

(1998) 10 MAD CK 0073
In the Madras High Court
Case No : C.R.P.No. 2896 of 1994

Jothi Ammal and three others

APPELLANT

Vs

Kulandai Vadivel and others

RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 7(3)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 14(1)

Citation : (1998) 3 CTC 457 : (1999) 1 MLJ 35

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. V. Raghavachari, for the Appellant; Mrs. P. Bhuvaneswari for Mr. T.R. Rajaraman, for the Respondent

Final Decision : Allowed

Judgement

1. The tenants/petitioners who suffered an order of eviction before the appellate authority have filed the above revision.

2. The respondents/landlords filed the petition in R.C.O.P.No. 49 of 1984 for eviction of the premises in question against the petitioners/tenants on

the file of the learned Rent Controller/Tiruchirappalli under Sections 10(3)(c) and 14(1)(b) of the Tamil Nadu Buildings Lease and Rent Control

Act 18 of 1960 as amended by Act 23 of 1973. Since, before this Court, arguments were made only with respect to. the correctness of the order

passed on the basis of the requirement of the premises in question for the additional accommodation, I am not dealing with the other issue.

3. According to the respondents, the respondent in the R.C.O.P. are in possession and enjoyment of the building bearing door No.18-C, which is

a portion of the entire building bearing door No. 18, and the petitioners herein/tenant in the R.C.O.P. has been in possession and enjoyment of the

building bearing door No. 18. The case of the respondents is that the family of the landlord consists of 6 members and they find it difficult to reside

in door No. 18-C and the existing accommodation is hardly sufficient and so they require the premises in question which is a portion of the entire

property as additional accommodation. The tenant in the R.C.O.P. has resisted the eviction petition on the ground that the petition is not

maintainable u/s 10(3)(c) of the said Act, as the building which is in occupation of the tenant and that of the landlord are different buildings. Even

on merits, the tenant disputed about the bona fide intention of the landlord. The Rent Controller appointed an Advocate- Commissioner and on the

basis of his report factually found that the buildings are two different buildings and so the petition is not maintainable u/s 10(3)(c) of the said Act.

He also went into the merits regarding the bona fide intention of the landlord and found that the intention is not bona fide one. Even with respect to

the relative hardship, which may be caused to the tenant by granting eviction would outweigh the advantage to the landlord. Aggrieved against the

same, the respondents who have been impleaded as legal heirs of the original petitioner in the R.C.O.P., after his death, have filed appeal in

R.C.A.No. 156 of 1989 on the file of the Appellate Authority/Sub-Judge, Tiruchirapalli. The appellate authority reversed the finding of the Rent

Controller and allowed the appeal. Aggrieved against the same, the tenants/petitioners have filed the above Revision.

4. The only point argued by the learned counsel appearing for the petitioners is that the building sought to be evicted is a different building other

than one which is in occupation of the respondents and so the eviction petition filed by the landlords cannot be maintained u/s 10(3)(C) of the said

Act. In support of his submission the learned counsel has relied on the evidence of P.W.1 himself and the report of the Commissioner.

5. In answering to the argument of the learned counsel for the petitioners, the learned counsel appearing for the respondents has submitted that

merely because the single wall which is dividing the buildings, and merely because two different door numbers have been given, it cannot be said

that they are two different buildings, and so the petition filed by them is maintainable.

6. It is not in dispute that the building which is in occupation of the landlords is bearing door No. 18-C and the building which is in occupation of

the tenants is bearing door No. 18. Admittedly, there is a dividing wall in between the buildings, which divides the property. Though in the eviction

petition it is stated that the building is bearing door No. 18- C, which is a portion of the entire building, P.W. 1, the second petitioner in the

R.C.O.P has stated in his chief-examination that the buildings bearing door No. 18 and 18-C are separate buildings. The Commissioner in his

report has specifically stated that they are two houses. While referring to the building which is in occupation of the petitioners, the Commissioner

has referred to the same only as adjoining house, which is a single storied building with Madras terrace roofing. The building bearing door No.18-

C in which the respondents are occupying is covered by country tiles, and having sloping towards north and south and the walls are mud walls. On

the basis of those facts, it has to be decided, those buildings have to be considered as one building so as to maintain the eviction petition filed u/s

10(3)(c) of the said Act.

7. Both the counsel have relied on a number of authorities in support of their submissions. The Division Bench of this Court in A. Mohammed

Jaffar Saheb Vs. A. Palaniappa Chettiar, while construing the scope of Section 7(3)(c) of the Madras Buildings (Lease and Rent Control) Act,

1949 has held as follows:-

The plain meaning of this section, is that a landlord in occupation of a portion of a block of buildings can, for his own accommodation evict the

tenant in occupation of another of the same block. This he would be entitled to whether or not the portion in the occupation of the tenant has got,

means of separate ingress and egress, whether it has been registered in the Municipal Property Register as a separate unit of assessment or not ,

and whether the access to the house is by the same street from which the landlord has got access to his own portion or not. These are wholly

irrelevant circumstances in order to ascertain the true position u/s 7(3)(c) whether a landlord requires additional accommodation being in

occupation of a portion of the building and seeking to evict a tenant in occupation of another portion of the same building.

8. In Shivaji Rao v. Bhutanga Rao, 1974 T.L.N.J. 183 N.S. Ramaswami, J., while construing the scope of Section 10(3)(c) of the said Act, has

held as following:-

There is no dispute that the 8 shops in question are physically part of the building bearing Door No. 439, Mint Street, It may be that the shops

themselves are given different door numbers, but it is not denied that only a partition wall separates the 8 shops which are facing N.S.C. Bose

Road and the ground floor of the main building which is said to be a big hall. It is also in evidence that the partition wall can be removed without

any further structural alteration as there is already a beam supporting the roof at the place where the partition wall stands. Under these

circumstances, there can be no doubt that the shops in question are only portions of one and the same building which is in occupation of the

landlord and that therefore the landlord is entitled to file the applications under Section. 10(3)(c) of the Act for additional accommodation

In the abovesaid decision the learned Judge has come to the conclusion on the basis that in evidence it was established in that case that the partition

wall can be removed without any further structural alteration, and the ground floor of the main building which is said to be a big hall. So, on the

basis of the physical structure of the building, the learned Judge has come to the conclusion though different door numbers have been given to the

shops, it has to be construed that it is only one building.

9. Though the learned counsel appearing for the respondents has relied on the abovesaid decision in support of her submission to the effect that in

that case though the learned Judge has factually found that the said building was treated as one, the shops were given distinct and separate door

numbers. But, the learned Judge has also specifically taken note of the fact that the landlord is having his own residence in the first floor situates

over the said shops. On the basis of the said fact, the learned Judge has come to the conclusion that the landlord seems to have treated the entire

building as one unit.

10. The learned counsel appearing for the respondent has strongly relied on the decision in Kuthalingam v. Jahir Hussain, 1997 (2) L.W. 470 in

support of her submission. In the said decision, the landlord was occupying the premises bearing door No. 31, and other premises bearing door

Nos. 29, 30, 40 and 41 etc.. were occupied by the tenant. In the said case door numbers 30 and 31 are separated by single wall. The learned

Judge in that case, refused to interfere with the findings of the appellate

authority on the basis that the said finding is purely based on facts and also on the basis of the evidence. The learned Judge proceeded on facts and on the basis of the factual findings of the appellate authority, has found as follows:-

When the two portions bearing Door Nos. 30 and 31 are admittedly in one building and the requirement of the landlord is also bona fide, there can be no impediment on the part of the landlord from asking for additional accommodation in the same building. I have already held that the

finding of the Appellate Authority holding that the requirement of the building is bona fide and does not warrant any interference by this Court".

Though before the learned Judge, the decision of the Supreme Court in Gangaram Vs. N. Shankar Reddy, was cited the learned Judge

distinguished the same on the basis of the facts of the case before him.

11. Before dealing with the facts of the present case, it is necessary to point out certain decisions on this aspect. In Gangaram Vs. N. Shankar

Reddy, , the Apex Court has elaborately discussed about the scope of Section 10(3) of the Act, and guidelines has been given in the said decision,

which are as follows:-

What S. 10(3)(c) envisages is the oneness of the building and not the oneness of ownership of two different buildings, one occupied by the

landlord and the other by the tenant. The significant words used in S. 10(3)(c) are "the landlord who is occupying only a part of a building "and"

any tenant occupying the whole or any portion of the remaining part of the building". Surely no one can say that two adjoining buildings bearing

different door numbers, one occupied by the landlord and the other by the tenant would make them one and the same building if they are owned

by one person and separate buildings if they are owned by two different persons. A practical test which can be applied to find out if two adjoining

buildings form part of the same building or two different buildings would be to see whether one of the two buildings can be sold by the landlord and

the purchaser inducted into possession of the premises sold without the landlord's possession and enjoyment of the premises in his occupation

being affected. Viewed in that manner, it can at once be seen that the leased premises in the appellant's occupation can be independently sold and

the purchaser delivered possession without the respondent's possession of door

No. 1-1-249 being affected in any manner. As a matter of fact, the previous history of the building shows that before it was purchased by the respondent, it was owned by Sri Sitaram Rao and the respondent was owning only door No. 1-1249. Such being the case, merely because the appellant has acquired title to door No.1-1-250 also, it can never be said that the building under the tenancy of the appellant became part and parcel of the respondent's building No. 1-1-249. Similarly, the fact that the two buildings are separated only by a single wall with no intervening space between them would not alter the situation in any manner because the identity of two separate buildings is not to be judged on the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them

12. Following the abovesaid decision, the learned Judge in S.Devan/V. Krishnan/ K. Salim Ahmed v. N. Palaniappal (Landlord), 1996 (2) L.W.

555, held as follows:-

If this principle is to be applied in this case it is not the case of the petitioners that each shop bearing separate door number cannot be sold by the landlord independently and the purchaser cannot be put in possession without the landlord's possession and enjoyment being affected. When each shop is having separate door number and each had been treated as a separate unit, it is always open to the landlord to sell each shop as a separate unit and hand over possession to the purchaser for his immediate occupation and enjoyment without affecting the landlord's occupation of another shop bearing separate door number. Hence even on the basis of this judgment, the petitioner's contention that the landlord has to file the petition for eviction only u/s 10(3)(c) of the said Act, cannot be accepted.

From the abovesaid decided cases, now it has to be decided about the case on hand as to whether the building bearing door Nos. 18- C and 18 are different or one building. In this case, as set out earlier, the advocate-commissioner has mentioned to different buildings and the same has been accepted by P.W. 1 in his chief examination. Even with respect to the physical features of the building, it is very clear that they can be treated as two different buildings. Even according to the petition, the premises bearing door No. 18 is a terraced one. The premises bearing No 18-C is a tiled one. So, even on the basis of the physical features, they can be identified

separately. It is not the case of the respondents that each building cannot be sold separately and the purchasers cannot be put into possession, without disturbing the other person who is in possession of the other building. So, the fact that the two buildings are separated only by a single wall with no intervening space between them would not alter the situation in any manner cannot be accepted because the identity of the said two buildings are different. Without appreciating the decision in Gangaram Vs.

N. Shankar Reddy, and the abovesaid features, the appellate authority has come to the conclusion that the said buildings are one building only.

Hence the same cannot be sustained.

13. Since I have come to the conclusion that the buildings bearing door Nos. 18 and 18-C are two different buildings, the respondents cannot

sustain the eviction petition filed u/s 10(3)(c) of the said Act. So, the order of the Appellate Authority/Sub-Judge, Tiruchirapalli is set aside and the

R.C.O.P.No. 49 of 1984 is rejected. Consequently, this revision is allowed. No costs.