

(1985) 07 MAD CK 0029
In the Madras High Court
Case No : C.R.P. 3307/81

Dr. Francis Rajan, Joseph Roy and Seshio Roy reple by Mrs, APPELLANT
M.N. Roy

Vs

M.K. Rachemchand RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:

Constitution of India, 1950 — Article 141
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(ii)(a), 10(3)
(a)(iii), 2(6)

Citation : (1985) 07 MAD CK 0029

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : Habibullah Badsha and V.N. Krishna Rao, for the Appellant; T. Shama
Murthy and A. Subramanya Iyer, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Natarajan, J.—The landlords are the petitioners. They have filed the petition for eviction of the respondent under Ss. 10(3) (a) (iii) and 10(2) (ii) (a) of The Tamil Nadu Buildings (Lease-and Rent Control) Act 18 of 1960, on two grounds, viz, own use and occupation of the 1st petitioner and unauthorised subletting. The petition mentioned premises is a non-residential premises bearing door No. 35, Muthugramani Street, Mylapore. According to the petitioners, the respondent is a tenant under them on a monthly rent of Rs. 175. The 1st petitioner is a Medical Practitioner and he wants to set up his medical practice and hence the petition mentioned premises is required for the occupation of the 1st petitioner. It is required for the occupation of the 1st petitioner. It is further alleged that the respondent has sub-let the shop to one Kothari for running a cloth shop. The respondent resisted the said claim and contended inter alia that the petitioners have nothing to do with the property and they have to prove ownership to the same. Further, the requirement of the petition mentioned premises for the occupation of the 1st petitioner is not bona fide and the alleged subletting is not

true. It is only the respondent who is carrying on business in textile as well as pawn brokerage. This petition has been filed only to coerce the respondent to pay enhanced rate of rent at Rs. 200. The learned Rent Controller held that the requirement of the petition mentioned premises for occupation of the 1st petitioner for setting up his medical practice is bona fide while negating the claim on the ground of subletting as it was not established. Aggrieved by the said order, the respondent has preferred an appeal before the Appellate Authority who allowed the appeal. Hence this revision was filed by the landlords, the petitioners herein. Learned counsel for petitioner mainly contended that the finding arrived at by the appellate authority on the question of maintainability of the petition as well as the requirement of the premises by the 1st petitioner for own use and occupation is perverse and unreasonable and it is liable to be set aside. As regards the maintainability of the petition, it is the contention of the respondent that it is only P.W.3 who had let out the demised premises to him, and he has been collecting rents and that neither P.W.3 nor the 1st petitioner at any time after the execution of the settlement deed Ex. P4 in favour of the petitioners, informed the respondent about Ex. P4. Learned Counsel for the petitioners contended that the settlement deed in favour of the petitioners is not in dispute; but the only ground, on which it was attacked that the petition is to be held not maintainable is that the rent was not collected by the petitioners from the respondent, but only P.W.3.

2. In this connection, learned counsel for the petitioners drew my attention to the definition of "landlord" under S. 2(6) which reads as follows :-

Landlord includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on account of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to tenant.

A perusal of the above provision clearly shows that the definition of "landlord" was comprehensive enough to include the owner, irrespective of the fact whether he is collecting rent or not. It is clear from the said definition that the landlord includes the person who is receiving or entitled to receive rent. That does not mean that the owner is not entitled to file the application. Even in the counter filed by the respondent it is alleged that the rent was being collected by Josephraj, Dr. Soosai and Mrs. M.M. Roy. Mrs. M. M. Roy is the guardian of the 3rd petitioner herein. It is the evidence of P.W.3 Josephraj that he has let out the premises on behalf of Dr. Soosai who is his paternal uncle and that the rent was collected by him. Dr. Soosairaj as well as P.W. 1. Even under the settlement deed executed under Ex. P4, the guardian of petitioners 2 and 3 were authorised to collect rents and profits of the petition mentioned premises jointly with the 1st petitioner. As such, in view of the definition of S. 2(6) and the evidence adduced in this case, I find that the petition filed by the owners of the premises is maintainable.

3. Next it was urged by the learned counsel for the petitioners that the requirement of the premises for the 1st petitioner for running the clinic is bona fide and the finding in this regard by the Appellate Authority is not correct. It is admitted by the 1st petitioner that on the date when the application was filed, the 1st petitioner was not at all practising. It is alleged by P.W. 1 that he started a clinic 3 or 4 months prior to his examination in Sastry Nagar. The contention of the respondent was that the 1st petitioner is carrying on dispensary only in his premises at door No. 55, Muthu Gramani Street, Mylapore. A Commissioner was appointed in the appeal and he has submitted his report. The Commissioner has mentioned in his report that it was written as "Laboratory" in paint at the top of hall No. 2 and that hall No. 1 leads to hall No. 2 and that there was a wooden door frame in between hall No. 1 and hall No. 2. According to the respondent, the physical features noted by the Commissioner clearly shows that the 1st petitioner has business activity connected with that of the first floor and that the 1st petitioner has got sufficient space in the ground floor as well as in the 1st floor to run the clinic if he so desires. Learned counsel for the petitioners drew my attention to various decisions of this Court regarding the meaning of the word "carrying on business" and submitted that the petitioners need not actually carry on or run the clinic and it is sufficient if he starts some activity connected with business. In *Ramaswami v. Karmega* ILR 1964 I Mad 712=76 L.W. 770 Ramachandra Iyer, C.J., held :-

It is not necessary for the purpose of carrying on a business within the meaning of S. 10(3)(a) (iii) that the acquired activity of a business should exist. If a part of the business has been commenced, the landlord should be deemed to have commenced the business, although the further conduct obtained would depend upon his being able to secure his building for it. The said section would cover a case where the authorities come to the conclusion that the demand for occupation is a bona fide one and the landlord has already commenced some activity in connection with starting of the business.

4. Learned counsel for the petitioners brought to my notice the decision of the Supreme Court in *Mohanlal v. Kondiak* 1979 2 S.C.J. 362 and submitted that the expression "business" according to S. 10(3)(a)(III) in Andhra Pradesh Buildings (Least, Rent and Eviction) Control Act, 1960 includes the practice of the provisions of the advocate as well as medical profession.

5. Learned counsel for the petitioners relied on the decision in *R.M. Solal Nadar v. Messrs. A.T.A. v. Guruswamy Nadar and Co.*, Reptd, by A.V. Guruswami Nadar 1966 I M.L.I. 629 =82 L.W. 345, wherein it was held :-

The general principle noticeable in the majority of cases appears to be that bona fide preparation to do business at a place where the tenant is trading coupled with an honest and genuine need for the same would entitle a landlord for an order under the section.

6. On the other hand, the learned counsel for the petitioners drew my attention

to the decision of a Division Bench of this Court reported in P.N. Raju Chettiar v. The State of Tamil Nadu, Reptd by the Secretary, Home Department (Accommodation Controller) and others 1970 1 M.L.J. 249=82 L.W. 695 wherein it was held :-

...the carrying on business may consist of a series of steps, and even if one step is proved we do not see why the requirement is not satisfied. But, if there is no step at all, whatever and the matter is only in the stage of intention, it is difficult to bring such a case within the phraseology of the statute".

In Mari Ammal v. Ramaswamy 1977 1 M.L.J. 499, Ismail, J. (as he then was) held:

The expression "of a business which he is carrying on" cannot be interpreted in the same manner in all the cases irrespective of the nature of the business but that the preparation necessary to constitute commencing of a business will necessarily depend upon the nature of the particular business proposed to be carried on.

The same principle was followed in the latest decision rendered by Ratnam, J. in M. Kanakavel Pillai by power agent M. Sellaiyah Pillai Vs. Drugs and Chemicals, Kumbakonam, and also in Rengaswamy Naidu v. Tamil Nadu Hand-horn Weavers Co-operative Society Ltd. 1932 1 MLJ, 130=95 L.W. 60(S.N.), a decision rendered by Sengottuvelan, J.

7. Learned counsel for the petitioners contended that running of a clinic cannot be equated with other business and that the 1st petitioner even though is not running a clinic, admittedly he is a qualified doctor and obtained the degree in 1975. It is too much to expect him to make any other arrangement like other business. In this case, an attempt has been made that he is running a clinic in Sastri Nagar on a rental business after the filing of the petitioner. But that has not been accepted by the appellate court on the ground that those receipts were obtained two days prior to the deposition and hence no reliance could be placed on the same, On the other hand, the receipts Ex. P5 series, produced on behalf of the petitioners stand in the name of one of the petitioners, by name Dr. Francis Rajan and after the settlement deed, he was doing medical practice at door No. 30, Muthugramani Street. Learned counsel for the respondent filed an affidavit sworn by his client, the respondent in revision, to the effect that the 1st petitioner Dr. Francis Rajan left India even as early as 1982 and he has settled in England with his family and he has not returned to India for whose alleged requirement the petition for eviction was filed. Further, after the appeal is allowed, the 1st floor, in the premises bearing door No. 140, Santhome High Road fell vacant and it was let out to Janatha Party in 1985 and yet another portion occupied by "Grand Box" was vacated in 1982 and Dr. Soosai is running a clinic in that place. According to him, when the 1st floor in door No. 140 fell vacant, the petitioner is a tenant in the ground floor. The 2nd petitioner Joseph Roy has filed a counter affidavit to the effect that his brother had gone to

England temporarily for further studies and he is already in the process of returning to India before the end of October 1985 and that the allegation that he has settled in England is false. It is further alleged that the portion vacated by Grand Box was occupied by his grandfather Dr. Soosai and that the petition mentioned premises is the ground floor and it is suitable for running the clinic for patients, visitors, cannot go to the 1st floor easily. In this connection, the learned counsel for the respondent drew my attention to the decision *Ranganatha Mudaliar Vs. M.S. Yakoof Khan*, and *Ranganatha Mudaliar Vs. M.S. Yakoof Khan*, and submitted that subsequent events can be taken in order to mould the relief. In *Ranganatha Mudaliar Vs. M.S. Yakoof Khan*, Nainar Sundaram, J. held as follows:- The ordinary rule is the decree in suit or proceedings should accord with the rights of the parties as it stood on the date of commencement of this litigation to realise. But where it is demonstrated that by virtue of subsequent events or change in circumstances during the pendency of the litigation, the warrant for granting the original relief claimed has been lost, the court can certainly take note of the altered circumstances and mould the relief in accordance with the circumstances as they stand at the time when the offence is finally made. The rule on this point is laid down by the Supreme Court in AIR 198 S.C. 11711 and there is no escape from it and it shall be binding on all courts within the territory of India as laid down by Article 141 of the Constitution of India, unless there is a possibility to distinguish it on facts or on difference in language of the concerned provision of law.

In *M/s Variety Emporium v. Mohd. Ibrahim Naina* 1985 I M.L.J. (S.C.) 198 L.W. (S.C.) 26, their Lordships of the Supreme Court Y.V. Chandrachud, C.J. and M.P. Thakkar, J. held:

No authority is needed for the proposition that, in appropriate cases, the court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events. Thus, when an action is brought by a landlord for the eviction of a tenant on the ground of personal requirement, the landlord's need must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceedings from court to court, if subsequent events occur which, if noticed, would non-suit the landlord, the court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the court, including the appellate court.

The ratio laid down in the above case is applicable on all fours to the instant case, as admittedly on the date when the petition was filed, the 1st petitioner was not running any clinic and the 1st petitioner, for whose benefit and requirement, eviction is admittedly sought for, left for England and even according to the counter affidavit he is expected to return to India in October, 1983 and as such the present petition for eviction for his use and occupation is not maintainable.

On going through the order passed by the learned appellate authority I find that the finding rendered by the appellate authority that the requirement for the 1st petitioner for running a clinic of his own in the petition mentioned premises only is not bona fide is perfectly justified and legal. There is no perversity or illegality or infirmity which require interference.

The finding of the Rent Controller that the 1st petitioner has not established the ground of unauthorised subletting is not challenged and it has become final. For the foregoing reasons, the order passed by the appellate authority is upheld and the revision petition fails and shall stand dismissed. There will be no order as to costs in this revision.