

(1996) 08 MAD CK 0107
In the Madras High Court

Muralidhar Lohia (died) and Another	APPELLANT
Vs	
North Madras Merchants Association and Another	RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29

Citation : (1996) 2 LW 469 : (1996) 2 MLJ 435

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 10.7.1990 passed by the learned single Judge, dismissing W.P. No. 9055 of 1987 in which the petitioner/ appellant has sought for quashing G.O.Ms. No. 1824, dated 29.7.1987, passed in exercise of powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act"), exempting the premises bearing Door No. 444, Tiruvottiyur High Road, Madras 600021 in the occupation of the petitioner/ appellant from all the provisions of the Act.

2. Learned single Judge has upheld the order of the State Government on the grounds that the exercise of power by the State Government is reasonable, that it does not suffer from any arbitrariness that the landlord has no remedy under the Act, and, therefore, the exemption, granted does not call for interference.

3. Before us, it was strenuously contended by the learned Counsel for the appellant that it cannot be said that the first respondent has no remedy under the Act, inasmuch as it can seek conversion of the premises into non-residential one u/s 21 of the Act and then seek eviction u/s 10(3)(a) of the Act. That the exercise of power u/s 29 of the Act should not result in adding a ground for eviction that it should not be exercised in favour of the landlord, who has a remedy under the Act. In support of these contentions, learned Counsel for the appellant placed reliance on the following decisions:

(i) P.J. Irani Vs. The State of Madras, .

(ii) P.N. Raju Chettiar Vs. The State of Tamil Nadu and Another, . (iii) Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, .

4. Whereas, it is the contention of the learned Government Pleader that the State Government has exercised their powers u/s 29 of the Act keeping in-view the policy of the Act and also the provisions contained in the Act and also of the fact that the landlord has no other remedy under the Act; that Section 29 of the Act confers power on the State Government to grant exemption to any building or class of buildings. u/s 21 of the Act, if the landlord wants to use the residential building for nonresidential purposes, he should obtain permission in writing of the controller for conversion of the residential building into a non-residential building. Whereas, in the instant case, the building is in the occupation of the tenant, which, according to the tenant, is predominately residential, the landlord cannot seek conversion of the same for non-residential use as long as it continues to be in the occupation of the tenant.

5. Learned Counsel appearing for the first respondent, while adopting the contentions of the learned Government Pleader, submitted that the first respondent, being a commercial organisation, has no remedy under the Act to seek possession of a residential building.

6. In the light of these contentions, the following points arise for consideration:

1. Whether the first respondent has a remedy for eviction of the appellant under the Act?

2. Whether the impugned Government Order of the State Government dated 29.7.1987 is valid in law?

7. Point 1: Section 21 of the Act reads thus:

No residential building shall be converted into a non- residential building except with the permission in writing of the Controller.

It places an embargo on the use of residential building for non-residential purposes without the written permission of the Controller. In unmistakable terms, Section 21 of the Act provides that no residential building shall be converted into a non-residential building, except with the permission in writing of the controller. Therefore, a person seeking conversion of the residential building into a non-residential building, should be in occupation of the residential building for converting it into a non-residential building. It is not possible for the landlord to seek conversion of the residential building into a nonresidential building, as long as the building continues to be in the occupation of the tenant, who uses it for residential purposes. In the event permission to convert a residential building in question into a nonresidential building is granted it cannot be continued to be used as residential building and such act would result in contravention of the

provisions of the Act, and the landlord and the tenant would be liable to be punished u/s 33(1) of the Act. Therefore, it is not possible to hold that Section 21 of the Act can be availed of by the landlord as long as the residential building in question continues to be in the occupation of the tenant.

8. What is required to be seen is as to whether on the date of the application filed for exemption and also on the order is passed granting exemption, the landlord could have sought for eviction of the tenant under the provisions of the Act. On the date of the application filed for exemption, and also on the date the order granting exemption was passed, the landlord could not have sought for eviction of the tenant as under the Act a landlord could seek possession of the residential building for bona fide use and occupation as such the 1st respondent could not have sought for possession of the residential building for non-residential purpose, because the landlord being a commercial organisation could seek possession of the building only for non-residential purpose. We are of the view that Section 21 of the Act, was not available to the landlord, as the building was in occupation of the tenant, as such, he could not seek conversion of the residential building into a non-residential building. More over, as pointed out above, the criteria for exercising the power u/s 29 of the Act is as to whether the landlord could seek eviction of the tenant under the Act and not as to whether he/she/it could seek conversion of a residential building into a non-residential building. Accordingly, Point No. 1 is answered in the negative.

9. Point No. 2: A reading of the order of the State Government discloses that it has considered all the relevant aspects, having a bearing on the exercise of power u/s 29 of the Act. It has referred to the nature of the institution, which is the landlord and also the nature of the building and the remedy available to the landlord under the Act and has concluded that this is a case in which exemption of the building in question from the provisions of the Act is warranted.

10. While considering the validity of such an order, it has to be borne in mind, as observed by the Supreme Court in P.J. Irani Vs. The State of Madras, , that this Court, in exercising jurisdiction under Article 226 of the Constitution of India, is not sitting in appeal on the order granting exemption. The relevant portion reads thus:

The High Court having considered the reasons came to the conclusion that they did not serve the purpose of the Act. We are unable to accept this view. It may be that some of the reasons given could not have justified the order that broadly, we think, they referred to facts which showed that the power had been exercised legitimately. Indeed, on the facts of this case which we have set out earlier, we think that it was unnecessary for the High Court to ask the Government to state the reasons for its order. In our view, these facts themselves sufficiently show that the order was within the objects of the Act and not extraneous to Section 13. We wish to observe before we proceed further, that in considering whether the reasons given by the Government are sufficient to bring the order within the objects of the Act, the High Court had no power to act as if it were sitting in

appeal over the Government's decision. A court cannot set aside an order u/s 13 on the ground that it would not itself have made the order for the reasons for which the Government had made it. All that the court has to see is whether the power was used for any extraneous purpose, that is to say, not for achieving the object for which the power is granted, the initial onus must be on the party which alleges abuse of power and there must be prima facie evidence in support of the allegation. It is only then that the onus may shift.

11. The criteria to be applied for the purpose of granting exemption, the Supreme Court has observed thus:

However all this may be, was the power in this case in fact used for an extraneous purpose? It is not said that the power had been exercised for any ulterior purpose. Now, the purpose of Act, quite clearly, is to prevent unreasonable eviction and also to rent. These two purposes are inter-twined. An eviction becomes unreasonable where the object is to exploit the situation arising out of the dearth of accommodation by letting out the premises at an unreasonably high rent and on realisation of extortionate premium. Often these are realised secretly, particularly so, the premium. Therefore when there is no risk of an opportunity arising in which a landlord may be able to realise illegal rent or premium, an eviction may not be unreasonable, indeed, there may be circumstances which would justify the inference that the tenant is trying to take an undue advantage of the situation and in such a case, the Government would be justified and within its power to exempt the premises from the operation of the Act. That is the position here. The lease was granted at a point of time when the situation was normal, that is, when a landlord was not in a position to make an unconscionable bargain for himself by exploiting the situation, for the lease was granted in 1940 when there was no scarcity of accommodation. Next, the lease was granted under orders of court. It was granted by the officers of the court. There is no question of either the court or the officers using the situation for purposes of exploitation. Again, to refuse exemption u/s 13 in the present case would amount to preventing the court from administering the estate in its charge in a manner which it has the power to do and which of course is its duty to do for the benefit of the parties entitled to the estate. There was nothing unfair to the second respondent in granting the exemption, for the second respondent had been given the option to take up the lease. He had refused it. He is now objecting to the exemption only because he finds it more profitable to continue in the premises than he thought it would be at the time the offer had been made to him. The appellant and his father had been deprived for a long time of the use of a considerable sum of money which was paid in terms of the bargain to which the second respondent had freely entered. It may be that the appellant's father would not have gone in for the lease of the Casino Theatre premises and spent enormous sums of money for constructing a show house there if the second respondent had not given him to understand that he would leave the Gaiety Theatre premises on April 30, 1947. The fact that the second respondent spent money, if any, in improving the Gaiety Theatre premises is

irrelevant. He knew that he had undertaken to vacate the premises by April 30, 1947 and that the appellant was taking steps to recover possession of these premises.

We do not think that the difficulties of a tenant on eviction decide what is or is not "unreasonable eviction". One of the objects of the Act as stated in the preamble is "to prevent unreasonable eviction of tenants". The word "unreasonable" necessarily connotes a consideration of all the circumstances including the conduct of parties in order to find out what is unreasonable. It seems to us that u/s 13 it is the duty of the Government to take into consideration all the relevant circumstances of a particular case or class of cases in order to determine if the protection of the Act given to the tenant or tenants concerned should be with drawn. The section is applicable not merely to institutions like hospitals or schools, but may be applied to other cases also, where there is no question of any unreasonable eviction of the tenant, or where prevention of eviction itself may be unreasonable. We, therefore, think that the Government's action in exempting the Gaiety Theatre premises from the operation of the Act was within the scope of the Act and the High Court does not seem to have considered the case from this point of view.

12. In *P.N. Raju Chettiar Vs. The State of Tamil Nadu and Another*, , it has been held that remedy by way of exemption u/s 29 is no substitute for eviction of tenant u/s 10. When remedy u/s 10 is available, State Government would not exercise its powers u/s 29. We have already pointed out that remedy u/s 10 of the Act is not available to the landlord in the instant case. That being so, petitioner/ appellant cannot draw any support from the aforesaid decision.

13. In *Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another*, , it is stated what has to be seen, while judging the validity of the order for exemption, is as to whether there is arbitrary exercise of power and what constitutes an arbitrary exercise of power under the section has to be decided on the facts of each case. Taking irrelevant factors into consideration, taking into consideration a reason which the legislature, by reason of the specific provision in the Act, had decided that it is not a ground justifying eviction of a tenant, would be instances of arbitrary exercise of the power of exemption. The Act provides for certain grounds of eviction and it would not be open to the Government to add to these permitted grounds either on the score of inconvenience of the landlord or on the ground that the landlord has made fair proposals to provide alternative accommodation to the tenant.

14. In the instant case, we have already pointed out that the State Government has referred to the facts and circumstances of the case and has also correctly held that no remedy is available to the landlord under the Act. It is on that ground, the power of exemption has been exercised. The reason for such exercise of power cannot be held to be irrelevant or extraneous to the exercise of power u/s 29 of the Act. Therefore, the order of the State Government cannot be held to be contrary to the decision in *Abdul Subhan Sahib and Sons Vs. State of*

Madras by Secretary, Home Department and Another, , inasmuch as it does not add any ground for eviction. If no order of exemption is passed, great hardship would be caused to the landlord and the injury caused would be incalculable, inasmuch as it would not be able to seek possession of the premises.

15. In P.J. Irani Vs. The State of Madras, , the Supreme Court has laid down that in some cases the statutory protection could either have caused great hardship to a landlord or was the subject of abuse by the tenant himself. In such cases, the Government would be entitled to exercise its power and exempt such landlords. A Division Bench of this Court in Mrs. Andrews v. Abhirami Animal (1962) 1 M.L.J. (S.N.) 16, has held that the purpose of a provision like Section 29 of the Madras Buildings (Lease and Rent Control) Act, 1960, is to provide for certain contingencies where the statutory protection from eviction causes great hardship to a landlord and becomes the subject of abuse by the tenant himself and that merely because the Act provides an immunity from eviction of certain classes of tenants under certain provisions of the Act, it does not that buildings in the occupation of such tenants could not be exempted, under the powers vested in the Government u/s 29 of the Act. This is also the view taken by another Division Bench of this Court in N. Muthuswami Naidu Vs. The State of Tamil Nadu and Another, .

16. In Cherian PC. President Vidyaniketan etc. etc. v. The Special Commissioner (1991) 1 L.W. 202, a Division Bench of this Court has held that remedy of exemption u/s 29 of the Act is not a substitute for the remedies available to a landlord for eviction under the Act itself. But, on the other hand, if the remedy under the Act is not available to him, there will be a justification for according exemption u/s 29 of the Act if a case therefore is made out.

17. In the light of the aforesaid decisions and in view of what has been concluded by us earlier, we are of the view that the order of the State Government (G.O.Ms. No. 1824, dated 29.7.1987) does not suffer from any infirmity as such it is valid in law. Therefore, it does not call for interference. Accordingly, Point No. 2 is answered in the affirmative.

18. For the reasons stated above, the writ appeal fails and the same is dismissed. No costs.