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**(1966) 12 MAD CK 0030**

**In the Madras High Court**

**Case No : Civil Revision Petition No. 108 of 1965**

Anandhayee Ammal

APPELLANT

Vs

S.M. Khaja and Co., by Partner, Seedi Mohamed

RESPONDENT

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**Date of Decision : 15-12-1966**

**Acts Referred:**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)

**Citation : (1968) ILR (Mad) 284**

**Hon'ble Judges : Ramaprasada Rao, J**

**Bench : Single Bench**

**Advocate : K. Muthuswami Chettiar and O. Radhakrishnan, for the Appellant; V. Srinivasa Iyer, for K. Venkataraman, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Ramaprasada Rao, J.—The landlady is the Petitioner before me. She applied for eviction on the ground that she required her only "premises, No. 68, Linghi Chetty Street, Madras, both for residential and non-residential purposes. The need for residential purposes is purely personal to her and the need for non-residential purposes is for the purpose of her son, who is carrying on a chemists and druggists shop at Tirukazhikundram, to open up a branch herein at Madras in the suit premises. The premises in question is admittedly a premises which is being used both for residential and non-residential purposes. In fact, the Respondent himself admits that the premises is, being used for residential purposes as well and that he is carrying on a business therein. The Petitioner examined herself and her son. The Petitioner would state that she requires this premises for her own use, but she would not categorically state that the premises is also required for non-residential purposes for her son. But the son who went into the box as P.W. 2 would state that he intends setting up a branch of his chemists and druggists shop at Madras. The Respondent-tenant objected to this petition on two grounds, one that the requirement is not bona fide, and, secondly, the petition is motivated because the landlady was from time to time

increasing the rent and, since the tenant failed to respond to a call for a further increase in rent, this petition has been filed.

2. The learned Rent Controller, who went into the question, held on the question of bona fides that the claim of the Petitioner is not bona fide. He mainly rested his conclusions on the demands for increased rent made in the year 1958 and presumed that the intention of the landlady in instituting this action can also be presumed to be for purposes of obtaining an increased rent. The appellate authority again rested its conclusions on a consideration of exhibits R-3 and R-4, which were the notices exchanged between the parties in connection with the increase of rent. The appellate authority is also of the opinion that exhibit R-3 was issued only with the ulterior object of increasing the rent. The appellate authority continues to observe the moment that object was fulfilled, the Petitioner kept quiet. She has resumed her attack again in the present petition because a few years have elapsed and she felt that she would be entitled to a further increase in rent.

3. The same contentions are pressed before me by Mr. Srinivasa Iyer, on behalf of the tenant. Mr. Srinivasa Iyer urges that the petition is not only falling short of bona fides on the part of the Petitioner, but is *ex facie mala fide* because it is only a ruse or an instrument to secure a higher rent. He also adds that the son of the Petitioner, who is admittedly carrying on a business at Tirukazhikundram, and not in the city, cannot u/s 10 (3) (a) (iii) of the Madras Buildings (Lease and Rent Control) Act XVIII of 1960 ask for possession of the building from the tenant in the circumstances stated above. He also states that the requirement of the premises for purposes of the sons' business is a myth.

4. It has been repeatedly held by our Courts, the decisions to which I would presently refer, that in case a landlord or landlady requires the premises of his or her own for his or her own occupation, the question of bona fides is alien for consideration and need not at all be gone into unless there are compelling circumstances to disbelieve the version of the landlord or the landlady, as the case may be, totally. I am not able to see such compelling reasons in this case so as to brush aside the request of the landlady for her only house in the city for her own residence. The question of bona fides no doubt is a subjective element. But even in finding out the truth of such a subjective element, we could safely sift the evidence on record to find out whether it is a totally mala fide claim on the part of the Petitioner concerned. Here, the Petitioner is a lady aged about 77 years, who seeks to reside in her own premises at that age at least amidst her relatives, and particularly her other sons who are in Madras and her daughter, who is also in Boyapuram. It does not appear to me to be a very strange request on the part of the 77 year old lady to come over and permanently stay in the midst of her relations and particularly when her first son who is in Tirukazhikundram intends to open a branch of the chemists and druggists shop at Madras.

5. In Abdul Kareem Vs. C.M. Mohamed, Ramachandra Ayyar, O.C.J., as he then

was, observed in very strong terms that where a landlord seeks to evict a tenant from his building on the ground that he requires the same for his own occupation, what has to be found is whether the Petitioner requires his own building for purposes of his own occupation. He adds that no question of bona fides at all arises in such circumstances. This decision has been followed by Venkatadri J., in Bathool Bai Vs. A.S. Vaidyanathan, . His Lordship observed as follows (head note):

Apart from cases of gross unreasonableness on the part of the landlord, if it is established that there is a genuine present need of the house for the landlord's own occupation, the Court cannot presume mala fides because of factors such as the landlord's having other houses or his or her being a single soul or that he or she is not permanently living in the city or town concerned. The fact that the landlord is living in a rented house would be enough to satisfy the Court about the bona fides of the requirement.

6. I need not multiply the authorities on this subject except to refer two unreported decisions of our Court, one of Alagiriswami J., in Civil Revision Petition No. 1278 of 1966 and of Natesan J., in Civil Revision Petition No. 869 of 1962, wherein the same principles have been adumbrated. I am, therefore, satisfied that the approach by the lower Courts regarding the question of bona fides is thoroughly unwarranted in law and in the light of the principles laid down by the above judicial precedents. I hold that the requirement of the Petitioner is bona fide, as she requires it for her own use and occupation.

7. The above result arrived at by me would be enough to dispose of the civil revision petition. But the other contention raised by the Petitioner is that the building being both for residential and non-residential purposes, she would like to have the premises for the business of her son, who has given evidence in this case. P.W. 2, the son of the landlady, has stated that he intends opening a branch of the chemists and druggists shop in the premises in question. It is common knowledge that a chemist and druggists business cannot be carried on without a licence for the purpose under the enactments of our State. Therefore, if the Petitioner intends to shift the business from Tirukazhikundram to Madras, it cannot be stated that he is aiding his mother in her alleged mala fide object to secure a higher rate of rent from the tenant. On the other hand, I believe P.W. 2 and hold that he intends to open a branch of his business in Linghi Chetti Street, Madras. But as observed by Viswanatha Sastri J., in Venkataswami and Sons v. Veerabadrasthoami AIR 1955 NUC 830 (Andhra) there is no yardstick by which we can measure the range of activities necessary to constitute the carrying on of a business. It is strenuously urged by the learned Counsel for the Respondent that the opening of a branch office by the Petitioner's son would not be a sufficient ground to enable the Petitioner to ask for her own premises on the ground that it is required for her son's business. I do not agree. The essential requirement is that there must be a foundation or reasonable material for a Judge to come to the conclusion that there is a business either by the landlord or landlady or his or

her son as the case may be, and it is for that business that the premises in question is required. If such material is placed then there is no reason why the Tribunal should not apply strictly the section which makes it clear that the landlord would as a matter of course be entitled to it once that requirement is established. In this case the son is carrying on a business. In my opinion it is not necessary that the son should carry on a business in the city, town or village in which the property is situate for enabling the father or mother to apply u/s 10(3) (a) (iii) of the Act. Mr. Srinivasa Iyer pointed out to me that unless the son carries on business in the city, the requirement of the section is not satisfied. I am unable to be persuaded to agree to this contention.

8. I, therefore, hold that the requirement of the premises in question for the purposes of setting up a business by her son also appears to be true and based on acceptable evidence. I, therefore, hold on both the grounds that the premises is required for residential as well as non-residential purposes. In the light of my judgment as above, the order of the appellate authority is set aside and the tenant is given four months" time to vacate. The civil revision petition is allowed. There will be no order as to costs.