

(1977) 08 MAD CK 0030
In the Madras High Court
Case No : C.R.P. No. 248 of 1975

Akilandammal and others

APPELLANT

Vs

S.C. Shah

RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(a)(iii), 2(6), 25, 27, 5

Citation : (1977) 08 MAD CK 0030

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Advocate : V. Srinivasan, for the Appellant; K.P. Unnikrishnan and N.V. Subramaniam, for the Respondent

Judgement

Varadarajan, J.—The legal representatives of the landlord Vadivelu Mudaliar who died on 8th August, 1971 are the petitioners herein. Vadivelu Mudaliar filed a petition under S.10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in January, 1971 for evicting the respondent, S. C. Shah, from four rooms and two halls in the first-floor and four rooms and two halls in the ground-floor of premises No. 9, Bunder Street, George Town, Madras, on the ground that he was carrying on business as printers under the name and style of C.V.R. Press at No. 55, Bunder Street, George Town, Madras occupied as a tenant and that he required the premises in question bona fide for his own business purpose. He had alleged in the eviction petition that he does not own any non-residential building in the city, that the landlord of premises No 55, Bunder Street, was giving him trouble and had asked him to vacate and that the portion in his occupation at No. 55, bunder Street was not sufficient or convenient for his present need and his expanding business. Vadivelu Mudaliar was only a Chief tenant of premises No. 9, Bunder Street and it was not disputed that he was occupying No. 55. Bunder Street only as a tenant. The respondent was sued in the eviction petition in his individual capacity as S. C. Shah. The petition for eviction was opposed by the respondent who contended that he is not a tenant of

Vadivelu Mudaliar in his individual capacity, that the firm of Messrs S.C. Shah, carrying on business in partnership is the tenant and the petition filed against the respondent in his individual capacity is not maintainable. The respondent further contended that Vadivelu Mudaliar, the Chief tenant of the building, occupying another building as a tenant is not entitled to evict him under the provisions of S. 10(3)(a)(iii) of the Act. The respondent denied the allegation made in the eviction petition that the portion occupied by Vadivelu Mudaliar in No. 55, Bunder Street was not sufficient or convenient for his present needs and expanding business and that his landlord was giving him trouble. The respondent contended that Vadivelu Mudaliar's request was not bona fide and that he had been letting out portions of premises No. 55, Bunder Street at enhanced rent every time when vacancy arose, that the original rent of Rs. 125/- per mensem for the portion occupied by the respondent in premises No. 9, Bunder Street, had been raised from time to time to the present rent of Rs. 200/- per mensem and that the aim of Vadivelu Mudaliar was only to get enhanced rent of Rs. 300/- per mensem. The respondent thus contended that the requirement of Vadivelu Mudaliar was not bona fide.

2. As already stated, Vadivelu Mudaliar died on 8th August, 1971. The petitioners herein filed I.A. No. 377 of 1972 for being brought on record as the legal representatives of Vadivelu Mudaliar on 28th August, 1971 and they were added as his legal representatives in that application by an order, dated 21st November, 1973. In that petition it was alleged by the petitioners that C.V.R. Press business for which the petition for eviction, was filed by Vadivelu Mudaliar against the respondent is a joint family business of Vadivelu Mudaliar and his two sons and that the sons are carrying on the business even after the death of Vadivelu Mudaliar and are, therefore, entitled to continue the eviction petition. In the counter-affidavit filed by the respondent in that application, there was no specific denial of the allegation made in the affidavit filed in support of that application that C.V.R. Press business for which the eviction petition was filed was a joint family business of Vadivelu Mudaliar and his sons and that the sons were carrying on the family business even after the death of Vadivelu Mudaliar, but it was contended by the respondent that the said allegations made in paragraphs 2 and 3 of the affidavit were not correct. The Rent Controller allowed the petition by his order observing "that since the present petitioners had interest in the business which the petitioner carried on at the time when he died, the present petitioners are entitled to continue the proceedings as the legal representatives of the deceased petitioner, Hence it cannot be said that the claim of the deceased petitioner was personal". Subsequent to the addition of the petitioners as the legal representatives of the deceased Vadivelu Mudaliar, the respondent filed an additional counter contending that the petition for eviction was filed for Vadivelu Mudaliar's own occupation for his business purpose and the cause of action does not survive to the petitioners herein and the eviction petition has, therefore, to be dismissed.

3. The respondent trotted out somewhat a new case during the trial by staling in

his evidence that the portion from which he was sought to be evicted was not in a sound condition and that it was not possible to run a printing press business in that portion. That case for which no plea was raised in the counter statement had been rejected by the Rent Controller.

4. The Rent Controller found that the contention that the firm S. C. Shah was the tenant was not acceptable. In coming to this conclusion he took into consideration the notices. Exs. P.8 and P.9, which were exchanged between Vadivelu Mudaliar and the respondent. Vadivelu Mudaliar had by the notice (Ex. P.8) terminated the tenancy of S.C. Shah and called upon him to vacate. In the reply notice Ex.B9 it was admitted clearly that Sri S.C. Shah (the individual) was in occupation of the portion of premises No. 9, Bunder Street, as Vadivelu Mudaliar's tenant, and it was stated that he was originally paying a rent of Rs. 125/- per mensem. It was not specifically contended in that reply notice that the firm M/s S. C. Shah was the tenant and not the individual S. C. Shah.

5. The Rent Controller found that the requirement was for the partnership business of the deceased Vadivelu Mudaliar and his sons and that S.27 of the Tamil Nadu Buildings (Lease and Rent Control) Act. 1960, applied and the legal representatives were entitled to continue the petition for eviction. He thus held that the cause of action had survived to the remaining partners of the firm on the death of the Vadivelu Mudaliar who alone had filed the eviction petition.

6. The evidence of R W 1, the respondent, that there was demand for enhanced rent was not accepted and the Rent Controller held that the requirement was bona fide and he ordered eviction.

7. But on appeal, the Appellate Authority found that the petitioners had not chosen to produce the counterfoils of the rent receipts to show that the tenancy was only in favour of the individual S. C. Shah and not in favour of the firm of Messrs S. C. Shah. He drew adverse inference from the fact that the counterfoils of rent receipts had not been produced by the petitioners and held that the tenancy was in favour of the firm of Messrs. S. C. Shah and not In favour of the individual S. C. Shah and that the eviction petition filed against the individual S. C. Shah was not maintainable. On the other question of survival of the cause of action, the Appellate Authority observed that the eviction petition proceeded on the basis that C.V.R. Press business is the individual business of deceased Vadivelu Mudaliar, and that having regard to that fact and the addition of the widow of Vadivelu Mudaliar also as the legal representative along with the two sons who are said to behaving interest in the business, it is clear that the requirement is not that of the partners alone but was also of the widow who was not a partner. The Appellate Authority relied upon the decision in Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, an I held that the cause of action did not survive to the petitioner herein The Appellate Authority found that the landlords of premises No. 55, Bunder street had not asked Vadivelu Mudaliar to vacate, but on the other hand, the notice, dt. 28th February, 1973 (Ex. P 1) issued by the previous owners of premises No 55, Bunder Street had asked the petitioners

herein only to attorn to the purchasers of that building from them and not to vacate the premises. The Appellate Authority further found that the building bearing door No 9, Bunder Street did not belong to the petitioners and they could not, therefore, be heard to contend that they are occupying rented premises and they want to occupy their own premises. For these two reasons, the Appellate Authority found that the requirement of the building by the petitioners was not bona fide. The Appellate Authority accordingly allowed the appeal and dismissed the petition for eviction.

8. The finding of the Appellate Authority that the firm of M/s S. C Shah is the tenant and not the individual S.C. Shah and that the petition for eviction filed against the individual S. C. Shah is not maintainable is perverse. The Appellate Authority wrongly cast the burden of establishing that the firm is not the tenant of the petitioner while the contention has been raised only by the respondent. The Appellate Authority erred in drawing an adverse inference against the petitioners from the non-production of the counterfoils of the rent receipts, for getting the fact that if rent receipts had been issued and counterfoils were in the possession of the petitioners, counterfoils must have been in the possession of the respondent and they have not been produced by him to show that the receipts had been issued only to the firm of M/s. SC Shah and not to the individual. The Appellate Authority erred in not advertng to the notices, Exs. P.8 and P 9 which had been taken into consideration by the Rent Controller in coming to the conclusion that the tenancy was in favour of the individual and not in favour of the firm. As already stated, by the notice. Ex. P8 Vadivelu Mudaliar has terminated the tenancy of S.C Shah on the basis that he alone was the tenant. The respondent has clearly admitted in the reply notice, Ex. P.9 sent through his lawyers that Sri S.C. Shah, which would mean only the individual, was the tenant and he was paying a rent of Rs. 125/- per mensem for the portion originally The respondent had not contended in that reply notice that the tenancy was in favour of the firm and that the notice of termination of tenancy as though the individual S.C. Shah was the tenant was not valid in law. The conclusion of the Rent Controller that the individual S.C. Shah was the tenant is based on sufficient materials, viz. Exs. P.8 and P.9 and the Appellate Authority grievously erred in not referring to these two notices in its judgment and drawing the adverse inference against the petitioners' firm from the non production of the counterfoils of rent receipts and holding that the tenancy was in favour of Messrs. S.C. Shah and not in favour of the individual. In these circumstances, I am of the opinion that the finding of the Appellate Authority that the tenancy was in favour of the firm and not of the individual is unsustainable and that the Rent Controller was justified in holding that the tenancy was in favour of the individual.

9. No doubt, the petition proceeds on the basis that C.V. R. Press business is the business of the deceased Vadivelu Mudaliar. But it could not be stated that he did not expect to die before the petition was disposed of by the Rent Controller. The income tax return for the year ending 31st March, 1970 (Ex P.3 series) shows that C.V. Rathinam and C.V. Swaminathan who are two of the three persons

impleaded as the legal representatives of Vadivelu Mudaliar also were partners of C.V.R. Press business along with Vadivelu Mudaliar, The shares of each of the three partners is mentioned at 1/3rd. Non doubt, Rathnam and Swaminathan are stated in that return to be entitled to certain sums as bonus and salary in addition to their shares of profits in the business. The shares of the three persons are mentioned as Rs. 7,90/-, Rs. 7,90/-, and Rs. 7,906/-. It is not possible to agree with the learned counsel for the respondent that C.V. Rathnam and C.V. Swaminathan are only employees of the firm merely because they have been shown in that income tax return to be entitled to bonus and salary in addition to their shares of profits in the business. The return and the assessment order passed (hereon would show that even in 1970 Rathnam and Swaminathan were partners of C.V.R. Press business along with their father. Therefore, the case of Rathnam and Swaminathan in the affidavit filed in support of I.A. No. 377 of 1972 which had been filed for being brought on record as the legal representatives of Vadivelu Mudaliar along with their mother that the business was the joint family business of Vadivelu Mudaliar and his sons and that they the sons were continuing the business even after the death of Vadivelu Mudaliar was not an afterthought. In these circumstances, I agree with the Rent Controller that C.V.R Press business was the joint family business of the deceased Vadivelu Mudaliar and his two sons, C.V. Rathnam and C.V. Swaminathan and that the two sons were carrying on the business even after the death of Vadivelu Mudaliar. The mere fact that the widow of Vadivelu Mudaliar who could not be stated to have been having any interest in the business as a partner was also added as the legal representative of the deceased, would not have the effect of Rathnam and Swaminathan ceasing; to be the partners interested in the joint family business of C.V.R. Press. The Appellate Authority has not given any valid reason for differing from the conclusion of the Rent Controller, that the requirement was bona fide. The Rent Controller had rejected the evidence of R W 1 that there was any demand for enhanced rent and held that the requirement was bona fide. The Appellate Authority has not dealt with this aspect of the case. I do not find any reason to differ from the Rent Controller that the oral evidence of R.W.1, who, as already stated had trotted out a new case during the trial that the portion in his occupation is not suitable for running the printing press, is not acceptable. The Appellate Authority had rested its finding on the question of the cause of action not surviving to the petitioners on the decision of the Supreme Court in Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, mentioned above. There, the learned Judges observe thus:

"The requirement pleaded in the ejectment application and on which the plaintiff h(sic)s founded his right to relief is his requirement, or to use an expression which will effectively bung out the real point, his personal requirement. If the ejectment application succeeds we will forget for a moment that the plaintiff is dead-the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application by the lessor a personal requirement of the

plaintiff. That the members of his family must reside with him is his requirement, not theirs. Such a personal cause of action must perish with the plaintiff."

This decision has been overruled by a larger Bench of the Supreme Court in *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, . In that case, the original plaintiff had filed the application for eviction under S. 14(I)(e) of the Delhi Rent Control Act, 1958. That application was dismissed in the first instance by the Additional Rent Controller, Delhi, on the ground that the notice to quit was not valid. The plaintiff filed on appeal, but died during its pendency, and his widow, son and two married daughters and two children of the deceased daughter were allowed to be substituted by the Rent Control Tribunal as petitioners. There was a remand by the Tribunal and after remand, the Additional Rent Controller held that some of the substituted persons require the premises bona fide for their occupation. The tenant's appeal to the Tribunal failed. The High Court of Delhi on a further appeal by the tenant took the view that the right to sue did not survive to the heirs of the plaintiff and on that ground it dismissed the ejectment application. The learned Judges of the Supreme Court have observed in the suit subsequent decision thus:

"If the law permitted the eviction of the tenant for the requirement of the landlord for occupation as a residence for himself and the members of his family", then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement for the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family."

However, the application for eviction was dismissed by the Supreme Court also on the ground that after the death of the original plaintiff a new partnership came into existence and one of his sons Shantilal who was a partner earlier was taken as a partner in the new partnership along with Thakordas's another son and some outsiders were also taken as partners in the new partnership. In the present case, the joint family C V.R. Press business continued even after the death of Vadivelu Mudaliar and his two sons, C.V. Rathnam and C.V. Swaminathan are continuing that business and no stranger has been taken in as a partner and the old joint family business did not come to an end on the death of Vadivelu Mudaliar and no new partnership business has come into existence after his death. The requirement was for the joint family C.V.R. Press business and it continued even after the death of Vadivelu Mudaliar, and the cause of action has, therefore, survived to Vadivelu Mudaliar's sons, Rathnam and Swaminathan. The mere fact that Vadivelu Mudaliar's widow also has been added as his legal representative along with his two sons does not alter the position. In these circumstances, I am of the opinion that the finding of the

Appellate Authority on all the three points is perverse and could not be sustained. Therefore, it is no possible to agree with the learned counsel for the respondent that this court sitting in revision under S. 5 of the Act is not entitled to canvass the correctness of the finding of the Appellate Authority on the question of fact, viz., whether the requirement of the petitioners is bona fide and come to a different conclusion. The finding being perverse and not supported by the evidence on record, it is open to this court to call for records and examine the records relating to the order passed under S 25 of the Act and consider the legality, regularity and propriety of such order and modify annul, reverse or remit the matter for reconsideration.

10. There is no substance in the other plea raised before the Appellate Authority and reiterated before me that Vadivelu Mudaliar having been a tenant of both the premises was not entitled to file a petition for eviction under S.10(3)(a)(iii) of the Act on the ground that he was not the owner of premises No. 9, Bunder Street, from a portion of which the respondent is sought to be evicted. S. 10(3) (a)(iii) does not lay down that the building from which the tenant is sought to be evicted under the provisions of that Act must belong to the landlord. It is enough if the petitioner seeking to evict a tenant from the building satisfied the requirement of the definition of "landlord" in S.2(6) of the Act. Vadivelu Mudaliar satisfied the requirement of S.2(6) of the Act and, was therefore, entitled to file the petition for eviction under S.10(3)(a)(iii) of the Act. In the result, the Civil Revision Petition is allowed with costs. The judgment and decree of the Appellate Authority are set aside and the order and decree of the Rent Controller are restored. The respondent will have three months time from this date to vacate.