position of the landlord. Already the age of the building though it is mentioned as a point but later on the position of law regarding the age of the building is diluted. Hence, it do not fetches much importance. Though it be so the building which is sought to be demolished is more than 80 years old building. Hence, this court considers that the age of the building do not stand as a barrier in considering the order of demolition as in the petition in hand.

38. The financial source of the landlord is disputed. For which this court would consider to reproduce the Judgment of the Hon'ble Supreme Court as follows;

In Venugopal vs. Karuppusami, 2006(2) CTC 615;

2006(3) MLJ 29, the Supreme Court has observed that,

“...In the instant case, we find that the property owned by the landlord, whatever may have been its value in the past, has acquired commercial value and, therefore, the landlord wishes to demolish the old single storey structure and to construct a multi-storeyed building which may fetch him higher rent, apart from serving his own needs. The landlord had already applied to the competent authorities and got the plans approved. Taking into consideration all these reasons, we are convinced that the landlord bona fide intends to demolish the old building and to construct a new one. Raising funds for erecting a structure in a commercial centre is not at all difficult when a large number of builders, financiers as well as banks are willing to advance funds to erect new structures in commercial areas.”

39. The Hon'ble Supreme court had held that for the property in commercial area raising of funds for reconstruct or restructuring the building by the landlord would not be a great barrier in the present commercial world. Where most commercial activities are taken care of even by the corporate financial service or by the bank. Hence, that could not be a circumstance for the landlord from raising of funds to construct

the building. This court considers that the order of the Rent Controller ordering for demolition under section 14(1)(b) of rent control act and in the considered view of this court the same is not found with any infirmity and the same is upheld.

40. Point No.4:

It is the point on the side of the respondents that the Rent Controller dismissing the petition for wilful default was not correct. But no cross objections were filed. Later on the rent amounts were deposited. The same was also received by the power of attorney agent for the landlord. Hence, this court would consider that, that cannot be treated as an act of wilful default as such. Further the landlord has also not preferred specific appeal toward the same. Hence, in the appeal looking into finding of the Rent Controller on the point of wilful default in the considered view of the court is that, the same could not be the subject matter of this appeal.

41. Point No.5:

Since the order of the Rent Controller is not found with infirmity, the appeal is liable to be dismissed.

42. In the result, the appeal is dismissed, thereby the Fair and Final order of the Rent Controller-cum-I Additional District Munsif, Erode in RCOP.No.16/2015, dated 20.01.2017 is hereby confirmed. No costs.

Dictated directly to the steno typist, transcribed and typed by her, corrected and pronounced by me in the open court this the 29th day of November 2019.

sd/-K.Hariharan
PRINCIPAL SUBORDINATE JUDGE,
ERODE

List of Exhibits and witnesses

(Both sides .. Nil..)

sd/-K.Hariharan
PSJ., Erode.

