
(1962) 11 MAD CK 0002
In the Madras High Court

M.M. Abbas Bros. and Another

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 15-11-1962

Acts Referred:

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

Citation : (1963) ILR (Mad) 877 : (1964) 1 MLJ 219

Hon'ble Judges : M. Anantanarayanan, J

Bench : Division Bench

Judgement

M. Anantanarayanan, J.—These are connected appeals respectively by M.M. Abbas Bros., carrying on business at No. 7, Sembudoss

Street, G.T., Madras, and Saleh Bros., similarly carrying on business at No. 6, Sembudoss Street, G.T., Madras, from the judgment of

Ramachandra Iyer, J., (as he then was) in W.P. Nos. 732 and 733 of 1958 before the learned Judge. Both the appellants pray the Court for the

issue of a Writ of certiorari under Article 226 of the Constitution, quashing the order of Government in G.O. Ms. No. 2216 (Home Department)

dated 5th August, 1958, exempting the above-named business premises from the operation of Section 7 of the Madras Buildings (Lease and Rent

Control) Act, (Act XXV of 1949), by virtue of powers vested in Government u/s 13 of the said Act. The learned Judge (Ramachandra Iyer, J.)

dismissed the Writ Petitions, holding that, under the circumstances of the matter, the Government were justified in the exercise of powers of

exemption u/s 13 of the Act. As the entire question involved is of some importance, particularly with reference to the dicta of this Court in Abdul

Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, interpreted in the light of other decisions of this Court

which have sought to explain that decision, and to the observations of other Lordships of the Supreme Court upon the ambit and character of the

powers of Government u/s 13, in P.J. Irani v. State of Madras (1962)1 An. W.R. 92 : (1962) 1 M.L.J.92 : (1962) 1 S.C.J. 194 : A.I.R 1961

(S.G.) 1731 it becomes necessary to set forth the facts of these two instances of exemption precisely and in some detail.

2. For, in order to do justice to the arguments of learned Counsel for the appellants (Sri Mohan Kumaramangaiam), it is essential that the grounds

which prompted the Government to exercise their powers of exemption should be narrowly scrutinised, in the light"" of the background of facts

against which the exemptions took place. It is only if this is done that we can be in a position to estimate the degree to which these acts of

exemption were either arbitrary, or so opposed to the policy and principles of the Act itself, as to justify the striking down of the relevant order

under the powers of judicial review.

3. The actual order of Government (G.O. Ms. No. 2216) itself furnishes the previous history of these cases, in some detail. The two appellants are

persons carrying on business in iron, steel and hardware in this City, for many years. They have been tenants of the respective premises (Nos. 6

and 7, Sembudoss Street), with regard to the conduct of their business, for over twenty-five years. A certain A. Khaleeli was the proprietor of

these buildings in 1947, when each of them fetched a monthly rental of Rs. 112-8-0. In that year, these premises were purchased by one

Kuppuswami Naicker, who was also doing business in Iron and Steel, with his office at No. 15, Sembudoss Street. It is common ground between

the parties that this street is a highly specialised locality of the business quarter of the town, where dealers in iron, steel and hardware have their

offices and shops. In 1949, the rents for these premises were each increased from Rs. 112-8-0 per month to Rs. 214-8-0 per month. In 1956 for

the first time, Kuppuswami Naciker (landlord) applied to the Government of Madras for exempting these business premises from the provisions of

the Madras Buildings (lease and Rent Control) Act.

4. The grounds upon which this exemption was sought by the landlord in 1956 are the same as the grounds upon which he later successfully

obtained orders of exemption in 1957, after failing in his initial attempt. The

landlord averred that his business was expanding, and that the ground-floor of No. 15, Sembudoss Street was totally inadequate for his business, and very congested. He was paying a rent of nearly Rs. 550 per month for his office buildings and stock godowns, while he was getting only a rent of Rs. 425 per month for the two premises Nos. 6 and 7 Sembudoss Street. If he improved those buildings, he could obtain nearly a rent of Rs. 1,000 per month and also have decent accommodation for his office. Actually these two tenants of the buildings (appellants), had other available accommodation of their own. By getting control of the premises, he could accommodate the godowns and office in one place, and improve his business. Further, the buildings were old and dilapidated, and urgently required alterations and improvements. It is not in dispute that, after the appellants filed objections to this memorandum of the landlord, a report was submitted to Government by the Accommodation Controller, Madras, after making a local inspection. That officer was of the opinion that the landlord genuinely required additional accommodation for his expanding business, that it was but fair that he should occupy buildings owned by him in the locality where the particular trade was being carried on, that the buildings were dilapidated and urgently required repairs and hence that the request of the landlord was reasonable.

5. After setting forth all this previous history, the effective portion of G.O. Ms. No. 2216 runs as follows:

The Government have carefully examined the request of the petitioner and they have also fully gone into objection statements of the two tenants Messrs. Saleh Brothers and Messrs. Abbas Brothers. They consider that it is clear that the petitioner requires premises Nos. 6 and 7 for his normal and legitimate business, having regard also to the legitimate expansion of such business. The government therefore, accepts the recommendation of the Accommodation Controller and considers that premises Nos. 6 and 7 Sembudoss Street, G.T. Madras, may be exempted from the provisions of Section 7 of the Madras Buildings (Lease and Rent Control) Act, 1949 and they accordingly exempt these two buildings.

6. In this context itself, it may be useful to refer to the counter-affidavit filed on behalf of the Government for it cannot be disputed that that could also be looked into for elucidation of the ground which led the Government to

exempt the buildings ; particularly as the actual order of exemption

itself summarises the ground and is not a mere bald record of an administrative decision, which has to be entirely supplemented by a latter affidavit.

In a material part of the counter-affidavit it is stated.

The Accommodation Controller after inspecting the building, reported in his letter dated 9th March, 1958 that the buildings required repairs and

remodelling, that the landlord could not occupy the buildings without demolishing and reconstructing them, that he was proposing to reconstruct the

building and would be prepared to vacate the portion of premises No. 15, Sembudoss street if premises Nos. 6 and 7, Sembudoss Street, were

exempted from the provisions of the Act¹/₂.

Government proceeded to claim that the facts and circumstances were carefully considered by them and that the impugned order was not at all

contrary to the objects of the Madras Buildings (Lease and Rent Control) Act. It was reasonable to exempt these premises from the provisions of

Section 7 of the Act.

7. Before proceeding to deal with the arguments of learned Counsel for the appellants (Sri Kumaramangalam) in the light of the decisions of this

Court including Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, it is essential to refer to the

dicta of their Lordships of the Supreme Court in P.J. Irani Vs. The State of Madras, for the authoritative elucidation of those principles with

reference to which any individual exercise of the power of exemption u/s 13 of the Act ought to be judged by this Court, within the ambit of judicial

review.

8. In *Globe Theatres, Ltd. v. State of Madras* (1954) 2 M.L.J. 110 Rajamannar, C.J. and Panchapakesa Ayyar, J., had occasion to consider a

challenge of Section 13 of the Act both with reference to Article 19 of the Constitution and Article 14 of the Constitution. The following passage

from Judgment of Rajamannar, C.J., is of some importance, in the context of the argument before us:

Apart from the legal position which I shall presently deal with, there is the practical aspect of the matter. On the other 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.

In P.J. Irani Vs. The State of Madras, which was an appeal from the decision just referred to the following observations were made by the

Supreme Court, with specific reference to the principles upon which any individual exercise of power by Government u/s 13 ought to be assessed

by the High Court:

The Preamble to the Act ran:

Whereas it is expedient to regulate the letting of residential and non-residential buildings and to control the rents of such buildings and to prevent

unreasonable eviction of tenants therefrom in the State."

This meant that the legislation was enacted for achieving three purposes : (1) The regulation of letting. (2) The control of rents and (3) The

prevention of unreasonable eviction of tenants from residential and non-residential buildings. The Act was the latest in the series of enactments and

orders dating back to the period of the Second World War when, due inter alia to large-scale movements of populations to urban areas, there was

an acute shortage of accommodation in the principal towns, as a result of which tenants ousted from buildings occupied by them on the termination

of their tenancies could not find alternative accommodation and were thrown on the streets, and thus owners of house-property could, if left

unchecked, unfairly exploit those who sought accommodation. The enactment in terms protected the rights of tenants in occupation of buildings

from being charged unreasonable rates of rent and from being unreasonably evicted therefrom.

....

Though the enactment thus conferred these rights on tenants, it was possible that the statutory protection could either have caused great hardship to

a landlord or was the subject of abuse by the tenant himself. It was not possible for the statute itself to contemplate every such contingency and

make specific provision therefore in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State

Government, which however could be used not for the purpose of discriminating between tenant and tenant, but in order to further the policy and

purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants. The learned Judges of the High

Court, therefore, held that while Section 13 of the Act was constitutionally valid, any individual order of exemption passed by the Government

could be the subject of Judicial review by the Courts for finding out whether (a) it was discriminatory so as to offend Article 14 of the Constitution,

(4) the order was made on grounds which were germane or relevant to the policy and purpose of the Act, and (c) it was not otherwise mala fide.

We find ourselves in complete agreement with the approach and conclusion of the learned Judges of the High Court to the consideration of the

question of the constitutional validity of Section 13 of the Act.

9. With this perspective and approach we are now in a position to consider the main argument of the learned Counsel, Sri Kumaramangalam, for

the appellants. The argument is not based either upon any assumption that these two instances of exemption involved a hostile discrimination

offending Article 14 of the Constitution or that Government were not acting bona fide in the exercise of their powers. But the argument is that the

impugned orders are contrary to the policy and intendment of the Act, at least by implication, and hence that they should not be sustained. u/s 7(1)

of the Act ;

A tenant shall not be evicted whether in execution of a decree or otherwise, except in accordance with the provisions of this section.

This, read with the Preamble to the effect that one of the objects of the legislation was ""to prevent unreasonable eviction of tenants"", justifies an

inference that Section 7 itself forms a compact Code of what would constitute situations of reasonable eviction. u/s 7(3)(a)(iii) which applied to the

present instances of non-residential premises, the landlord can evict the tenant from such premises and obtain possession only if:

the landlord is not occupying for purposes of a business which he 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.

In the present case, since the landlord is admittedly in possession of rented

premises No. 15, Sembudoss Street, a non-residential premises, for the conduct of his business, he could not evict the tenants, (appellants) u/s 7 of the Act. All possible instances of eviction could be summarised under the following heads:

- (i) Cases in which the Act itself provides for eviction.
- (ii) Cases in which eviction is prohibited under the Act, either expressly or by implication.
- (iii) Cases or situations where the Act had omitted to provide for eviction.

There are clear authorities of this Court for the view that the power u/s 13 could not at all be exercised in respect of cases within the first category,

for that would not only render the process of eviction under the Act meaningless or superfluous, but also imply that Government could frustrate the

decisions of statutory Tribunals under the Act, by granting exemptions even where a Tribunal had held that the landlord was not entitled to evict.

Equally, it is contended, the power u/s 13 ought not to be used to exempt premises in cases where eviction is prohibited under the Act, either

expressly or by necessary implication. This, it is argued, is the essence of the decision in Abdul Subhan Sahib and Sons Vs. State of Madras by

Secretary, Home Department and Another, . Nor has any decision which has subsequently explained the scope of that case, rendered it essential

to whittle down such an interpretation. But, according to the learned Counsel, the powers u/s 13 could be amply exercised in those situations with

regard to which the Act is silent, and where eviction is neither provided for, nor prohibited. Since the present instances come within the mischief of

the implied prohibition of Section 7(3)(a)(iii) the present orders of exemption ought not to be sustained.

10. This renders it imperative that we should immediately proceed to Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home

Department and Another, which is the pivotal case on which the argument turns. Very briefly stated, the facts in that case were as follows:

Premises No. 6, V.V. Koil Street of the City, were in the occupation of N. Abdul Subhan & Sons on a monthly rent of Rs. 170. The landlord

applied to the Government for grant of exemption of the premises from the provisions of the Act:

On the ground that he purchased the premises for a sum of Rs. 25,000 for the

specific purpose of re-starting his commission mandi business, and

that the present premises he is living in, is unsuitable for this business and that, therefore, he needs the premises for his own occupation and use.

The question of the alleged sub-letting by the tenant, from which he is alleged to have obtained unconscionable advantage at the expense of the

landlord, was dealt with by the learned Judges of the Bench and considered to be irrelevant. But, dealing with the main ground of exemption, they

observed as follows, with specific reference to Section 7(3) of the Act.

The policy of the Act, as could be seen from these provisions, is to deny the right of the landlord to evict a tenant from a non-residential building,

unless the landlord himself does not occupy another non-residential building in the same city. If he does occupy such a non-residential building, the

Legislature has debarred him from getting possession of a non-residential building in the occupation of a tenant.

* * * * *

As already pointed out by us, the decision in *Globe Theatres' Case* (1954) 2 M.L.J. 110 has laid down that the power given to the Government to

exempt any premises from the operation of the Act could only be exercised in furtherance of the object of the Act should also be in consonance

with the policy of the Act... 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 a furtherance of the object of the Act.

The second ground, namely, that the landlord required the premises in question for the purpose of his business since the premises which he is

already occupying is unsuitable, is one which is not permitted as a ground for eviction under the provisions of the Act but is also not in furtherance

of the policy underlying the Act.... Under the circumstances, it would not be open to Government to add to these grounds either on the score of

inconvenience of the landlord or on the ground of fairness of the proposal put forward by the landlord for alternate accommodation to the evicted

tenant....

11. Now, this case was prior to the authoritative pronouncement of their Lordships of the Supreme Court in *P.J. Irani Vs. The State of Madras*, .

It came up for consideration, subsequently, in more than one decision of this Court. In *M.V. Perumal Chetty and Company and Another Vs. The*

State of Madras and Another, the scope of this case was explained by Rajagopalan, J., and the learned Judge observes that Balakrishna Ayyar, J.,

had occasion to examine the same issue in W.P. No. 290 of 1957. In *M. Chinniah Servai Vs. The State of Madras and Another*, Rajamannar

C.J., observed as follows with regard to *Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another*, to

which he himself was party.

In Writ Petition No. 2 of 1954, Rajagopalan J., upheld the order of exemption passed by the Government following the principles laid down in the

Globe Theatre's Case (1954) 2 M.L.J. 110 and Writ Appeal No. 27 of 1953. It was contended before the learned Judge that the statutory

Tribunal had decided against the landlord, and the order of the Government was designed to reverse the order of the Tribunals and on the 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, .

As Rajagopalan, J., observed in *M.V. Perumal Chetty and Company and Another Vs. The State of Madras and Another*, :

...the grant of exemption is not vitiated merely because it may result in eviction on grounds other than those specified in Section 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.

12. In *Globe Theatre Private Ltd. v. State of Madras* (1961) 1 M.L.J. 85, Rajamannar, C.J., and Veeraswami, J., had again occasion to consider

the question of exemption u/s 13, the challenge being that Government in passing the order were really adding another ground for eviction to the

grounds set out in Section 7 of the Act. In delivering the judgment of the Court

the learned Chief Justice (Rajamannar, C.J.) reiterated the principle that the ground of exemption u/s 13 can never be merely a ground for eviction obtainable under the process of the Act itself. He then added, in a significant passage, with regard to the argument that Government could not exempt upon a ground not set out in Section 7:

We confess that there are here and there certain observations in this case Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, 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 ground for eviction. Indeed the contrary was laid down in the leading decision in The Globe Theatres v. State of Madras (1954) 2 M.L.J. 110. In a later decision, the same Division Bench which decided Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, explained the decision in M. Chinniah Servai Vs. The State of Madras and Another, .

13. But the argument of Sri Kumaramangalam is that all this leaves intact and untouched, the broad dictum laid down in Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, to the effect that Section 13 could not be invoked to exempt premises with regard to which it is clear that eviction was prohibited, expressly or by implication, under the Act itself. For, such an exercise of power would be contrary to the policy and intendment of the statute and would also offend the criterion laid down by the Supreme Court in P.J. Irani Vs. The State of Madras, Relevant to this aspect, Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, was rightly decided and the subsequent explanations of that case do not affect the core of this contention. Learned Counsel does not dispute that Section 7 itself contains express prohibitions against eviction, in other parts of the same section such as Section 7(3-A), with regard to a tenant employed in an essential service, or a building let for use as an educational institution, etc. But he argues that Section 7(3)(a)(iii), by logical implication, implied that where the landlord is already in possession of other non-residential business premises, it would be opposed to the policy

of the Act, to evict a tenant from the landlord's own premises. What is thus prohibited under the Act, cannot be accomplished by the use of

Section 13.

14. We might, before proceeding to deal with this argument, refer very briefly to certain other decisions which do not, however, touch the centre of

this problem. Thus, in *Nagamanickam Chettiar v. Nallakannu Servai* (1957) 1 M.L.J. 182 Rajamannar, G.J., upheld an eviction under the Act,

itself, u/s 7(3)(a)(iii) but the finding was that the landlord in that case "" was not in occupation of building for the purpose of carrying on the business

of manufacturing camphor with the help of power-driven machinery."" The learned Chief Justice also referred, in this context, to Section 7(3)(c),

which relates to the situation of a landlord in partial occupation of the premises, the tenant being in possession of the rest. Again, in *Pannalal*

Jagannath Prasad Gupta Vs. The State of Madras and Another, Veeraswami, J., had occasion to consider the bona fide requirements of a

landlord of a non-residential premises for his own occupation as a ground justifying the exercise of power u/s 13 of the Act. The learned Judge set

forth the dicta of the Supreme Court in *P.J. Irani Vs. The State of Madras*, . Having regard to the particular facts and circumstances of the case,

the impugned order of Government was held valid, and there is reference both to *Abdul Subhan Sahib and Sons Vs. State of Madras* by

Secretary, Home Department and Another, and to *M. Chinniah Servai Vs. The State of Madras and Another*, . Incidentally it was observed that M.

Chinniah Servai Vs. The State of Madras and Another, related to a situation not provided for by the Act, namely, where the owner of a non-

residential building applied for eviction of a tenant of such a building on the ground that the bona fide required it for his residential purposes. It was

observed that Section 11(1) of the Act provided only for the converse case of residential building being converted into a non-residential building,

with the permission of the Controller. In brief therefore, the specific argument now put forward is not converted by these decisions, apart from the

reference in *Abdul Subhan Sahib and Sons Vs. State of Madras* by *Secretary, Home Department and Another*, which we have already extracted.

15. This aspect also came up for consideration in *F. Andrews v. Abhorani Ammal and Ors.* W.A. No. 166 of 1963 to which one of us was a

party, but, though that case related to an appellant, claiming express protection from eviction u/s 7(3-A) of the Act, in the context of an order of

exemption u/s 13, the decision might not be material for the present purpose, as the Court held, upon the facts, that the landlord also could virtually

claim to belong to an essential service, and there is a specific exemption in this regard for such a situation u/s 7(3-A)(i). But the dicta in P.J. Irani

Vs. The State of Madras, are set forth, and it is indicated that the purpose of Section 13, inter alia,

was to provide for those contingencies of either great hardship to the landlord or of abuse resulting from the conduct of the tenant himself in

clutching at the rights conferred by the statute.

16. Therefore, having regard to the dicta in P.J. Irani Vs. The State of Madras, we are unable to see how any rigid rule could be laid down that,

merely because eviction could not be obtained in a particular case under the Act, it necessarily followed that the concerned premises could not be

the subject of exemption u/s 13. Certainly, the intendment of the Legislature in enacting Section 7(3)(a)(iii) was that it would be unreasonable to

evict a tenant from non-residential premises, where the landlord were already in occupation of non-residential premises for his own business, either

by virtue of his title, or as a tenant under another landlord ; so much is reasonable construction. But it by no means follows that there cannot be

special facts and circumstances, constituting either great hardship or abuse of rights, which would justify the Government in exempting such

premises u/s 13. One of the grounds urged by the landlord in the present case itself is that that was not a ground relied upon by Government for the

exercise of their power. The landlord has urged that the tenants had other premises of their own. We can very well imagine that in a case like the

present, occupation of premises for trade in a specialised locality, may make all the difference between prosperity in the trade, or decline in the

trade. Further, the landlord and tenants could themselves be rivals in the same business, which is actually the fact here. In such a context, where the

tenant has other accommodation but clings to the letter of the law to defeat a rival, can we hold that there are no circumstances of hardship in

denying the landlord the right to accommodation required for his expanding business, which accommodation he has himself secured at great cost,

where the landlord is further able to show that his own rented premises are quite inadequate for the purpose. We are unable to see how the dicta

of their Lordships of the Supreme Court in Irani Case (1962) 1 S.C.J. 194 : AIR 1931 S.C. 1731 : (1962) 1 An.W.R.92 : (1962) 1 M.L.J. 92

could be shorn of their effect by the forced construction that even the greatest hardship, or the greatest abuse, will not prevail to justify an

exemption u/s 13, unless it is an instance of an exemption in a situation of eviction for which there is no provision in the Act. Certainly the argument

would have force if it is contended that that which is impliedly prohibited under the Act has been achieved by an exemption in order to favour a

party, or with a hostile discrimination or mala fide. But that is not the argument here. We are, therefore, convinced that the decision of the learned

Judge (Ramachandra Iyer, J.) on this central aspect must be upheld, and the Writ Appeals dismissed. They are accordingly dismissed with costs to

Respondents 2 to 4. Counsel fee in each case, Rs. 200.