
(1967) 07 MAD CK 0006
In the Madras High Court

A. Narasinga Rao and Another APPELLANT
Vs
The State of Madras and Others RESPONDENT

Date of Decision : 07-07-1967

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 3

Citation : (1967) 2 MLJ 622

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—This petition is filed by the owners of premises No. 1/1, Sydoji Lane Triplicane, Madras, for the issue of a writ of

mandamus directing the State of Madras and the Accommodation Controller to release the portion in the ground floor of the said premises No.

1/1, Sydoji Lane, occupied by the 3rd respondent The two petitioners, husband and wife, are the joint owners of the said premises. The premises

consists of two flats the ground floor portion being occupied by two tenants, one of whom is the State Government. The portion occupied by the

State Government was allotted by the State Government to the 3rd respondent R. Mathrubutham, who was employed as Upper Division Clerk in

the Central Control Organisation of the Postmaster-General's Office, Madras. On 27th August 1964, the petitioners applied to the Government

for release of the portion allotted by the Government to the 3rd respondent for their own personal occupation as the 2nd petitioner had undergone

an abdominal operation in the Vellore Mission Hospital and was not in a position to climb up the stairs. While this petition was pending, in

October, 1964 the 3rd respondent, the allottee, was transferred to Karur. On 22nd October, 1964, the petitioners brought the fact of transfer of

the 3rd respondent to the notice of the Government and prayed that that portion may be allotted to them, as it was no longer required by the 3rd respondent. The petitioners not getting any reply to their request again reminded the Government on 18th February, 1965. On 16th July, 1965, the Government rejected the application of the petitioners for release of the ground floor portion without assigning any reason. On 20th July, 1965, the Accommodation Controller granted the 3rd respondent time till the end of August, 1965 to vacate the premises. The order stated that no further time beyond 31st August, 1965, would be granted. Subsequently time was extended upto 30th September, 1965, for the 3rd respondent to vacate the premises. The 3rd respondent did not vacate the premises. On 14th October, 1965, the petitioner filed a fresh complaint to the Accommodation Controller bringing to his notice the fact that the 3rd respondent had not vacated the premises and when no action was taken, the petitioners caused a lawyer's notice to be served terminating the tenancy with effect from 31st January, 1966. On 17th January, 1966, the Deputy Secretary to Government, Home Department, sent a memorandum to the petitioners stating that, as the 3rd respondent has since been re-transferred to Madras City and had already joined duty in the Office of the Director of Audit and Accounts, there could be no objection to his retaining the house which stands allotted in his name. In the order it was mentioned that "the question of transfer of allotment of the house in the name of Akhilandam does not arise now." The legality of the order of the Government dated 17th January, 1966, permitting the 3rd respondent to retain the house which had been allotted in his name is questioned.

2. Section 3 of the Madras Buildings (Lease and Rent Control) Act XVIII of 1960 requires every landlord to give notice of the vacancy within seven days after the building falls vacant. If within seven days of the receipt of the notice, the Government or the authorised officer does not intimate the landlord in writing the building is required for the purpose specified in the section, the landlord shall be at liberty to let the building to any tenant or to occupy it himself. If the building is required for any of the purposes mentioned in the section and if notice is given within seven days from the date of the vacancy, the landlord is required under the Act to deliver possession to the allottee by the Government or by the authorised

officer. If the building is not required for any of the purposes mentioned in the section, the building cannot be occupied by the Government. The right to allot and occupy a building depriving the landlord of his right to possession can only be traced to the provisions of the Act and if the conditions are not satisfied, the Government will not be entitled to deprive the landlord of his possession. This position has been clearly stated by this Court in W.P. No. 4675 of 1965 and in *Menghraj Thekurdas Vs. The Accommodation Controller, Madras*, . When the 3rd respondent was transferred to Karur in October, 1964, the necessity for the allottee to occupy the building came to an end. The occupation of the Government as already pointed out, can only be when the building is required for the purpose of the State or Central Government or as any local authority or any public institution under the control of any such Government or for the occupation of any officer of such Government. If the officer of the Government had been transferred and there is nothing to indicate that the Government or any other authority required the building, the necessity was no longer in existence and the Government would not be entitled to continue to deprive the landlord of his right to possession. It may be that a reasonable time is permissible for the officer to vacate the building and to make his own arrangements. In this case, though the 3rd respondent was transferred in October, 1964 and the fact brought to the notice of the Government in November, 1964, and reminder issued in February, 1965, nothing was done till the petitioners application was rejected on 16th July, 1965. When the petitioner's application was rejected, it was nine months since the 3rd respondent had left Madras for Karur. There could have been no justification at all for the Government to deprive the landlord of their possession, as the officer was away from Madras for over nine months. On 20th July, 1965, the Accommodation Controller extended the time for the 3rd respondent for vacating the premises until August, 1965. Time was further extended upto 30th September, 1965. I am unable to see how this extension of time could be justified under the provisions of the Act. The occupation of the premises by the Government after the transfer of the 3rd respondent could not be justified. There can be no justification at all for the Government directing that the 3rd respondent's allotment of the premises should continue as he had been re-transferred to Madras after a period of 14 months. The power to

requisition and to occupy a building is restricted and can only be exercised if required for the purposes mentioned in the sub-section. As none of

the requirements was in existence, the continued possession of the Government was illegal. It is no justification to say that after 14 months, the

officer had been re-transferred and his allotment could be continued. The possession of the Government for the 14 months from October, 1964

having been not justified, the impugned order cannot be supported. Following the decisions in W.P. No. 4675 of 1965 and Menghraj Thekurdas

Vs. The Accommodation Controller, Madras, , I direct the respondents to put the petitioners in possession of the premises within one month from

this date.

3. The petition is allowed with costs against the respondents.

4. Counsel's Fee Rs. 200.