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**(1950) 02 MAD CK 0008**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Petition No. 8658 of 1949

George Oakes Ltd.

APPELLANT

Vs

The Chief Judge, Small Causes Court and Another

RESPONDENT

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**Date of Decision :** 27-02-1950

**Acts Referred:**

Madras Buildings (Lease and Rent Control) Act, 1946 — Section 4, 7

**Citation :** AIR 1951 Mad 222 : (1951) ILR (Mad) 330 : (1942) 55 LW 860 : (1950) 2 MLJ 317

**Hon'ble Judges :** Rajamannar, C.J; Viswanatha Sastri, J

**Bench :** Division Bench

**Advocate :** V.K. John, of John and Row, for the Appellant; V. Radhakrishnayya, for P. Rajeswaran, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajamannar C.J.

1. I agree that the application should be dismissed. I only wish to add a few words on the point raised by Dr. John purporting to rely upon the

decision in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, to which I was a party. I do not think that the doctrine of

contracting out of the statute can possibly be of any help to Dr. John in this case for two reasons which are, in my opinion, conclusive. The first

reason is that the lease in his client's favour was executed on 22nd June 1946 i.e., before the passing of Madras Act XV [15] of 1946. On the

date of the execution of the lease, the landlord had no right under the Rent Control Order then in force to apply to the Controller for fixation of a

fair rent. It is only the tenant who could approach the Controller for that relief. Obviously, a person cannot be said to have abandoned a right by

reason of an agreement when on the date of that agreement the law did not confer on him that right. I must confess that this aspect was overlooked

during the course of the arguments. The second of the reasons is that it is nobody's case that the parties were aware of the fair rent for the building

and that what was fixed under the contract was less than the fair rent, but nevertheless, it was agreed that the landlord should not approach the

Controller for fixation of fair rent. In *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, the lease was executed long after the

commencement of Madras Act XV [15] of 1946 and the parties were aware that u/s 1 of the Act, default in payment or tender of rent for one

month would entitle the landlord to pray for eviction. In spite of this provision the landlord chose to agree not to evict the tenant until and unless

there were arrears of rent for two consecutive months. The facts of the present case are completely different.

2. If there had been a fixation of fair rent by the Controller before the execution of the lease in favour of the petitioner at a higher figure and in spite

of that the landlord entered into an agreement accepting a lower rent, then, undoubtedly he would be bound by that contract, but that is not the

case here.

3. Speaking for myself, I would expect the Controller in most cases to hold that the rent deliberately agreed to by the landlord would not be less

than the fair rent, but surely, there might be cases in which the facts and circumstances indicate that the agreed rent is not the fair rent. Both the

Controller and the appellate authority have found in this case that the fair rent is higher than the agreed rent. That finding of fact is binding on us.

4. Though it is not necessary for the disposal of this application, I would like to say something about the doubt expressed by my learned brother

whether the decision in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, would impliedly lead to the conclusion that the tenant

can also contract himself out of the benefits conferred on him by the Act by taking a lease after the Act containing terms and conditions which

operate to curtail the rights and privileges conferred upon him by the Act. There was no doubt in our mind that he could not. I would be prepared

to go the length of holding that it would be against public policy and the spirit of the Act. The provisions of Section 6 embody the principle that the

tenant can be saved from the terms of an express agreement when such terms are to his detriment. But I fail to see why in the absence of a specific prohibition and when there is no offence against public policy, a landlord should not waive a benefit conferred on him by the Act; why, for instance, he should not agree that he would not take out an application for eviction unless there is default in payment of rent for two or three consecutive months.

Yiswanatha Sastri, J.

5. The Madras Buildings (Lease and Rent Control) Act (XV [15] of 1946), hereinafter referred to as "The Act," embodies a compromise between two well-recognised and occasionally conflicting principles, namely, the freedom of citizens to enter into contracts and the duty of the State to prevent the oppressive exploitation of large sections of the public by a few individuals. The Act was a measure intended to be administered expeditiously and equitably, albeit summarily, and not intended to be litigated upon in Courts from the lowest to the highest.

6. The relevant facts may be shortly stated. During the currency of the term of a registered lease dated 22-6-1946, the landlord, here respondent, applied to the Rent Controller u/s 4 of the Act for fixing a "fair rent" for his non-residential building, and the Controller by his order fixed a fair rent, a sum about 50 per cent. in excess of the monthly rent stipulated under the lease deed as payable by the tenant, the applicant before us.

7. Dr. V. K. John, the learned counsel for the tenant, attacks the order of the Rent Controller as being ultra vires. He says that the Rent Controller has no power, during the subsistence of a contract of lease to increase the contract rate of rent, if it happens to be lower than what, in his opinion, would be the "fair rent." He further argues that it is open to a landlord to contract himself out of the provisions of Section 4 of the Act and forego the right to recover a "fair rent" by stipulating for payment of rent at a lower rate, where the contract of tenancy is entered into, or, as in this case, renewed after the Act came into force. His argument is that the Act was intended only for the protection of tenants from the rapacity of landlords who often exacted unconscionably high rents from tenants and resorted to arbitrary and capricious evictions thereby causing serious hardship and suffering to a large section of the public. It is against this background that the

Act and every section of the Act should be viewed according to Dr. John.

8. It may be observed at the outset that the Act has replaced the Madras Non-Residential Building Rent Control Order, 1942. Section 3 of the Control Order provided for an application to the Rent Controller to determine the fair rent in cases where the contract rate of rent was found to be excessive, and empowered the Rent Controller to fix a fair rent. Though Section 3 did not in terms, limit the right to apply for fixing a fair rent to tenants, it is obvious that only tenants would be interested in applying for reduction of the contract rate of rent, if it happened to be in excess of the "fair rent." There was no provision in Section 3 of the Control Order for fixing a rate of rent in excess of the contract rate and the section was not, therefore, meant to give relief to landlords. Section 4 of the present Act, however, expressly confers on the landlord as well as the tenant of a building, the right to apply to the Controller for fixing a fair rent and empowers the Controller to fix a fair rent, irrespective of the question whether the contract rate of rent happens to be higher or lower than the "fair rent" eventually determined by the Controller. Indeed, Section 4 permits an increase of rent from 60 per cent to 100 per cent in the case of non-residential buildings constructed after 1st April 1940.

9. A strenuous effort has been made by Dr. John for the tenant to induce us to adopt a construction other than the literal one, of the provisions of Section 4 of the Act and to confine its application to "statutory tenancies," where tenants continue in possession of buildings not under subsisting leases, but under and by virtue of the provisions of the Act after the expiry of the term. He argues that the Legislature could not have intended so fundamental and revolutionary a change as would enable landlords to nullify the rights secured to tenants under subsisting leases and that Section 4 must be so interpreted as to avoid a result so injurious to tenants. The Act was deliberately intended to alter, vary and modify the contractual rights and privileges of both landlords and tenants, and, in my opinion, it is not legitimate to neutralise the operation of the Act by introducing notions taken from the pre-existing law which the Act was intended to abrogate and did abrogate. The argument based on the sanctity of contracts has no persuasive effect on me when I have to construe an Act whose avowed

object or purpose is to make that lawful which will not be lawful

under a contract of tenancy, and, conversely, to prohibit results which will follow from the enforcement of such a contract. Great stress has been

laid on the injustice and inequity of forcing upon a tenant a much higher rent than what he had agreed to pay and the landlord had willingly agreed

to accept, by too literal an interpretation of an enactment intended for the relief of tenants. I approach the Act on the assumption that--to quote the

preamble- there was need for legislation :

to regulate the letting of residential and non-residential buildings and to control the rents for such buildings and to prevent unreasonable eviction of tenants therefrom.

The regulation of letting and the control of rents might be in the interests of landlords as well as tenants, though in the large majority of cases the

tenants would stand to benefit by the Act. It is, in my opinion, a fallacy to assume that in the Act and its scheme there is only one Central purpose,

namely, the relief of tenants from oppressive rents and unjust evictions, and mould the construction of the sections of the Act so as to carry out this purpose.

10. If there is an ambiguity or doubt about the language of Section 4 of the Act, read by itself or in conjunction with the other sections of the Act,

and two constructions are reasonably possible or plausible, one of which would upset fundamental principles of law or produce a manifestly

unreasonable or unjust result, while the other is free from such taint, the Court might reject the former and accept the latter. In other cases, we have

to see not what, in our opinion, the legislature might reasonably do, but what it has actually done by way of enacted words. In my opinion, the

language of Section 4 of the Act is as plain as it could be, and there is nothing intrinsically wrong or unjust in a tenant being asked to pay a "fair

rent" if the rent stipulated as payable under the lease is lower than the fair rent, when that very tenant is given a right to compel his landlord to

accept a "fair rent" as determined by the Controller and forego any higher rent which he himself had agreed to pay under the contract of lease. It is

not correct to assume that it is only on tenants and not on landlords that new rights and privileges were conferred under the Act. Overriding the

terms and conditions of leases as well as the provisions of Section 111, T. P. Act,

Section 7 of the Act confers valuable rights on landlords in the matter of ejectment of tenants who commit default in payment of rent or transfer or sub-let the buildings leased or use the buildings for purposes other than those for which they were leased, etc., (See *R. Krishnamurthy Vs. S. Parthasarathy and Another*, and *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, . The landlord is bound by the contractual terms of the tenancy only to the extent specified in Section 7 Sub-section 3 of the Act. Dr. John would apparently concede to the tenant the right to apply for a reduction of the contractual rent, if it is in excess of the fair rent as otherwise, one of the main objects of Sections 4 and 6 of the Act would be defeated and tenant would be at the mercy of landlords. He would, however, deny a corresponding right to the landlord to apply for the fixing of a fair rent if the contractual rent happens to be less than the fair rent that might eventually be fixed. In the circumstances mentioned in Section 6 of the Act, the landlord can apply for an increase of rent even though the lease provides only for the payment of the "fair rent" already fixed, Section 6, Clauses (b) and (c) of the Act clearly imply that applications for fixing fair rents could be made during the continuance of the term of a lease and provide that stipulations in leases for payment of rent in excess of the fair rent shall be unenforceable and contractual rents already paid in excess of the fair rent, shall be refunded by the landlord or otherwise adjusted. In *Rajammal Vs. The Chief Judge, Court of Small Causes and Another*, it was assumed that an application could be made by the landlord u/s 4 of the Act to fix a fair rent which, as eventually determined in that case, was in excess of the contractual rent. I see no reason whatever to hold that Section 4 of the Act does not apply to a contractual tenancy where the term of the lease happens to be subsisting. Nor can I find any reasonable ground for confining the application of Section 4 to what are called "statutory tenancies" where the contractual term has expired and the tenants continue in possession only by virtue of the provisions of the Act. Giving the words of Section 4 their natural meaning, there is neither doubt nor ambiguity and the result of a literal interpretation, in my opinion, appears to be both just and reasonable.

11. As I have come to a clear conclusion on the construction of Section 4 of the Act, I consider it unnecessary to do more than refer to *Glossop v.*

Ashley, 1922-1 K. B. 1 : (90 L. J. K. B. 1237) and Phillips v. Copping, 1935 1 K. B. 16 : 104 L. J. K. B. 78 cited by Dr, John. These decisions

were based on the particular language of English statutes, whose interpretation taxed the resources of the learned Judges of the Court of appeal.

There is no need to obscure the plain meaning of Section 4 of the Act by importing into it the phraseology employed in construing statutes totally different in their wording.

12. Lastly, it is argued on the strength of certain observations in the recent decision in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and

Others, that it is open to the landlord to waive the right to have a fair rent fixed which might be in excess of the rent payable under the lease deed.

In the present case the lease was executed before Act XV [15] of 1946 came into force and there was then no provision empowering the landlord

to apply for fixing a rent which might be in excess of the contract rate, It is said, however, that the landlord was presumably aware of the

provisions of Act XV [16] of 1946, when he agreed to a renewal of the lease in 1949 on the basis of the old rent, thereby waiving the right to

apply for an increased rent, though such increased rent might be the "fair rent" u/s 4. This contention was not raised in the Court below or before

the Controller, and cannot, in my opinion, be allowed to be raised for the first time on this application for a writ. Further, though the lease was

renewed in 1949 after Act XV [15] of 1946 came into force, it was renewed in pursuance of an option for renewal contained in the original lease

of 1946 and on the same terms as before. In fact, the parties were bound by the terms of the original lease of 1946, which was entered into before

the Act of 1946 came into force. The landlord had then no right to apply for a fair rent and consequently there could be no waiver of such a right. I

cannot assume or presume that the parties contracted with knowledge of Madras Act XV [15] of 1946 at the time of the renewal of tenancy in

1919. I humbly venture to think that there is no presumption in law that any one, even a Judge knows the law especially when it is embodied in

special or local legislation which is the subject of amendment from time to time. The maxim "ignorantia legis non excusat" has a very different scope

and application and cannot be pressed into service on this occasion. All that this maxim means is that people may not have had notice of the law,

but yet they would be bound by law even without such notice. There are many occasions on which people do not actually know what the law is and yet they are bound. In this sense, ignorance of law does not furnish an excuse for illegal or improper action. I am unable to assume without any evidence that the landlord had knowledge of his right to apply for fixing a fair rent u/s 4 of the Act and that with such knowledge, he deliberately consented to abandon his right at the time when the lease was renewed. Perhaps, the truth is that neither the landlord nor the tenant thought about the Act or about a revision of the rents at the time of the renewal. I would be quite as unwilling to cut down by a process of interpretation the protection afforded by the Act to the landlord as I would be to abrogate the protection afforded to the tenant. There are, no doubt, enactments conferring benefits on citizens, which benefits they can waive, without offending any rule of public policy as pointed out by my Lord in the judgment; in *S. Raja Chetty and Others Vs. Jagannathadas Govindas and Others*, . I am unable to apply the doctrine of waiver by reference to a legal presumption that a landlord must be aware of the provisions of Act XV [15] of 1946. I am equally unable to accept the contention that the mere insertion of terms and conditions in a lease executed after the Act, securing to the landlord rights of a more restricted character than those conferred upon him by the Act, operates in itself as waiver by the landlord of the statutory rights conferred upon him by Sections 4 and 7 of the Act. Logically speaking, the argument based on waiver could be advanced against a tenant who has taken a lease after the Act, containing terms and conditions which operate to curtail the rights and privileges conferred upon him by the Act. But Sections 6 and 7 of the Act prevent a tenant from contracting out of the terms of those sections and depriving himself of the right to insist on a fair rent and the right to continue in possession even though the stipulated term has expired. Further Section 16 (1) of the Act makes the transgression of Section 6 and the exaction of a rent in excess of the rent fixed as fair rent by the Controller, an offence punishable with imprisonment. I therefore doubt whether the learned Judges who decided *S. Raja Chetty and Another Vs. Jagannathadas Govindas and Others*, , would have held in such circumstances that the tenant had validly contracted himself out of the right to a fair rent and immunity from eviction conferred on him by the Act. Be it as it may, waiver as a defence must

be expressly pleaded and strictly proved by evidence. There is nothing in the circumstances relating to the renewal of the lease, even remotely

suggesting that at the time of the renewal the landlord had contracted himself out of his statutory right to apply u/s 4 of the Act for fixing a fair rent

or that he with knowledge of the provisions of the Act, waived the rights conferred upon him.

12a. To recapitulate, the Act confers certain rights and privileges on landlords as well as tenants, though the latter are benefited to a larger extent

than the former. Section 4 of the Act is a deliberate departure from the corresponding provisions of Section 3 of the previous Control Order, and

expressly includes the landlord as a person entitled to apply to have a fair rent fixed. There is nothing in Section 4 to confine its application to

statutory tenancies or to exclude its application to contractual rents payable under subsisting leases. The words of Section 4 are plain and have

only one meaning, namely, that a landlord as well as a tenant could apply u/s 4 of the Act. This interpretation is reinforced by Sections 5 and 6 of

the Act. Even if it were relevant, which it is not, there is no injustice or inequity or no such degree of public mischief as should lead the Court to

an unnatural construction of the section. The defence of waiver by the landlord of his right to apply u/s 4 of the Act has no basis whatever in the

circumstances of this case.

13. Where the fair rent fixed u/s 4 of Madras Act XV [15] of 1946 is in excess of the rent which was being paid before such date, the landlord

cannot claim the difference from any date anterior to the date of filing the application u/s 4 which in this case was 9th October 1947. Subject to this

modification the order of the Chief Judge is affirmed and this application is dismissed with costs.