

(1986) 06 MAD CK 0001
In the Madras High Court

Janab K.M.A. Abdul Khader and Others	APPELLANT
Vs	
P. Palanisamy Nadar and Sons	RESPONDENT

Date of Decision : 16-06-1986

Acts Referred:

Citation : (1986) 99 LW 827 : (1987) 1 MLJ 430

Hon'ble Judges : S. Nainer Sundaram, J;S. Nainar Sundaram, J

Bench : Division Bench

Judgement

S. Nainer Sundaram, J.—The petitioners are the landlords within the meaning of the Tamil Nadu Buildings (Lease and Rent Control) Act,

1960 (Act "8 of 1960), hereinafter referred to as "the Act1. The first respondent is admittedly the tenant within the meaning of the Act. The

landlords would allege that the tenant sublet the premises to respondents 2 to 5. The landlords filed a single petition for eviction urging various

grounds therefor, under the provisions of the Act. According to them, there was wilful default in the payment of rents, attracting Section 10(2)(ii);

there was subletting, attracting Section 10(2)(ii)(a); one of the door numbers was put to different user, attracting Section 10(2)(ii)(b); there were

acts of waste attracting Section 10(2)(ii); the landlords required the premises for their use and own occupation attracting Section 10(3)(a)(iii); and

there was a bona fide requirement for demolition and reconstruction attracting Section 14(1)(b) of the Act. The case of the landlords was refuted

by the tenant and the alleged sub-tenants, and when occasion comes I may refer to the contentions raised by them shortly in the course of this

order. The Controller did not countenance the case of the landlords and he was obliged to dismiss the petition for eviction. The landlords

appealed. The Appellate Authority found that the grounds of sub-letting and requirement for own use and occupation have been made but, but on the ground that it is a case of different items covered by different tenancies and further the tenant would be put to prejudice by the prosecution of single petition for eviction discountenanced the case of the landlords for eviction. As a result the Appeal was dismissed. That is how the landlords are now before this Court in revision.

2. The pivotal point concentrated upon by both sides in this revision is as to whether a single petition for eviction was proper and competent on the facts and circumstances of the case. Before I deal with the legal aspect on this question, I would like to place on record the factual features that have emerged in the case. The property that was the subject-matter of eviction petition was scheduled, in the following terms:

In Tuticorin Town, Ettayapuram Road, Building bearing Door Nos. 143, 144, 145/6, 145/7 and 145/9 and the drying grounds, vacant site with all erections and fittings, electric, water connection, well, trees, etc, unnumbered godown, and entire place now in enjoyment of respondent as tenant under petitioner.

The allegations of the sub-letting were projected in respect of different door numbers and relatable to different alleged sub-tenants and they are found in paragraph 9 of the petition as follows:

After the issue of the notice terminating the tenancy, the petitioners learnt that the first-respondent has subleased a portion of the property door

Nos. 144 and 145/9 to M/s. P.P. Sivapragasam Dhall Mill, another portion, i.e., door numbers 145/6 and 145/7 to M/s. Muna Kana & Co., a

third portion i.e., door number 143 to M/s. Thangam Traders and yet another portion to M/s. Sakthi Lorry Booking Office who are added as

respondents 2 to 5 in the petition. The sublease of the property to them are (sic.) unauthorised one. The respondents are liable to be evicted on that ground.

The grounds for acts of waste were not connected to any specified door number and it was put forth in paragraph 10 of the petition as follows:

The 1st respondent has recently demolished a portion of a wall to put up directly new entrance from Ettayapuram Road to facilitate his sublease.

The said acts are unauthorised one. The respondent has no authority to alter of

to put up any constructions. The said acts of the respondent amount to waste which are likely to impair materially the value and utility of the building

Coming to different user, the landlord related it to door number 143 as found in paragraph 11 of the petition as follows:

The petitioners further learn that the respondent has converted the user of the building door number 143 from residential into a non-residential by converting it as Dhall factory different from the one for which it was let. He is liable to be evicted on this ground also.

The other three grounds were put forth in an omni-bus manner, without specifying any door number. It has emerged from evidence that the tenant,

first-respondent took different items of properties on different occasions, under different tenancy agreements. The Appellate Authority refers to the

evidence on record that the tenant first-respondent took door number 144 in 1951 from one Singaravelu for Rs. 75 per month; and door number

143 in the year 1963 and together for door numbers 143 and 144 he paid a consolidated rent of Rs. 250 per month from 1963; he took door

number 145/9 in the year 1963 on a monthly rent of Rs. 60 in 1969 he took on lease door numbers 145/6 and 145/7 for Rs. 100 per month and

the unnumbered godown for a rent of Rs. 50 per month and the vacant site for a rent of Rs. 50 per month. The Appellate Authority has also taken

note of the evidence on record that the tenant was given separate rent receipts for these door numbers. The Appellate Authority points out that

there is no evidence that these door numbers were ever the subject matter of a single tenancy or there was any fresh agreement at any particular

point of time from which the tenancy was treated as a single tenancy. It is true that the tenant paid a consolidated rent for all the items to the father

of the vendor of the landlords. But that is not decisive. The purchase by the landlords was under Ex. A12 dated 31st May, 1976, where different

door numbers were given for the properties purchased. There are receipts evidencing payment of different rents for different door numbers at

different points of time. All these features have been duly taken note of by the Appellate Authority, when he came to the conclusion that the tenant

had taken the items concerned under different tenancy agreements and was paying rent separately for each of the items. No attempt was made

before me by the Learned Counsel for the landlords to discharge these findings of fact. The reasonings expressed by the Appellate Authority for

coming to the above conclusion are convincing and they appear to me as tenable, not requiring disturbance by this Court, exercising revisional powers.

3. It will be now appropriate to look into the legal principles deducible from pronouncements of Courts to find out as to whether they would enable

the landlord to get the relief of eviction asked for by them in the present proceedings initiated by them. No hard and fast rule could be spelt out

from the pronouncements which had come to be rendered on the facts and circumstances of the cases dealt with by them; but a general and a

broad principle is deducible that the ultimate test is whether any prejudice has been caused to the tenant by the procedure of filing a single petition

for eviction.

4. In *R. Venkatesachary and Others Vs. The Judge, Court of Small Causes and Another*, a Bench of this Court consisting of Rajamannar, Chief

Justice and Chandra Reddy, J., as he then was, was inclined to countenance the maintainability of a single application by the landlord for obtaining

possession of entire house as a building, portions of which had been let out separately.

5. In *Umsalma Bibi v. R. Lakkja Gowder* (1967) 2 M.L.J. 277 : 80 L.W. 165, Ananthanarayanan, C.J., was not inclined to interfere in revision on

the ground that no prejudice had been caused to the tenants by a composite application filed by the landlord u/s 14(1)(b) of the Act, where there

were several tenements, even though the learned Chief Justice explicitly expressed his view that where a landlord makes an application u/s 14(1)

(b) in respect of a "building", as defined in the Act, he must make a separate application in each such instance, though all these "buildings" may be

within one structure. In *P. Govindaswami Naicker Vs. S.R. Kerwar and Others*, Ananthanarayanan, C.J., dealt with a case of a number of

tenants occupying the same building and the landlord claiming by way of a single petition increase of rent due to increase in property tax and water

tax and the learned Chief Justice held that a single petition is sufficient, and the learned Chief Justice reiterated his earlier proposition that the real

question is whether there has been prejudice caused to the tenants by the said

procedure; and in that case, no prejudice was made out.

6. Kailasam, J., as he then was, dealt with a case of a single petition for eviction of the tenants occupying the same building in *P.M. Patel v. K.*

Raanathan C.R.P. No. 869 of 1970, order dt.23rd October, 1970, concisely reported in 1972 T.N.M. 54, and the learned Judge following the

ratio of the Bench in *R. Venkatesachary and Others Vs. The Judge, Court of Small Causes and Another*, , upheld the maintainability of such a

petition for eviction. In *S.M. Gopalakrishna Chetty v. Ganeshan and Ors.* A.J.R. 1975 S.C. 1750 : (1976) 1 S.C.J. 358, it has been

countenanced that a single petition with regard to two different tenancies in the same premises, one for residential purpose and the other for non-

residential purpose is maintainable.

7. I had occasion to consider the question in *T.N. Unnaialai Achi v. Saminatka Pathar* 93 L.W. 404, in the context of clubbing together in a single

petition, residential and non-residential buildings, separate by themselves, bearing, different numbers, and after referring to the case law on the

subject, I had to¹ express the opinion that the clubbing of these buildings together for the purpose of obtaining reliefs under the provisions of the

Act will cause prejudice to the tenant and in this view a single petition cannot be countenanced. *Sathiadev, J.*, in *T.N. Krishnamoorthy Vs. Jagat*

Textiles, , has also taken note of the principle that a single petition with regard to more than one tenancy in the same premises is maintainable, when

the tenancy is one.

8. In *P. Kandaswamy Vs. Hajee K.S. Mohamed Mohideen Rowther*, , *Sengottuvelan, J.* dealt with a case" of a premises consisting of two

portions, but covered under a single tenancy agreement and the learned Judge held that one Rent Control Application in respect of both the

portions is maintainable. In *D. Rukmani Ammal and Ors. v. V.K. Izudden* (1983) 1 M.L.J. 186 : 96 L.W. 186, once again, I had occasion to deal

with the question in the context of a case where the premises demised consisted of two door numbers, but covered by single lease and demised to

a single tenant and further structurally the two door numbers were situated in such a proximity and other physical features established such a nexus

so as to treat them as a single unit, and let out as such to a single tenant; and in those circumstances it was held that the tenant was not put to

prejudice by the process of a single petition for eviction u/s 14(1)(b) of the Act.

9. As we could see from the schedule of property set out in the petition for eviction, it consisted of five door numbers, drying grounds, vacant site

and an unnumbered godown. The evidence has established that different door numbers were the subject matter of demise at different points of

time. It was not established that at any particular point of time they were covered by a single tenancy agreement. The landlords being the same and

the tenant being the same, payments of the rents in an aggregate sum will not be a decisive factor to spell out a single tenancy in respect of all the

buildings which have different door numbers. The parties, both the sides, coveted the issue of a commission and (sic) the Court appointed a

Commissioner to inspect the property, subject matter in dispute in the revision, and note down the following details and file a plan:

(1) The lie of the door numbers and the vacant lands;

(2) Town Survey numbers, if any, for the door numbers and separate Town Survey Numbers, if any, for the vacant lands.

The Advocate-Commissioner has submitted his report and the plan prepared by a surveyor and the materials exposed through the Commissioner

are not speaking in favour of maintaining a single petition for eviction in respect of all the items. The vacant lands and the door numbers are in T.S.

Nos. 3461/1 and 3461/2. The entirety of T.S. No. 3461/2 and a portion of T.S. No. 3461/1 go to make up the property in dispute. Door

numbers 143 and 144 are stated to be in T.S. No. 3461/2 and the door number 145 is stated to be in a portion of T.S. No. 3461/1 coming within

the property in dispute. The plan document No. 1 filed by the Advocate-Commissioner does not allocate the door numbers to the buildings and

structures found therein. But one thing is abundantly clear that vast extent of vacant land is involved in the property in dispute and all the buildings

and structures cannot be stated to be structurally contiguous, so as to form a single unit.

10. There are two aspects which rightly weighed with the Appellate Authority to spell out prejudice to the tenant by the filing of a single petition for

eviction. As pointed out earlier, the property in dispute takes in vacant sites and drying yards and the evidence has demonstrated that they were the

subject-matter of separate tenancies. The description of the property does not

say and equally so the evidence placed in this case does not make out that these vacant sites and drying yards are appurtenants to any building or buildings, which again were let out separately at different points of time. Eviction of tenant from a vacant site demised separately as such will stand on a different footing. The matter will have to be viewed and the controversy between the landlord and the tenant will have to be solved from a different angle. In the present case, the tenant the first respondent has contended that he has put up constructions and has made installations, electrical and water supply at huge costs and further he claims to have improved the property also. There are materials in the case to support this case of the tenant and the Appellate Authority points out that the tenant, the first-respondent, must "have put up structures in the vacant site and there could be claim for compensation for such structures. Certainly, the tenant could not work out his rights and secure his interests in respect of such vacant sites and the superstructures put up by him thereon in the present proceedings. In those circumstances, it will be most inappropriate to bring in such vacant sites and club them with the property, which will fall within the definition of "building" under the provisions of the Act in motion in respect of these two types of properties. Prejudice to the tenant is writ large on the face of the facts of the case,

11. Yet another aspect on the question of prejudice, which should be relevantly taken note of and, in fact, was taken note of by the Appellate

Authority is that the landlords sought eviction alleging different grounds, relatable to different door numbers, the relevant allegations in the petition

for eviction have been already recapitulated in the preceding paragraphs of this order. The landlord would allege subletting in respect of door

numbers 144 and 145/9 to the second respondent; door numbers 145/6 and 145/7 to the third-respondents; door number 143 to the fourth-

respondent and yet another portion to the fifth respondent. Substantiation of subletting in respect of one or more of the door numbers will not lead

to eviction in respect of the other door numbers where such substantiation happens to be lacking. Equally so, the allegations of different user

attracting Section 10(2)(ii)(b) of the Act are referable to door number 143. Certainly, on the facts of the present case, it cannot be stated that

different user of door number 143 will entail the eviction of the tenant from the

other door numbers also, especially when it has come out in evidence that different door numbers and properties, were the subject-matter of demise at different points of time. This is a relevant feature demonstrating how prejudicial will be, to the tenant, the action for eviction through a single petition for eviction in respect of all the items of properties.

12. This is not the case of a single building as a single unit, wherein different portions are let out either to a single tenant or different tenants. This is also not a case of a number of tenants occupying one and the same building. This is also not a case of different tenancies or more than one tenancy to the same tenant in a single premises bearing a single door number. It is a case of different tenancies relating to different door numbers and serving different purposes. The element of prejudice is amply made out and it dissuades the authorities under the Act from countenancing a single petition for eviction. As I have initially pointed out, the ultimate test to be applied in such contingencies is to find out whether the tenant is being put to prejudice by the filing of a single petition. Here prejudice to the tenant has been demonstrated beyond ambiguity. Under these circumstances, I have no reason to disturb the orders passed by the authorities under the Act and this Revision deserves dismissal and accordingly it is dismissed. I make no order as to costs.

13. I must place on record that the Learned Counsel for the respondents wanted to demonstrate that even the findings rendered by the Appellate Authority on the question of subletting and bona fide requirement for owner's occupation are not sustainable. I have no occasion to assess the contentions since I have upheld the primary point with regard to the maintainability of the petition.