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**(1960) 08 MAD CK 0024**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 107 of 1960**

Globe Theatres (Private), Limited

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

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**Date of Decision :** 18-08-1960

**Acts Referred:**

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 13, 4, 7

**Citation :** (1961) ILR (Mad) 250

**Hon'ble Judges :** P.V. Rajamannar, C.J; Veeraswami, J

**Bench :** Division Bench

**Advocate :** K. Rajah Iyer and K.S. Ramamurthi, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

P.V. Rajamannar, C.J.—This is an appeal from the judgment of Rajagopalan J., in Writ Petition No. 465 of 1960, filed by the Appellant for the issue of a writ of certiorari to quash the order of the Government in G.O. Ms. No. 351, dated 3rd February 1960. It is sufficient to state the following facts. The second Respondent, who is the contesting Respondent, obtained a lease of a site in Mount Road, Madras, and constructed a Cinema Theatre known as the New Globe Theatre. He leased the theatre to the Appellant before us in 1941. Subsequently the Madras Buildings (Lease and Rent Control) Act came into force. In March 1959, the second Respondent applied to the Government to exempt the theatre from the provisions of the Rent Control Act of 1949. The Appellant before us opposed the grant of exemption and made his representations. Eventually the Government passed the order above referred to and exempted the premises from the operation of Section 7 of the Act, that is, the section relating to eviction.

2. The validity of the impugned order was attacked on several grounds. The first and most substantial ground was that Section 13 of the Act under which the Government purported to pass the order of exemption was itself ultra vires and, therefore, the Government had no jurisdiction to act under that section. Unfortunately for the Appellant this question is concluded so far as this Court is

concerned by a decision of a Division Bench to which one of us was a party in *Globe Theatres v. State of Madras* ILR [1954] Mad. 616. Following that decision Rajagopalan J., held that Section 13 of the Act was valid. We shall now briefly mention the other ground which also did not find acceptance with Rajagopalan J., who dismissed the petition. It is contended that the Government in passing the order in question were really adding another ground for eviction to the grounds set out in Section 7 of the Act. That they could not do because of the principle laid down in a decision of this Court in *Abdul Subhan v. State of Madras* ILR [1959] Mad. 1014. We confess that there are here and there certain observations in this case which might appear to support this argument. But when examined carefully it will be evident that it was not the intention of the Division Bench to lay down a general proposition that the exemption could be granted only on grounds contained in the Act as valid grounds for eviction. Indeed the contrary was laid down in the leading decision in *Globe Theatres v. State of Madras* ILR [1954] Mad. 616, namely, that if a ground is actually covered by any provision of the Act, then resort must be had to the Tribunals established under the Act, and if a party has failed in his attempts to get relief from such Tribunals it would not be open to the Government to give him relief on the same ground. In a later decision, the same Division Bench which decided *Abdul Subhan v. State of Madras* ILR [1959] Mad. 1014, explained the decision in *M. Chinniah Servai Vs. The State of Madras and Another*, We agree on this point with Rajagopalan J.'s summary which he quotes from an earlier decision of his:

It should therefore be taken as well settled now that the grant of exemption is not vitiated merely because it may result in eviction on grounds other than those specified in Section 7 of the Act. It should be obvious that, if the desired eviction could be secured under the terms of the Act itself, there should be no occasion at all to grant any exemption from the operation of the Act. The exemption is not a substitute for a relief permissible under the Act itself.

3. We may point out in this connection that it would be wrong to say that by reason of the exemption the Government are adding a new ground for eviction. Actually what happens on an exemption is that the ordinary law of the land applies, namely, the Transfer of Property Act, and the parties are governed by the provisions of that Act. There is no substance in this ground.

4. Nor do we find any merits in the contention that the Government had not made a proper enquiry in respect of the representations made by the Appellant and by the Respondent and that the Appellant had not been given an opportunity to offer evidence which he wished to adduce before the Government. There is nothing in Section 13 of the Act which makes it incumbent on the Government to conduct any particular enquiry. Indeed it is very doubtful if the order of Government u/s 13 can be said to be a judicial order at all. Actually in this case the Government did call for reports from the Accommodation Controller and they expressly state in the course of the order that they have carefully examined the request of the Respondent in consultation with the Accommodation Controller,

Madras. They also say that they have fully gone through the objection statement of the Appellant. Then it was said that there was nothing to show that the Government had applied its mind to the relevant circumstances which should have guided them in deciding whether or not to grant an exemption. But here again learned Counsel for the Appellant is reading far more into the section than can be discovered there. It cannot be said that the Government had travelled outside the record. At the outset they say that the request of the owner of the premises is genuine. It is not open to this Court to say that they erred in so holding. Then they discuss the point whether it will be reasonable to grant an exemption. It is not for this Court again to say whether the Government erred in holding that the exemption would not be unreasonable. The order is not in any sense an arbitrary order. It is a speaking order. But it is not open to this Court to examine the correctness of the reasons on which it is based.

5. Finally we should refer to two contentions raised by Mr. Rajah Ayyar, learned Counsel for the Appellant, which we are not able fully to appreciate. One is that the ground on which exemption can be granted by the Government u/s 13 should be a ground relating to the building as such and not relating to the owner of the building. It is difficult for us to conceive of a case where the ground can have relation to the building without having relation to the owner of the building because it is the owner who seeks the exemption. The building itself does not. The act itself is full of provisions including grounds on which eviction can be obtained, which are personal either to the landlord or to the tenant, as for example, a bona fide requirement for occupation, sub-letting, wilful default in payment of rent, etc. Mr. Rajah Ayyar was unable to give even a single instance to illustrate the principle which he was advancing before us. Another argument which we have not been able to follow is that the Respondent was estopped from making an application for exemption because he had made an application u/s 4 of the Act for fixation of fair rent and had succeeded in obtaining an enhanced rate of rent. We need not spend more time in meeting this point than to say that because he resorted to Section 4 of the Act, it does not mean that he cannot take advantage of another provision of the Act, namely, Section 13. It must not also be overlooked that the exemption is only from the provisions of Section 7 of the Act. The Respondent is well within his rights to resort to Section 4 and at the same time seek exemption from Section 7. None of the necessary ingredients to found a plea of estoppel is to be found in this case. We agree with the reasoning and conclusion of the learned Judge, Rajagopalan J., and dismiss the appeal.