

(1973) 02 MAD CK 0037

In the Madras High Court

Case No : Civil Revision Petition No"s. 1308, 1450 and 1498 of 1972

C. Kuttappa Nair and Another

APPELLANT

Vs

S.S.A. Shahul Hameed and Others

RESPONDENT

Date of Decision : 09-02-1973

Acts Referred:

Madras Buildings (Lease and Rent Control) (Amendment) Act, 1949 — Section 12

Madras Buildings (Lease and Rent Control) Act, 1948 — Section 12(3)

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 23, 23(3)

Citation : AIR 1973 Mad 388 : (1973) 86 LW 323 : (1973) 2 MLJ 55

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

1. The three revision petitions have been filed by three of the tenants against a common order of the Appellate authority remanding the eviction petitions for fresh disposal. Seven petitioners claiming to be entitled to the premises in question filed eviction petitions against various tenants. The Rent Controller found that the petitions were not maintainable on the ground that all the persons who are entitled to rights in the premises in question were not parties. On appeal, the appellate authority held that the petitions were maintainable, and remanded back the petitions to the Rent Controller for disposal on other matters of controversy in the light of the observations made by the appellate authority. In the three revision petitions filed by the three tenants, the main contention raised is that the appellate authority has no right to remand the matter for fresh disposal to the Rent Controller.

2. The power of the appellate authority is defined in Section 23 of the Madras Buildings (Lease and Rent Control) Act, Section 23(3) provides-

"The appellate authority shall call for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further enquiry as he thinks fit either personally or through the Controller, shall decide the appeal."

The section does not confer any right on the appellate authority to remand the matter for fresh disposal. All that the sub-section empowers the appellate authority to do is to decide the appeal after making such further enquiry as he thinks fit either personally or through the Rent Controller. Option is given to the appellate authority to make the further enquiry either personally or through the Controller. It is specifically provided that the appellate authority shall decide the appeal. The only power that is left with him is that if he does not make the "further enquiry" himself personally, he may call the Controller to make "such further enquiry". But the decision can only be by the appellate authority.

3. In the decision in Rangasami Naidu v. Second Judge, Small Cause Court, Madras, 62 MLW 5, a Bench of this Court, Rajamannar, C. J. and Raghava Rao, J. held that under Act XV of 1948 (The Madras Buildings and Lease Rent Control) Act, the appellate authority cannot remand a case for fresh disposal by the Controller. Before the Bench it was contended that the appellate authority had an inherent power to remand a case to the Controller. The Bench was dealing with Section 12(3) of Act XV of 1948, which can be extracted:--

"The appellate authority shall send for the records from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further enquiry as he thinks fit either personally or through the Controller, shall decide the appeal."

It will be seen that the sub-section is similarly worded as sub-section(3) of S. 23 of Act XVIII of 1960. Dealing with the powers under the sub-section, the Bench observed that the sub-section defined in clear terms the powers of the appellate authority, that the appellate authority has got the power to make such further enquiry as it thinks fit before deciding the appeal, that this enquiry, it can do, either personally or through the Controller, but that after such enquiry the appellate authority is bound to decide the appeal and that it is not enough if the appellate authority merely disposes of the appeal; he is bound to decide the appeal.

4. Following the decision of the Bench, it has to be held that the appellate authority has no power to remand, but has the power to make a further enquiry either by himself personally or through the Controller; but he has to decide the appeal himself.

5. On behalf of the respondents, certain decisions of this Court were referred to. In P.D. Viswanatha Reddiar's estate by P.D. Narayanaswami Reddiar Vs. K. Dhanraj Sowcar, Ramaswami, J. observed-

"Remand is an exercise of judicial discretion by the learned District Judge which cannot be abdicated, and in regard to which there can be no judicial self-abnegation and rested on the half-hearted acquiescence of the parties who might be fearful that if they appeared unduly obstructive to what the learned District Judge was thinking to be a proper course, worse might befall them."

The learned Judge did not deal with the power of the appellate authority under Act XXV of 1949 (Madras Buildings Lease and Rent Control Act).

6. In *Danakoti Chettiar and Another Vs. M.M. Duraisamy Chettiar*, , Ramachandra Iyer, C. J. held that the jurisdiction exercised by the District Court u/s 12-B of the Madras Buildings (Lease and Rent Control) Act, 1949 (Act XXV of 1949) though revisional is appellate in character and that the power of remand is an inherent power in a Court exercising appellate jurisdiction. This view cannot be accepted as it runs contrary to the provisions of the section and to the view expressed by the Bench in 62 Mad LW (SN) 35.

7. In *Babu Mudaliar Vs. Bhaktavatsalu Chetty*, , Ganapatia Pillai, J. after referring to the decision in 62 MLW 35, and the decision of Ramachandran Iyer, C. J. in *Danakoti Chettiar and Another Vs. M.M. Duraisamy Chettiar*, , held that where the ground on which the order of the trial Court is founded, an opportunity should necessarily be given to the parties to let in evidence upon other grounds available and relevant to the point in issue. The furnishing of an opportunity to the parties to let in evidence upon other grounds may be permissible under the powers conferred on the appellate authority to make a further enquiry either by himself personally or through the Controller. But this would not include a power of remand or of delegation to the Controller the duties of the appellate authority to decide the appeal.

8. Anantanarayanan, C. J. in C. R. D. No. 1872 of 1964, held that u/s 23(3) of Madras Act XVIII of 1960, the proper course for the appellate authority is to retain the appeal on its file and to dispose of it after the Rent Controller makes the further enquiry and submits the findings. This view is in accord with Section 23(3) so far as directing the Controller to make a further enquiry is concerned. But the submission of a finding by the Controller may not be quite warranted under the section, if the duty cast upon the appellate authority to decide the appeal is delegated to the Controller.

9. In the *The Senior Superintendent of Post Offices Vs. K.R.M.S. Chockalingam Chettiar*, , after referring to various decisions, Ramaprasada Rao, J. adopted the formula laid down by Ganapatia Pillai, J. and Anantanarayanan, C. J. and found that the District Judge ought to have called for a finding on matters on which he could not concur with the Rent Controller, keeping the revision petition on his file.

10. In view of the clear wording in the section (Section 23(3)) and the ruling in the Bench decision, which is binding on me, I hold that the appellate authority has no power to remand a matter and the only power given to him by the statute is to "make a further enquiry either personally or through the Controller", if need be, and is bound to decide the various issues in the appeal himself.

11. In the result, the contention of the revision petitioners is accepted and the order of remand made by the appellate authority is set aside. The appellate authority is directed to dispose of the appeals according to law.

12. It is stated that three tenants have not preferred any appeal. But that would not make any difference since the order of the appellate authority is held to be unsustainable as a whole. The appeal in entirety will be disposed of by the appellate authority.

13. There will be no order as to costs in these revision petitions.

14. Petition allowed.