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**(1971) 03 MAD CK 0075**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 2141 of 1962

B.S. Rajarama Iyer and Another

APPELLANT

Vs

Parasumanna K. Ramaswami Iyer (Decd.) and Others

RESPONDENT

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**Date of Decision :** 10-03-1971

**Acts Referred:**

Madras City Tenants Protection Act, 1922 — Section 7

**Citation :** AIR 1971 Mad 475 : (1971) 84 LW 448 : (1971) 2 MLJ 124

**Hon'ble Judges :** Ramanujam, J

**Bench :** Single Bench

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## Judgement

Ramanujam, J.

1. The petitioners herein are the legal representatives of the original landlady. The respondent who is a tenant in respect of a vacant piece of land, filed an application for fixation of fair rent u/s 7-A of the Madras City Tenants Protection Act, 1922, hereinafter referred to as the Act. That petition was resisted by the petitioners on two grounds: (1) that the tenant cannot seek the benefit of the said Act and have the fair rent fixed under the provisions of that Act and (2) that a portion for fixation of fair rent was not the subject-matter of the original lease. The learned District Munsif, Madurai town, held that the ground of objection raised by the petitioners was not tenable that the tenant was entitled to the benefits of the Act and that the entire property for which the fair rent is sought to be fixed comprised in the original lease deed. After rejecting the objections raised by the petitioners, the learned District Munsif proceeded to fix the fair rent for the site. Having regard to the fact that the original rent of Rs. 10 a month was fixed in November 1944, and that the site is situated in an important locality and a crowded place in Madurai town. he fixed a sum of Rs. 30 as the fair rent for the same.

2. Aggrieved against the enhancement of rent from Rs. 10 to Rs. 30 a month, the tenant filed an appeal before the Sub Court, Madurai. The Petitioners-landlords also filed a memorandum of cross-objections reiterating their two

contentions which were found against by the first court. The appellate court also found that the two contentions put forward by the petitioner that the Act will not apply to the respondents tenants and that the entire property for which the fair rent is sought to be fixed was not included in the original lease were not tenable. However, on the quantum of fair rent, the appellate court took the view that though the tenant has filed an application of fixation of reasonable rent u/s 7-A of the Madras city Tenants Protection Act of 1922 the restriction imposed on the court u/s 7 had to be applied to this case, that if that restriction were to apply, the reasonable rent fixed by the first court at Rs. 30 could not be correct and that the maximum rent on the application of the proviso to Section 7 can only be Rs. 12.50 per month.

3. In that view it fixed the reasonable rent at Rs. 12.50.

4. The petitioners are aggrieved against the order of the lower appellate court reducing the reasonable rent from Rs. 30 to Rs. 12.50 a month. The learned counsel for the petitioners contends that the lower appellate court was in error in importing the proviso occurring in Section 7 to an application filed u/s 7-A and that the interpretation adopted by the lower appellate court runs counter to the express statutory provision. According to the learned counsel in an application filed by the tenant for fixation of reasonable rent u/s 7-A, the court's power to fix the reasonable rent is not conditioned or limited, and the considerations which have to be taken into account in disposing of an application filed by the landlord u/s 7 cannot be taken into account. I am inclined to agree with the said contention. Section 7 of the Act provides for an application by the landlord for fixation of reasonable rent and it directs the court to fix such rent as it deems reasonable. But the proviso to Section 7 states that the rent previously payable for the land shall not be enhanced by more than 25 paise in the rupee. The effect to the said proviso is that the court's power to fix reasonable rent is not absolute but is restricted and the maximum enhancement can be only by 25 per cent. Section 7-A which provides for the fixation of reasonable rent at the instance of the tenant does not however impose any such limitation. That section states that the court has to fix a reasonable rent for the occupation of the land or where on an application u/s 7 the rent has been previously enhanced, the court has to fix such rent as it deems reasonable. There is no such proviso in this section as the one occurring in Section 7. Section 7 specifically states that though the court may fix higher sum as reasonable rent, it has no power to fix any amount over and above 25 per cent, of the rent that was being paid on the date of the application. But Section 7-A gives power to the court to fix such rent as is reasonable without imposing any limitation thereon.

When a statute provides for two different situations under separate provisions and curtails or limits the power of the court in one case and does not so curtail or limit the power in another it cannot be inferred that the Legislature intended to impose the same limitation on courts while exercising the powers under both the provisions. It may be that the Legislature thought that when a tenant applies for

fixation of fair rent, there is no likelihood of enhancement and that enhancement is likely in cases where landlord applies for fixation of fair rent, and that is why the limitation occurring in the proviso to Section 7 was not expressly provided u/s 7-A. But the court has to interpret the provisions of the statute as they exist on the statute book. In my view the power of the court to fix a reasonable rent u/s 7-A cannot be curtailed or limited with reference to what has been stated in Section 7. The learned counsel for the respondent however seeks to justify the interpretation placed by the lower appellate court on Section 7-A on the ground that it provides that a tenant can apply for reduction of the rent fixed by the court u/s 7 earlier at the instance of the landlord and that this shows that the court cannot fix a reasonable rent beyond 25 per cent, of the contract rent. I am not impressed by that contention for Section 7 merely provides for the various circumstances under which the tenant can apply for fixation of a reasonable rent. A mere reference to Section 7 cannot take in the proviso to that section in respect of proceedings initiated u/s 7-A. It is true that the legislative intention seems, to be clear that the standard rent cannot be enhanced beyond 25 per cent. But such an intention cannot be gathered from the provisions of Section 7-A.

As contended by the learned counsel for the respondent there may not be any justification for distinguishing an application for fixation of reasonable rent filed by the landlord and the one at the instance of the tenant. But so long as the legislative intention is not express or implied in Section 7-A, it is not possible to limit the power of the court to fix any rent as it deems reasonable as provided in Section 7-A. It may be an unintended lacuna in the Act. But it is not for the court to supply the omission. I therefore disagree with the view taken by the lower appellate court and hold that in a proceeding u/s 7-A, a reasonable rent that may be fixed by the court cannot be limited to 25 per cent, above the rent that was being paid on the date of the application. In this case, the lower appellate court has reduced the reasonable rent from Rs. 30 to Rs. 12.50 on the ground that the proviso to Section 7 is applicable to Section 7-A as well and it has not gone into the question as to what will be the reasonable rent in respect of the site in question and whether the reasonable rent fixed by the lower court is correct or not. I therefore set aside the order of the lower appellate court and remit it for further consideration for fixing the reasonable rent. There will be no order as to costs.

5. Order accordingly