

(1962) 07 MAD CK 0040
In the Madras High Court
Case No : Writ Petition No. 182 of 1960

Late Methodist Mission Aided Higher Elementary Schools	APPELLANT
Vs	
The State or Madras and another	RESPONDENT

Date of Decision : 10-07-1962

Acts Referred:

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

Citation : (1962) 07 MAD CK 0040

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : G. Ramanujam, for the Appellant; V. Thyagarajan and N.C. Rangaswami, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The State Government, by its order dated 25th October, 1959, exempted premises No. 25, Perambur Barracks Road, Madras, from the provisions of S. 7 of the Madras Buildings (Lease and Rent Control) Act, 1949. This order was made in exercise of the powers vested in the Government by S. 13 of the Act and on the ground that the second respondent required the premises for his own occupation, he having purchased the same in 1952 and waited for the petitioner to vacate it since then. It would appear that, when the second respondent moved the Government on an earlier occasion, the latter examined the request in consultation with the Accommodation Controller and the Director of Public Instruction, Madras, and directed the Accommodation Controller to inform the petitioner to vacate the premises within a period of three months. The Government was probably mindful of the fact that the premises were utilized for accommodating the Higher Elementary School. The petitioner failed to vacate within the time given, but the Government would appear to have suggested repeated extensions of time, the last of which was given till 31st March, 1959. It was only thereafter the second respondent successfully moved the Government under S.13. In the order, the Government says that in view of

the fact that the petitioner has had ample time in which he could have a suitable building for the school and the building in question is not the only one in which the school is housed but there are other buildings, the eviction of the petitioner would not be unreasonable. That was also the view, as appears from the order, of the Accommodation Controller. On behalf of the petitioner, Mr. G. Ramanujam, strenuously urges that in view of the provisions of S. 7 (3) (A) (ii) of the Act, it is not within the competence of the Government under S. 13 to make the impugned order. Learned Counsel argues that the policy of the Act, as found in the section just mentioned, is not to make available the provisions for eviction of tenants of the premises let out for use as an educational institution and which is actually being used as such, and that consistent with that policy, S. 13 cannot be understood as empowering the Government to do something nullifying that policy. The precise question does not appear to be covered by authority. But it presents no difficulty. It is true that S. 7(3) (A) (ii) expressly provides that no order for eviction shall be passed under Sub-S. (i) in respect of a building let out for and is actually used as an educational institution. But, I do not understand this provision to mean that it has the effect of controlling the scope of the power under S. 13, especially when the purposes and objects of this section are borne in mind. A parallel instance is absence in the Act of any provision for eviction from a non-residential building. On that account it cannot be said that, because eviction is not provided for in respect of such a building, therefore, the power of exemption under S. 13 is not available. The scope of S. 13 with reference to the decided cases, including *Irani v. State of Madras* (1962) 1 M.L.J. 92 = 74 L.W. 614 (F.B.), was summed up by this Court in *Pannalal Jagannath Prasad Gupta v. State of Madras* ILR 1962 Mad. 430 at 437=74 L.W. 604:

It should therefore be taken as well settled that bonafide requirements by a landlord of a non-residential building for his own occupation is a ground well within the scope of S 13 of the Act and that, in particular circumstances, if the Government are satisfied that the justice of the case, including relieving hardship or unreasonable severity or rigour in the application of the provisions of the Act requires it, they may legitimately and properly grant exemption on that ground.

2. To relieve hardship or unreasonable severity is also one of the objects of the Act. it is in the light of it, among other considerations, the constitutionality of S. 13 was upheld. The Act is supposed to be a temporary one, and its provisions, as is well known, make inroads into the ordinary law of property as provided in the Transfer of Property Act. While the object of the Act was to regulate letting of residential and non-residential buildings, control rents of such buildings, and prevent unreasonable eviction of tenants therefrom, it is obvious that these limitations, conceived as they in public interest, should also answer the test of reasonableness. Wherever, therefore, the Act operates oppressively or with unreasonable rigour the test of reasonableness will not be satisfied, It is to meet such a contingency, S. 13 has been put into the Act, so that the Government, in exercise of the power conferred upon it by the section, may apply the Act in such a way as to satisfy that test. Whether that test is satisfied or not will, of course,

depend upon the particular facts and circumstances. I am therefore unable to accept the contention for the petitioner that the Government was not competent under S. 13 to make the order.

3. It is not denied that the second respondent purchased the house in 1952 and since then he had been making attempts from time to time to get back possession of the house for the purpose of his own occupation. The Government was satisfied on the material before it, that the second respondent required the house bona fide for his own occupation. Where a particular house is exempted under S. 13 from the operation of the provisions of S. 7, as has been pointed out by this Court in *Pannalal Jagannath Prasad Gupta v. State of Madras* ILR 1962 Mad. 430 at 437=74 L.W. 604, it is subject to judicial review. On a petition for such a review, this Court will have to find whether, in making the exemption, the Government acted unreasonably, arbitrarily, for extraneous reasons or mala fide. Where the Government has given reasons and those reasons are founded on some material, this Court, on a petition for review, will not sit as a Court of appeal, but scrutinise the record to satisfy itself that justifiable circumstances existed for the Government to make the order. It is not possible to say that in the Instant case the order of the Government was vitiated by any one or the other of the defects.

4. The petition fails and is dismissed, but in the circumstances there will be no order as to costs. This petition has been pending for two years, and bearing in mind that this is a case of an educational institution, I think it proper to direct that the petitioner will have time to vacate until the 30th April 1963, which means the petitioner should deliver vacant possession of the premises to the second respondent on 1st May 1963.