
(1993) 01 MAD CK 0050
In the Madras High Court

K.R. Murugesan

APPELLANT

Vs

The Chairman, Ex-Servicemen Welfare and Another

RESPONDENT

Date of Decision : 18-01-1993

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(ii)(b)

Citation : (1993) 1 MLJ 512

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Having failed before both the Authorities below, the tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, has preferred this civil revision petition.

2. The respondents/landlord herein filed the eviction petition R.C.O.P. No. 74 of 1990 on the file of the Rent Controller, Vellore on the ground that the petitioner-tenant used the demised building for a purpose other than that for which it was leased. The petition was filed u/s 10(2)(ii)(b) of the said Act. Both, the Rent Controller and the Appellate Authority, Vellore in R.C.A. No. 6 of 1992 have concurrently held that the petitioner has so used the said building. Admittedly, the petitioner was an ex-servicemen and so the respondents leased out the demised building for running cycle business. There was a raid by the prohibition wing of the police of the abovesaid building on 24.8.1989 and 1/3 bottles of Indian made foreign liquor were seized from the building and in the subsequent police proceedings, the petitioner admitted his guilt in having stored the liquor bottles in the abovesaid building. A fine was levied on him and he paid the same. That is borne out by Ex.A-3 document dated 25.8.1989. That apart by Ex.A-2 letter dated 25.9.1989 by the petitioner to the 2nd respondent he has admitted the above facts and pleaded thus:

Primarily based on these two documents Exs.A-3 and A-2 the Authorities below have come to the conclusion that the abovesaid liquor bottles were stored in the petition-building. Further, the explanation offered by the petitioner that the

abovesaid liquor bottles were temporarily kept in the said building on behalf of ex-servicemen who come to purchase such liquor from the adjacent godown, was not believed by the Authorities below. As per the relevant rules, each ex-serviceman was allowed to have supply of only five bottles and there is no scope in that context for the petitioner to have stored as many as 173 bottles, even as per the explanation. This explanation was not accepted also because the petitioner did not examine any of such ex-servicemen, who allegedly left liquor bottles in the custody of the petitioner. Further, even before the Authorities below, the argument of the petitioners was that the abovesaid raid was only a solitary instance wherein the petitioner was found to possess the abovesaid liquor bottles and that on that footing, it could not be held that the building was used for liquor trade. For this argument *Rathnam Naicker v. Mani Naicker* (1955) 1 M.L.J. 2, was also relied on. This argument was also considered and the Authorities below have negated the said contention on the footing that the facts in the said case were different.

3. Now, before me, the learned Counsel for the petitioner advances the same argument along with the other argument that at any rate, the cycle business, for which the original lease was given, has not been abandoned at all. In connection with this latter argument the learned Counsel relies on *V. Gopal Stores by Proprietor, V. Gopal Vs. A. Arunachala Naicker*, . With reference to the former argument certain other decisions like, *Abdul Razack v. Umapathy* (1965) 2 M.L.J. 41 and *E.A.E. Kamal Pasha v. V.A. Tajuddin and Ors.* 1974 T.LN.J. 180, were also relied on.

4. So far as *Rathnam Naicker v. Mani Naicker* (1955) 1 M.L.J. 2, is concerned, I find that the said case held that merely because a tenant played cards for stake in the demised building on a solitary occasion and was convicted under the City Police Act, it could be held that the building was used for a different purpose. But playing cards on one single occasion cannot be equated with storing as many as 173 liquor bottles, particularly in the light of the other finding by the Authorities below that the petitioner's only explanation that the said liquor bottles were kept in custody only at the request of the other ex-servicemen is not acceptable. Therefore, the Appellate Authority is right in not applying *Rathnam Naicker v. Mani Naicker* (1955) 1 M.L.J. 2, to the present case. *Abdul Razack v. Umapathy* (1965) 2 M.L.J. 41, only says that a fugitive and sporadic user of the lease premises for a limited period ought not to be taken as the test of conversion to some other use. In the said case, the tenant of a building leased as a shop, for a limited period, conducted some cooking and also stayed there, though he had his residence elsewhere. Only in the context of those facts, the said decision was given and I do not think that decision could be applied to the present facts, in view of the above referred to features in the present case. In *E.A.E. Kamal Pasha v. V.A. Tajuddin and Ors.* 1974 T.LN.J. 180, the court held that the landlord impliedly consented to the different use to which the landlord put the building. After holding so, no doubt, the learned Judge also observes that only a small room in the total demised building was put to such a different use and that in

order to bring the case within the relevant sub-section, it is necessary to prove that a substantial part of the building was put to a different use. In the present case, the Authorities below, taking into consideration all the features in the case, have come to the factual inference that the building was used for liquor business, and so, this decision also is not applicable to the present case.

5. The second contention of the learned Counsel is that it is nobody's case that he has abandoned the cycle business for which the building was teased and that hence eviction could not be ordered under the abovesaid relevant clause in Section 10 of the abovesaid Act. In the abovesaid case, viz. V. Gopal Stores by Proprietor, V. Gopal Vs. A. Arunachala Naicker, , in the building which was let out for selling betel leaves, a small portion was used for selling crackers during a particular season like Deepavali, in addition to the main business. In that context, it was no doubt held that such use for selling crackers would not amount to using the building for a different purpose, since the original business was not abandoned. But, in the present case, from the fact that a very substantial quantity of liquor bottles had been stored in the demised building, it is not difficult to infer that atleast a substantial part of the building was used by the petitioner for the liquor trade. Therefore, even assuming that the original cycle business was not altogether abandoned, the relevant clause in Section 10 would be satisfied.

6. In fact, it has been held by a Full Bench of this Court in Dr. N.R. Rao alias N. Raghavendra Rao and Another Vs. Premier Auto Electric Private Limited, , that where it was found that a third party has been using a portion of the demised building contrary to the purpose for which the building was leased out, it was held that Section 10(2)(ii)(b) is satisfied. Further, there it has also been held thus:

Section 2(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) defines, building to include part of the building also. In Section 10(2)(ii) (b), the expression is "used the building for a purpose other than that for which it was leased...."Such a reference to "building" will include part of the building also. Therefore, the occupation of R.W. 1 of a part of the building will definitely attract the mischief of Section 10(2)(ii)(b). As contended by Mr. Rao, the occupation of a portion of the building by a third party will squarely come within the meaning of occupation of "substantial part" of the building, as contemplated by the Supreme Court in Palaniappa Chettiar v. Ponnuswami Pillai (1970) 1 S.C.W.R. 487 and such an expression "substantial part" has been used in contract to a minimal or trivial portion of the building. This argument is fortified by the definition given to "building" in the Act and also the expression "building" occurring in Section 10(2)(ii)(b) of the Act.

Thus, this Full Bench decision also explains the term "substantial part" used by the Supreme Court Palaniappa Chettiar v. Ponnuswami Pillai (1970) 1 S.C.W.R. 487, which was relied on in the above referred to E.A.E. Kamal Pasha v. V.A. Tajuddin and Ors. 1974 T.L.N.J. 180.

6A. Further, in view of K.A. Anthappai v. Ahammed (1992) 2 L.W. 735, as to the limited scope of the present revisionary power, I do not think, I will be justified in interfering with the conclusion reached by the authorities below.

7. Therefore, there is no merit in this civil revision petition and hence, it is not admitted, but dismissed. Time for vacating three months.