
(1971) 06 MAD CK 0006
In the Madras High Court
Case No : Writ Petition No., 3756 of 1970

Mullaikodiammal	Vs	APPELLANT
The Government of Tamil Nadu and Another		RESPONDENT

Date of Decision : 23-06-1971

Acts Referred:

Citation : AIR 1972 Mad 132 : (1971) 2 MLJ 449

Hon'ble Judges : Ramaprasad Rao, J

Bench : Single Bench

Judgement

Ramaprasad Rao, J.—The petitioner is a landlady. Her family owned four houses No. 17. Typhoon Alikhan Bahadur St. Triplicane Madras,

No. 17-A Typhoon Ali Khan Bahadur St. Triplicane. No. 40 Arunachala Achari St, Triplicane and No. 71 De Mellows Road Choolai,, Madras.

The last house is a non-residential premises. She was residing with her husband at No. 40 Arunchala Achari St. till 1968 when her husband died.

Thereafter the petitioner had to perform the marriage of her daughter and she decided to sell away her property No. 40 Arunachala Achari St.

Triplicane, Madras and give vacant possession of the same to a purchaser. With this object in view, she vacated the premised in the latter part of

1969 and occupied an inconvenient portion in the ground floor of No. 17-A Typhoon Ali Khan Bahadur St. Triplicane, Madras and ultimately, it is

said, that she sold away her property No. 40 Arunachala Achari St. Triplicane. At the time when she shifted her family from No. 40 Arunachala

Achari St. Triplicane. At the time when she shifted her family from No. 40 Arunachala Achari St. to No. 17-A Typhoon Ali Khan Bahadur Street

was under the occupation of a tenant. Incidentally it may be noted that till 1967,

even premises No. 17 Typhoon Ali Khan Bahadur Street was under government occupation, but later it was released to the petitioner in the sense that no Government servant was prepared to occupy the same and therefore the petitioner was enabled to put up a private tenant from the year 1967 even before her husband's death. As already stated, the petitioner shifted to No. 17-A Typhoon Ali Khan Bahadur St. Triplicane, in or about March 1970. At that time the upstairs portion of No. 17-A Typhoon Ali Khan Bahadur St. was allotted to Government servants and was in occupation of one. The petitioners case is that in May 1970, the first floor was about to fall vacant since the earlier allottee was about to surrender possession thereof. The petitioner's family consists of herself, her son and her daughter-in-law and three school going grand-children. Accommodation in the ground floor to which she moved only after her husband's death consists of only two small rooms and a koodam and there is practically no moving space to the members of the family. Therefore she wrote to the Accommodation Controller on 2nd May 1970. requesting him to release the first floor to enable her to have additional accommodation for her own residence. This was followed up by various letters and, in particular a request was made that the allotment need not be made to a person who is a non-vegetarian, in case it is decided to allot the premises at all. The petitioner not having obtained any favourable orders from the Accommodation Controller, applied to the Government under the provisions of the Madras Buildings (Lease and Rent Control) Act XVIII of 1960, for the release of the said first floor and sought for a stay of handing over the possession of the premises to an allottee who was by then sought to be inducted into the portion by the Accommodation Controller. I may at once state that the allottee was a non-vegetarian. The Government who has the authority to deal with such application, ultimately passed the impugned order which runs as follows:-

Ref:--From the Accommodation Controller, Madras, letter No. B.5 8232/70 dated 12th August 1970.

From Smt. Mullaikodi Ammal petition dated 23-7-1970 and 27-7-1970.

Thirumathi Mullaikodi Ammal is informed that her request for release of premises No. 17-A (first floor) Typhoon Ali Khan Bahadur St. Chepauk, Madras, has not been complied with.

No reasons are given and there is no indication in the order that the statutory authority, namely, the State Government did exercise independently

its mind when it rejected the request for the release of the upstairs premises made by the landlady. After the issue of rule nisi the records were

brought up and I perused the note of the Accommodation Controller dated 12-8-1970 on which sole reliance was placed by the State

Government when it passed the impugned order. The grounds on which the Accommodation Controller rejected the request for relief were:-

1. That the landlady's family is not so big as to require additional accommodation;

2. She was making it inconvenient for Government servants to continue to live in the upstairs portion;

3. That the landlady overlocked the premises to prevent the new allottee from occupying the premises; and that therefore the landlady's request for

release is not bona fide this writ petition to quash the order of the Government.

It is in these circumstances that the petitioner has filed this writ petition to quash the order of the Government.

2. At the time of the hearing the learned Government Pleader would state that, though the Accommodation Controller has given the reasons for

rejection, his report has to be read as a whole and, in particular, in conjunction with the statement made by the petitioner's son prior to the drafting

of such a report by the Accommodation Controller. The petitioner's son, no doubt, admitted that the family owned another premises No. 17

Typhoon Ali Khan Bahadur St. Triplicane, and, it was this admission that was put against the petitioner by the learned Government Pleader when

he suggested that she could have made an effort to secure premises No. 17 Typhoon Ali Khan Bahadur St. Triplicane, instead of seeking for the

release of the upstairs portion in No. 17-A.

3. The writ has to be allowed on the main ground that the order impugned is a non-speaking one and the report of the Accommodation Controller

on which reliance was placed disclosed reasons which are totally extraneous for purposes of consideration of the subject under issue. Even

otherwise, it appears to me that the confession by the son that there was another premises available to the family for occupation is neither here nor

there. It is well known that a landlord who occupies a premises of his or her own,

cannot initiate proceedings against tenant for eviction on the ground that such a tenanted building is required for his or her own use and occupation. Further, it is for the landlord or landlady to judge for himself or herself as to what portion of the premises is suitable for his or her residence and for the residence of the members of the family and it is not for the Department or any one to dictate. It is unfortunate that the Accommodation Controller should state that a family consisting of an old lady with a son daughter-in-law and three grand-children is not so big as to require additional accommodation. What ought to be the size of the family to be characterised as big in view of the Accommodation Controller, is not clear. The allotment of the premises to a non-vegetarian appears to be vindictive. I am making these observations only to point out that neither the Accommodation Controller nor the first respondent, in the discharge of public duties and statutory duties, exercised their powers in a reasonable way. The factual situation has not been weighed in its real perspective, the impugned order is hopelessly laconic and the petitioner's request on the facts and circumstances does not appear to be unreasonable. These factors have not been borne in mind when the order has been passed. Therefore the rule nisi is made absolute. The writ petition is allowed and there will be no order as to costs.

4. The subject is remitted to the first respondent for fresh disposal in accordance with law and in the light of the observations made above.

5. Writ petition allowed.