

**(1965) 04 MAD CK 0009**

**In the Madras High Court**

**Case No : Writ Petition No. 1544 of 1964**

M. Ramaswami Asari

APPELLANT

Vs

The State of Madras and another

RESPONDENT

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**Date of Decision :** 16-04-1965

**Acts Referred:**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29

**Citation :** (1965) 04 MAD CK 0009

**Hon'ble Judges :** Veeraswami, J

**Bench :** Single Bench

**Advocate :** S. Rajarama Iyer and R.S. Venkatachari, for the Appellant; K. Venkataswami for The Addl. Govt. Pleader and Mr. R. Gopalaswami Ayyangar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Veeraswami, J.—This petition by a tenant is to quash an order of the first respondent dated 16th April 1964, and made under S. 29 of the

Madras Buildings (Lease and Rent Control) Act, 1960, exempting premises No. 128, South Avani Moola St., Madurai, from the provisions of S.

10 of the Act. The petitioner has been in occupation of the premises since June 1952. There is no dispute that the premises belong to the second

respondent. At the time the premises was let out to the petitioner, the second respondent was a minor. On his attainment of the age of majority and

his marriage, he applied to the Government for exemption on the ground that he had no other house of his own at Madurai and was actually

residing in a rented premises. After asking for the explanation of the petitioner, the Government made the impugned order being satisfied that this is

a case which justified grant of exemption. Mr. Rajarama Aiyar for the petitioner

contends that the Government in making the order was misled by its view that the premises were both residential and non-residential and that in such a case no remedy was open to the petitioner under the provisions of the Act, Learned Counsel relies on *Dakshinamurthi v. Thulja Bai* 65 L.W. 242, and contends that where it is not shown that the purpose of the tenancy is predominantly for one or other purpose, a petition for eviction would lie in any event. The penultimate paragraph of that judgment no doubt supports the contention. There is no finding by the Government in the instant case as to the predominant purpose of the tenancy.

2. But, in my view, that does not in any way vitiate the impugned order. The power of the Government under S. 29 of the Act is a very wide power and its exercise is not controlled by any other provision in the Act, as will be apparent from the opening words of the section. The purpose of this power is to soften the rigour or hardship in the working of the Act which is an emergency legislation. It follows, therefore, that the power may properly and justly be used for that purpose. Whether the purpose exists or not will be a matter for decision in each case in the light of the particular facts. An exemption being in the very nature an exception to the general protection provided under the Act, it may prima facie be discriminatory and, therefore, each order under S. 29 of the Act may call for examination. Ex facie, the order therefore must appear that it has been made for justifiable purposes. Summing up the nature of the power, this Court in *Pannalal Jagannath Prasad Gupta v. State of Madras* 74 L.W. 604, observed:

It should therefore be taken as well settled that bona fide 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.

3. I continue to hold the same view *Pannalal Jagannath Prasad Gupta Vs. The State of Madras* and Another, has also concurred with it.

4. In this case, the facts undoubtedly justify the order. Here is the second

respondent, who became of age, got married, but was living in a rented house, owning no other house himself in Madurai and naturally he wanted to occupy his own house. That is certainly a legitimate purpose for which the Government could exercise its power under S. 29 of the Act and relieve the hardship of the second respondent. That is what the Government did. The petition fails and is dismissed with Costs. Counsel's fee, Rs. 100.