

(1962) 08 MAD CK 0024

In the Madras High Court

Case No : Writ App. No's. 108 and 109 of 1960

Messrs. S.R. Krishnamurthy and Co. by partner K.M.P.
Rangaswami

APPELLANT

Vs

The State Of Madras and another

RESPONDENT

Date of Decision : 08-08-1962

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 3

Citation : (1962) 08 MAD CK 0024

Hon'ble Judges : Ramakrishnan, J;Anantanarayanan, J

Bench : Division Bench

Advocate : P. Venkataswami, A. Ramanathan, S. Mohan Kumaramangalam and S. Gopalaratnam, for the Appellant; T R. Sundaram and B. Lakshminarayana Reddi, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—These appeals are directed against the order of Rajagopalan, J. in W.P. Nos. 831 and 830 of 1959 respectively. The prior facts are set out briefly in the order of the learned Judge which is reported in M.V. Perumal Chetty and Company and Another Vs. The State of Madras and Another, . They are briefly as follows: The appellants herein, who were the petitioners in the writ proceedings, were tenants of different portions of the premises No. 88/89 Godown, St, Madras, let to them for non-residential purposes, and they were in possession when the second respondent in the writ petitions namely, one Jambulingam Pillai, purchased the property in January, 1958. The second respondent applied to the Government of Madras, to exempt the buildings from the operation of the Madras Buildings (Lease and Rent Control) Act, (Act XXV of 1949) (hereinafter referred to as the Act) under S. 13 of the Act. After giving notice of this application to the petitioners-appellants and hearing their representations, the Government of Madras, the first respondent In the writ petitions, by their order dated 5th August, 1959, exempted the premises from the provisions of S. 7 of the Act. Thereafter the petitioners (appellants) applied

for the issue of a writ of certiorari to set aside the order of the Government. Rajagopalan, J. dismissed the writ petitions, holding that the exemption under S. 13 of the Act was validly granted. Against the above order, the petitioners appeal before us.

2. It is common ground that the building in question has been let out to the tenants for non-residential purposes. It is also not in dispute that the second respondent is occupying for the purpose of his business, a non-residential building of his own, in Madras City. S. 7 (3) (a) of the Act lays it down that a landlord may, subject to the provisions of CI. (d) apply to the Collector for an order directing the tenant to put the landlord in possession of the building :

(i).....(ii).....

(iii) incase it is any other non-residential building if the landlord is not occupying for purposes of a business which be is carrying on a non-residential building in the City, town or village, concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise;

3. In the pre present case the second respondent needed accommodation to enable his son to start a business of his own. But under S. 7 (3) (a) (iii) of the Act, he could not evict the tenants in occupation. It is mainly on that ground that the landlord applied to the Government for exemption. The Government considered the need of the landlord to be genuine and reasonable, and granted the exemption.

4. Before Rajagopalan, J. two grounds appear to have been urged by the tenants who sought to vacate the Government's order. They were :

1. The Act did not provide for eviction in the circumstances of the petitioners case. Hence the grant of exemption would result in an eviction inconsistent with the provisions of the Act, and it would, therefore, be unreasonable; and (2) Relying upon the observations of this Court in a prior decision of a Division Bench in Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, it was urged that as the exemption was granted to obtain eviction in circumstances which would not enable eviction to be obtained under the provisions of the Act, the exemption granted in this case was vitiated.

5. Rajagopalan, J., negatived both these contentions. In regard to the first contention, he held that though the policy of the Act was to prevent unreasonable eviction of tenants, it was wrong to assume that every eviction of a tenant, on a ground or grounds other than those mentioned in S. 7 of the Act would be unreasonable. It would follow that S. 13 of the Act could be applied even in cases where the ground relied upon may be one not covered by S. 7 of the Act, subject to the restriction that the grant of exemption should not lead to an unreasonable eviction of the tenant, as that would be against the policy underlying the Act. In deciding whether the statutory power vested in the Government by S. 13 of the Act was properly exercised, what constitutes a

reasonable or unreasonable eviction will have to be decided with reference only to the scheme that underlies the provisions of the Act. Rajagopalan, J., held that the reasons set out by the Government for granting the exemption showed that the eviction would be reasonable. In regard to the second contention, the learned Judge relied upon *Chinniah Servai v. State of Madras* ILR 1960 Mad. 204=7 L.W. 782, which explained the scope of the decision in *Abdul Subhan's* case (1), and negated the applicant's contention.

6. Learned Counsel, Sri Mohan Kumaramangalam, who appeared for the appellants, relied upon the decision of this Court in *Abdul Subhan's* case (1), and also urged that the exemption granted in this case was ultra vires of S. 13 of the Madras Buildings (Lease and Rent Control) Act, 1949.

7. We will take up the first point which arises out of certain observations in *Abdul Subhan's* case (1). The judgment in that case was delivered by a Division Bench consisting of Rajamannar the learned Chief Justice and Ganapatia Pillai, J., on the 1st of May 1959. Several decisions have been given by this Court after that date, wherein *Abdul Subhan's* case (1) has been referred to and distinguished or explained. We will make a brief reference to these decisions because certain observations in *Abdul Subhan's* case (1) have again been stressed on this case. The relevant observations in *Abdul Subhan's* case (1) are:

(1) We fail to see how procuring the premises for the landlord for a purpose for which he is not entitled to evict a tenant under the provisions of the Act would be in furtherance of the object of the Act.

(2) If a particular case does not fall within the provisions of the Act permitting such eviction, we are unable to hold that exercise of power of exemption by the Government under S. 13 for achieving such eviction would be reasonable exercise of power.

(3) The Act does categorically lay down the only grounds permissible for eviction of tenants. Under the circumstances it would not be open to the Government to add to these grounds either on the score or inconvenience of the landlord or on the ground of fairness of the proposal put forward by the landlord for alternative accommodation to the evicted tenant.

8. Had these observations remained without the subsequent clarification made in other judgments of this Court, including judgments of Division Benches no doubt. It may be plausibly claimed that the above observations in *Abdul Subhan's* case (1) require reconsideration by a larger Bench. But as it happens the very same learned Judges who decided *Abdul Subhan's* case (1) had to consider another case of exemption granted under S. 13 of the Act, in *Chinniah Servai v. State of Madras* ILR 1960 Mad. 504=7 L.W. 782. At page 209 of the report, they observe,

.....if the Government exempted the premises from the provisions of the Act the very same grounds (grounds which were urged before the statutory Tribunals and which had been held against the landlord) 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 v. State of Madras* (1959) 2 M.L.J. 389=72 L.W. 596.....

9. Rajamannar, the learned Chief Justice who was a party both to *Abdul Subhan's Case*(1) & *Chinniah Servai's Case* (2), sitting with Veeraswami J. considered another case of exemption under S. 13 of the Act, in *Globe Theatres Ltd., v. State of Madras* (1961) 1 M.L.J. 85=74 L.W. 4. The contention was pressed before the Bench that the Government had really added that another ground for eviction to the grounds set out in S. 7 of the Act, and that this was opposed to the decision in *Abdul Subhan's Case* (1). The learned Chief Justice who delivered the judgment of the Division Bench observed:

We confess that there are here and there certain observations in this case [*Abdul Subhan's Case* (I)], which might appear to support this argument, But when examined carefully it will be evident that it was not the intention of the Division Bench to lay down a general proposition that the exemption could be granted only on grounds contained in the Act as valid grounds for eviction.

10. They referred to *Chinniah Servai's Case* (2), where they had explained the decision in *Abdul Subhan's Case* (1). They agreed with *Rajagopalan J.*'s view and observed,

It should therefore be taken as well settled now that the grant of exemption is not vitiated merely because it may result in eviction on grounds other than those specified in S. 7 of the Act. It should be obvious that, if the desired eviction could be secured under the terms of the Act itself, there should be no occasion at all to grant any exemption from the operation of the Act. The exemption is not a substitute for a relief permissible under the Act itself.

11. We note, In this connection, that the view of *Rajagopalan J.* extracted above, and which the Division Bench upheld is also the view expressed by him in the order now in appeal. After these repeated and authoritative expositions of the scope of S. 13, and also the clarification of the observations in *Abdul Subhan's Case* (1), we cannot agree with the appellants that certain observations of this Court in *Abdul Subhan's Case* (1), should again be pressed into service to hold that in granting the exemption in this case, the Government acted in excess of their powers.

12. Coming to the question that the grant of exemption in this case would lead to unreasonable eviction of tenants, we agree with *Rajagopalan J.* that in the circumstances of the case, the exemption will not lead to violation of the policy of the Act. It is well known that in Hindu families, a father engaged in business will consider himself to be under an obligation to start his son also in business, and secure premises and other facilities for the purpose. In this case the Government have found that the need of the landlord's son for starting a business of his own was genuine. It is not open to this Court in writ proceedings, to constitute itself

into a Court of appeal against such a decision. In fact the appellants do not ask us to re-examine the correctness of that finding. The landlord in such circumstances, would like to obtain eviction of the tenants under the ordinary provisions of the law in the Transfer of Property Act; but the Madras Buildings (Lease and Rent Control) Act debars him from obtaining that relief. It is to enable him to obtain such a relief under the ordinary law, that the exemption under S. 13 has been granted in this case by the Government. It cannot be considered to be unreasonable. On the other hand, to hold that the landlord should seek other accommodation for the business of his son by securing premises on paying costly rent, even though he has got a property of his own suitable for such business would amount to an oppressive operation of the provisions of the Act. In such circumstances, the Government can clearly interfere by granting exemption.

13. It may also be worthwhile, in this connection, to refer to the fact that the recent amendment to S. 10 (3) (a) (iii) of the Madras Buildings (Lease and Rent Control) Act, 1960, provides for the contingency of a landlord getting relief to enables his son also to get a non-residential building for the purpose of his business, by evicting the tenant in possession. This would show that the Legislature itself felt that there was a lacuna in the provisions of the earlier Act which required to be rectified.

14. Learned Counsel, Sri Mohan Kumaramangalam appearing for the appellants referred to the decision of Venkatadri, J., in *Kolandaivelu Chetti v. Koolayana Chettiar* (1961) 1 M.L.J. 184=74 L.W. 164. Venkatadri, J., seems to have held that a landlord was entitled to apply under the Act for eviction of a tenant from a residential building on the ground that he required the building for establishing a separate residence for his son. That judgment was given in a revision petition which arose out of the proceedings for eviction under the Madras Buildings (Lease and Rent Control) Act, 1949. The Rent Controller allowed eviction under S. 7 (3) (a) of the 1949 Act. The Subordinate Judge reversed the order in appeal, but the District Judge, in revision, restored the order of the Rent Controller. When the matter came up before Venkatadri, J., the old Act had been amended and the Act XVIII of 1960 had come in to Force and Venkatadri, J., was of the view that he had to decide the case under S. 10 (3) (a) of the Act of 1960, which provided for relief in the case where the landlord's son also required the premises. But the case dealt with in the present appeals arises under the Act of 1949. Therefore the decision of Venkatadri, J., has got no relevancy for the present appeals. The appeals are dismissed with costs one set. Advocate's fee Rs. 250 for both the appeals together.