

(1959) 10 MAD CK 0007
In the Madras High Court

M. Chinniah Servai

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 01-10-1959

Acts Referred:

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

Citation : (1960) ILR (Mad) 204 : (1940) 72 LW 782 : (1960) 2 MLJ 191

Hon'ble Judges : Rajamannar, C.J

Bench : Division Bench

Judgement

Rajamannar, C.J.—This is a petition filed under Article 226 of the Constitution for the issue of a writ of certiorari or such other suitable writ

or order or directions in the nature of writ to quash the proceedings of the State of Madras culminating in their order G.O. Ms. No. 2621, Home,

dated 17th September, 1958. In and by that order the Government, in purported exercise of the powers conferred u/s 13 of the Madras Buildings

(Lease and Rent Control) Act, 1949, exempted premises No. 15, Coral Merchant Street, George Town, Madras, from the provisions of Section

7 of the said Act.

2. The facts which led up to this petition are as follows : The second respondent in the petition, one Rajathi Animal, purchased premises Nos. 14

and 15, Coral Merchant Street for a sum of about Rs. 23,000 by a deed of sale, dated 12th March, 1955. Of these two, No. 14 appears to be a

cowshed and we are not concerned with it in this petition. No. 15 was in the occupation of the petitioner, Chinniah Servai who was residing in a

portion of the premises and running a boarding and lodging house. Rajathi Animal filed an application before the House Rent Controller, Madras

H.R.C. No. 2462 of 1955 for eviction of the petitioner on the ground that she required the premises bonafide for her residential purposes and that she had no other house of her own in the City of Madras. The petition was contested on two grounds, namely, (1) that the premises were not required bona fide and (2) that the premises were used for a non-residential purpose. The House Rent Controller held that the building in question was a residential building and it was required bona fide by the second respondent, who will hereafter be referred to as the respondent. Hence he passed an order for eviction. The petitioner before us filed an appeal against this order, H.R.A. No. 88 of 1956. The Appellate Tribunal dismissed the appeal agreeing with the Rent Controller that the building was a residential one and that it was required bona fide by the petitioner for her own occupation. The petitioner filed a Civil Revision Petition No. 1370 of 1956, against this order to this Court. The petition was allowed by Panchapakesa Ayyar, J., who set aside the orders of the two Tribunals below and dismissed the respondent's application for eviction. The learned Judge agreed with the findings of the Rent Controller and the Appellate Tribunal that the respondent did require the premises bona fide for her residential purposes but held that the premises were let and were being used for non-residential purposes, namely, running a lodging house and the mere fact that the petitioner lived in a portion of the premises with his family for the purpose of running the lodging house would not convert the premises into a residential one. Thereupon the respondent filed a petition before the Government praying that the said premises No. 15, Coral Merchant Street, Madras, may be exempted from the provisions of Section 7 of the Act. The respondent referred to certain statements made by the petitioner before us in prior proceedings for eviction setting up a case that the building in question was residential in character. She reiterated that she required the building bona fide for her own residential purposes. Notice of this petition was given to the petitioner before us who made his own representation. Referring to the contradictory statements made by him at different stages the petitioner said that it was true that he had been taking all possible defences open to him under the law to ward off eviction and he could do nothing else than to meet each case as and when it arose. He submitted that no case was made out for exemption. The Government on a consideration of both the respondent's petition and the

petitioner's statement passed the following order:

Srimathi Rajathi Animal has applied to Government for exempting premises Numbers 14 and 15, Coral Merchant Street, G.T., Madras, from the

operation of the Madras Buildings (Lease and Rent Control) Act. She has stated that she purchased the premises on 12th March, 1955, for a sum

of Rs. 22,500. She is now residing in a small portion in premises No. 124, Coral Merchant Street, paying a rent of Rs. 25 per mensem. The

building No. 15, Coral Merchant Street, is occupied by Sri Chinniah Servai who is residing there and running a Boarding and Lodging house.

Premises No. 14, Coral Merchant Street, is a cowshed. The landlady has represented that she purchased the buildings for high price as she

wanted to leave her present rented house as the landlady of that house has been insisting on her vacating the house. She represented that she bona

fide requires premise No. 15, Coral Merchant Street, for her own occupation. She has therefore requested that the premises may be exempted

from the provisions of Section 7 of the Madras Buildings (Lease and Rent Control) Act.

The Government have examined the request of the petitioner carefully in consultation with the Accommodation Controller, Madras and they have

also gone into the objection statement filed by the tenant Sri Chinniah Servai in detail. The Government find that the landlady has no other house of

her own and that her need for this house is bonafide. The Government therefore consider that premises No. 15, Coral Merchant Street, G.T.,

Madras, may be exempted from the provisions of Section 7 of the Madras Buildings (Lease and Rent Control) Act, 1949.

3. It is to quash this order of the Government that the above petition has been filed by the tenant.

4. Section 13 of the Act runs thus:

Notwithstanding anything contained in this Act, the State Government may, by notification in the Fort St. George Gazette, exempt any building or

class of buildings from all or any of the provisions of this Act.

This section does not specify the grounds on which the exemption may be granted by the Government. However, in considering the validity of a

provision like this section, this Court, though it held that as such the section was not ultra vires or void, nevertheless any particular case of

exemption could be the subject of judicial review and this Court would have the power to quash any order of exemption if the order of exemption

was arbitrary or mala fide. Dealing with the practical aspect of the matter one of us who was a party to the decision in that case *Globe Theatres,*

Ltd. v. State of Madras (1954) 2 M.L.J. 110 said:

On the one hand, it is obvious that there should exist a power of exemption to be exercised in proper cases. On the other hand, it would be

dangerous to vest in the executive unfettered discretion in granting exemptions, a discretion which cannot be challenged in a Court. On the one

hand, it is not easy or feasible to enumerate the grounds on which exemption should be made. On the other hand, it would be wrong to allow the

Government to exercise the power of exemption on irrelevant or mala fide considerations.

It was also observed:

There are bound to be cases in which an inflexible application of the provisions of the Act may result in unnecessary hardship not contemplated by

the Legislature. I would even go further and say that the enforcement of the provisions of the Act may amount to an unreasonable restriction on the

exercise of the right conferred by Article 19 of the Constitution. It is eminently desirable that there should be some authority vested with the power

to make exceptions to the general application of the Act and its provisions in proper cases. If so, there could be no better body than the State

Government, on whom such power could be conferred.

The principles laid down in this decision have been applied in several cases both by learned Judges sitting alone and by Division Benches. Mr.

Gopalaswami Ayyangar, learned Counsel for the petitioner referred us to the recent decision of this Court in *Abdul Subhan Sahib and Sons Vs.*

State of Madras by Secretary, Home Department and Another, . Reference was also made to (1957) 1 M.L.J.N.R.C. 44, Writ Appeal No. 44 of

1956. On behalf of the respondent Mr. T. Venkatadri referred us to the Judgment of Rajagopalan, J., in Writ Petition No. 2 of 1954 and (1959) 2

M.L.J. 27.

5. One of the earliest cases in which the principles laid down by us in the *Globe Theatres* (1954) 2 M.L.J. 110, had to be applied to a concrete

instance was that in Writ Appeal No. 27 of 1953. In that case the owner of a

cinema theatre was prevented from using his own premises to carry on his own business of running a cinema at the instance and for the benefit of a person who was in possession of another theatre in which he was carrying on the same business of running a cinema theatre. There is nothing in the Act which permits the eviction of a tenant in such circumstances, that is, on the ground that the tenant has other business premises in which he can carry on his own business whereas the landlord had none to start his own business. The Government exempted the premises therein from the operation of the Act. Dealing with a challenge of the validity of the order we said as follows:

We cannot say that the action of the Government in exempting the premises in question is in any way in disregard of the underlying policy of the

House Rent Control Act.... In our opinion, it is only when the provisions of the Rent Control Act do not cover a particular case that there is

legitimate scope for the exercise by the Government of the powers conferred by Section 13 of the Act. To give an illustration, if in a case the

landlord alleges that there has been a sub-letting by the tenant without his permission and therefore the tenant is liable to be evicted and he fails to

establish his case before the Rent Controller or the appellate authority, the Government would not be exercising their power of exemption

legitimately if on the same ground they grant an exemption u/s 13 of the Act. This is not such a case. There is no provision in the Act which permits

the eviction of a tenant of business premises on the ground that the tenant has other business premises, whereas the landlord has none to start his

own business. In such a case, the Government may consider that an eviction of the tenant is not only not unreasonable but is most equitable. This is

such a case....

6. We, therefore, upheld the order of exemption passed by the Government in that case. In Writ Petition 2 of 1954 Rajagopalan, J., upheld the

order of exemption passed by the Government following the principles laid down in the Globe Theatres, case,¹ and Writ Appeal No. 27 of 1953.

It was contended before the learned Judge that the statutory tribunals had decided against the landlord and the order of the Government was

designed to reverse the order of the tribunals and on the same material placed before the tribunals. But the learned Judge did not agree with that

contention. He certainly subscribed to the proposition that if the Government exempted the premises from the provisions of the Act on the very

same grounds it will in effect amount to a reversal of the appellate authority though in an indirect way and an order passed in such circumstances

would be in excess of jurisdiction. It is this latter aspect which compelled this Court to set aside the order of exemption in Abdul Subhan Sahib and

Sons Vs. State of Madras by Secretary, Home Department and Another, .

7. Bearing in mind these general principles the facts of this case may be examined. Both the Rent Controller and the Appellate Tribunal had held

that the building in question was bona fide required by the respondent for her residential purposes. This finding was expressly accepted by

Panchapakesa Ayyar, J., in C.R.P. No. 1370 of 1956. In spite of this finding the learned Judge felt compelled to dismiss the application for

eviction because he held that the building was non-residential. Now there is no provision in the Act under which the owner of a non-residential

building can apply for the eviction of a tenant of such a building on the ground that he bona fide requires it for his residential purposes. There may

be non-residential buildings of various types. There may be buildings like factories, large industrial establishments, shops and other such buildings

which obviously could not be normally considered to be fit for residential purposes. There may be equally buildings which may be held to be non-

residential because they were let out for non-residential purposes but which certainly could be used for residential purposes. The building with

which we are concerned in this petition obviously falls in the latter category. The finding is that the petitioner himself lives with his family in a portion

of the house and uses the remaining portion of the house to run his boarding and lodging business. In that sense any building with half a dozen

rooms can be used to run a boarding and lodging house. It cannot possibly be contended in this case that if the petitioner were to vacate, the

building could not be used entirely for residential purposes. The difficulty however was that there is no provision in the Act under which a non-

residential building, that is to say, a building which has been let for non-residential purposes, can be converted into a residential building, though

there is a provision in Section 11(1) of the Act for conversion of a residential building into a non-residential building with the permission in writing

of the Controller. The position in this case was therefore this. The respondent had purchased the house for her own residential purposes. It was not suggested anywhere that the house did not permit residential occupation. The finding of this Court which had become final--and it is binding on all parties--was that the building must be deemed to be a non-residential. There is no provision in the Act under which the owner of a non-residential building can demand eviction of the tenant of such a building for her own bona fide residential occupation. The Government in our opinion did not purport to set aside the finding of this Court that the building was non-residential in character. What they were impressed by was the bona fide requirement of the building by the respondent for her residential purposes. As to this, both the Rent Controller and the Appellate Tribunal and this Court have been concurrently of opinion that the respondent's case was bona fide. Here then was a case the justice of which could not be met by any of the provisions of the Act. Here is an instance of the principle which was laid down in Writ Appeal No. 27 of 1953 as following from the general principle set out in *Globe Theatres Ltd v. State of Madras* (1945) 2 M.L.J. 110, namely, that it is only when the provisions of the Rent Control Act did not cover a particular case, that there is legitimate scope for the exercise by the Government of the powers conferred by Section 13 of the Act. We therefore hold that the order of exemption passed by the Government in this case was not either arbitrary or mala fide nor did it amount to a circumventing of an order of this Court or of any Rent Control Tribunal.

8. We have refrained from making any reference to the inconsistent statements made by the petitioner from time to time because the Government did not purport to set aside the finding of this Court that the building was non-residential in character relying upon such prior statements of the petitioner.

9. The petition is therefore dismissed but in the circumstances there will be no order as to costs. The petitioner undertakes to give vacant possession within six Weeks from to-day.

10. In view of the dismissal of the Writ Petition, C.M.Ps. Nos. 5530, 5531 and 5532 of 1959 are dismissed.