

(1975) 01 MAD CK 0040

In the Madras High Court

Case No : W.A. 131 of 1975 against W.P. 188 of 1975

Muthuswami Naidu

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 22-01-1975

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : (1975) 01 MAD CK 0040

Hon'ble Judges : Kailasam, C.J.;Balasubrahmanyam, J

Bench : Division Bench

Advocate : M. Srinivasan for Mr. R. Gopalaswami Iyengar, for the Appellant; V. Radhakrishnan for 2nd Respt., for the Respondent

Judgement

Kailasam, C.J.—This appeal is filed by a tenant against the order of Ramanujam, J., dismissing his petition for the issue of a Writ of

certiorari calling for the records in G.O. Ms. No. 1998. Home, dated 12th August, 1974 and to quash the same. The appellant is the tenant of

shops bearing Door Nos. 100, 101, 101-A, B and E belonging to the 2nd respondent, Sri Swami Nallaiappar Sri Kanthimathi Ambal

Devasthanam, through its Executive Officer, Tirunelveli. The 2nd respondent Devasthanam issued notices to certain tenants including the appellant

terminating their tenancies and filed suits for eviction. It was the contention of the tenants that the impugned Government Order, G.O. Ms. No.

1998, Home, dated 12th August, 1974, which was issued under S.29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (Tamil

Nadu Act 18 of 1960) exempting all buildings owned by the Hindu, Christian and Muslim Religious Trusts and Charitable Institutions from all the

provisions of the Act, was not valid.

2. The contentions before the learned Judge were:

(i) The tenants of the buildings owned by the religious trusts and charitable institutions which have been exempted from the provisions of the Act

have not been given notice by the Government before exempting the same from the operations of the Act and as such the impugned order has been

passed in violation of the principles of natural justice:

(ii) The power of exemption has been exercised by the Government arbitrarily without taking into account the terms and conditions of the individual

tenancies in relation to those buildings; and

(iii) The impugned Government Order offends Art. 14 of the Constitution.

The learned Judge found against the appellant on all points and dismissed the writ petition. Hence this writ appeal.

3. In the writ appeal, Mr. M. Srinivasan, the learned counsel, challenged the impugned Government Order mainly on one ground, namely, that

S.29 of the Act does not empower the Government to exempt a class or classes of buildings on the basis of ownership namely Hindu, Christian

and Muslim Religious Trusts and Charitable Institutions.

4. The impugned Government Order runs as follows:

In exercise of the powers conferred by S.29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (Tamil Nadu Act 18 of 1960), The

Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim Religious Trusts and Charitable Institutions

from all the provisions of the said Act.

S.29, under which the impugned Government Order was passed, provides as follows :

Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any

building or class of buildings from all or any of the provisions of this Act.

The submission of the learned counsel is that the power conferred on the Government is to exempt any building or class of buildings and that the

exemption should be based on the building or class of buildings and not on the landlord or class of landlords or tenant or class of tenants.

5. Construing the words ""any building or class of buildings"" as they stand, the

submission is not without substance. If the power is confined or has been understood to have been confined to a building or class of buildings, it is very difficult to resist the contention of the learned counsel. The object of the enactment is (1) to regulate the letting of residential and non-residential buildings, (2) to control rent of such buildings and (3) to prevent unreasonable eviction of tenants therefrom in the State of Tamil Nadu. The scope of the enactment comprises the regulation of the letting of residential and non-residential buildings, which would involve the controlling of the relationship between landlords and tenants, the control of rents and prevention of unreasonable eviction of tenants.

6. The Supreme Court in construing the powers of the Government under S.13 of Act 25 of 1949 which is in pari materia with S.29 of Act 18 of

1960, in *P. J. Irani v. State of Madras* AIR 1961 S.C. 1731 observed that though the enactment conferred some 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, that it was not

possible for the statute itself to contemplate every such contingency and make specific provisions therefor in the enactment and that 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 that case to prevent

unreasonable eviction of tenants. 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 landlord. This Court in a decision reported in *Mrs. Andrews v. Abhirami Ammal* 1962-I M.L.J. 16 (S.N.), held that the purpose of a

provision like S.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 or is 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 mean that buildings in the

occupation of such tenants could not be exempted, under the powers vested in

the Government under S.29 of the Act. The Court, was, therefore, of the view that under the powers vested in the Government the buildings in occupation of such tenants can be exempted. In *Globe Theatres Ltd. v. State of Madras* 1954-II M.L.J. 110 : 67 L.W. 64, this Court held that the policy and object of the enactment have been sufficiently indicated so as to enable the Government to exercise the power conferred by S.13 of the Act in Specific cases not inconsistent with and in furtherance of such policy and object. A somewhat different note was struck by a Bench of this Court in *Abdul Subhan Sahib & Sons v. State of Madras* 1959-II M.L.J. 387 : 72 L.W. 596. The Court held that the two main objects of the Act were the control of rents and the regulation of letting with a view to prevent unreasonable eviction of tenants. The Court proceeded to observe : 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. 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 a reasonable exercise of power.

These observations were explained in *Chinniah Servai v. State of Madras* 1960-II M.L.J. 191 : 72 L.W. 782 and following the decision in *Globe Theatres Ltd. v. State of Madras* 1954-II M.L.J. 110 : 67 L.W. 64, this Court observed that it was only when the provisions of the Rent Control Act did not cover a particular case, that there was legitimate scope for the exercise by the Government of the powers conferred by S.13 of the Act. In *Venkatadri v. Tenali Municipality* AIR 1956 And 61, the Andhra Pradesh High Court held that it was open to the State to exempt the buildings belonging to Municipal Councils and Local Boards. The exemption was granted on the basis of the landlord being a Municipal Council and not strictly on the basis of class of buildings. The same view was taken by us in *P.S. Perumal Chetty & Bros., M.M. Chokkalingam Chettiar & Co., v. State of Tamil Nadu* W.A. Nos. 49 and 50 of 1976 which were dismissed in limine, though the point was not taken in the same manner as urged in the present appeal.

7. On a consideration of the decisions cited above, it is clear that when the

statutory protection could either have caused great hardship to a landlord or was the subject of abuse by the tenant himself the State Government has power to exempt such hard cases under S.29 of the Act. It is to be seen that the Section granting exemption has been construed right through as including the class of landlords and tenants and not strictly confined to class or classes of buildings. The classes of buildings have been fixed or determined only in relation to class of landlords that owned them. In view of the decisions of this Court and the Supreme Court, we are unable to agree with the learned Counsel that the words "'class or classes of buildings'" should be strictly construed as relating to buildings alone. In the result, the appeal is dismissed. There will be no order as to costs.