

PETITIONER:
B. KANDASAMY REDDIAR

Vs.

RESPONDENT:
O. GOMATHI AMMAL

DATE OF JUDGMENT: 22/09/1998

BENCH:
M.K.MUKHERJEE, S.SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

M.K. MUKHERJEE, J.

Leave granted in all the three petitions.

2.Gomathi Ammal, the respondent in these appeals, is the owner of a three-storied building in the city of Nagerkoil. In its first and second floors she runs a lodging house; and the rooms in the ground floor are occupied by different persons, including the appellants herein, as tenants. In the year 1982, she filed separate petitions before the Rent Controller for eviction of the three appellants and two others, invoking Sections 10(3)(c) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ['Act' for short], which entitle a landlord to evict a tenant for his requirement of additional accommodation and for immediate demolition of the building and erection of a new one, respectively.

3.The Rent Controller dismissed the petitions by a common judgment and, aggrieved thereby, the respondent preferred appeals which were allowed by the appellate authority by reversing the adverse findings recorded by the Rent Controller on both the grounds canvassed by the respondent for eviction. Thereafter one of the tenants moved the High Court by filing a revision petition which was summarily dismissed. The aggrieved tenant then filed a special leave petition before this Court contending that the appellate authority failed to appreciate that the grounds for eviction under Sections 10(3)(c) and 14(1)(b) of the Act were distinct and mutually exclusive. Accepting the above contention this Court set aside the eviction order and remitted the matter to the appellate authority for reconsideration on the available evidence. In the meantime, the other tenants including the appellants, had also filed revision petition; and in view of the order of this Court, the High Court passed similar directions therein. After rehearing, the appellate authority allowed the three appeals (out of the five) preferred by the respondent against Rasul Ahmed [appellant in the appeal arising out of SLP (c) No. 1511 of 1997]. G. Sastha [appellant in the appeal arising out of SLP (c) No. 191 of 1998] and co-optex, tenants of door Nos. 145, 146 and 143 respectively. The other two

appeals which were preferred against B. kandasamy Reddiar [the appellant in the appeal arising out of SLF (c) No. 20181 of 1997] and one Thiru Appollos, who occupied door Nos. 147 and 147A respectively, were dismissed. Against the above decision of the appellate authority appellants G. Sastha and rasul Ahmed filed two revision petitions and the respondent in her turn, filed two similar petitions against the dismissal of her other two appeals. Co-optex, however, did not file any appeal and vacated the premises in its occupation. By a common judgment the High Court allowed the revision petitions of the respondent and dismissed those of the appellants Rasul Ahmed and G. Sastha. The above judgment is under challenge in these appeals.

In disposing of the revision petitions in the manner indicated above the High Court firstly observed :-

"Both the Rent Controller and the Appellate Authority have held that eviction cannot be had under Section 14(1)(b) of the Act. The correctness of the said finding also cannot be doubted since the landlady does not intend to demolish the building. That finding of the Rent controller as well as the Appellate Authority, therefore, does not call for any interference."

and then proceeded to consider whether the respondent was entitled to evict the appellants under Section 10(3)(c) of Act. It ultimately held that the claim of the respondent that she required additional accommodation for the purpose of running the lodging house was genuine.

5. Having heard the learned counsel for the appellants and the respondent we are of the view that the factual aspects of the case need not be gone into as these appeals must be allowed for the simple reason that in disposing of the revision petitions the High Court did not at all take into consideration the following proviso, which finds place under clause (e) of Section 10(3) and reads as under :-

"Provided that, in the case of an application under clause (c) the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord."

Apart from the fact that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation the consideration of the above proviso is mandatory, in the instant case it is all the more necessary in view of the admitted facts that the respondent has now taken possession of door No. 143, earlier occupied by Co-optex, and that she has also initiated execution proceeding for eviction of the tenant of door No. 147 A. As the mandatory requirement of the above quoted proviso has not at all been adverted to by the High Court in the light of the materials already on record and the above subsequent events we set aside the impugned judgment so far as it relates to the three appellants and remand the matter to it for fresh disposal of the three connected revision petitions in accordance with law and in the light of the observations made hereinbefore. Since the matter is long pending the High Court is requested to dispose of the above petitions as expeditiously as possible preferably within a period of six months from the date of communication of this order. There shall be no order as to costs.