

(1982) 12 MAD CK 0001
In the Madras High Court

Narasu's Coffee Company (Firm)

APPELLANT

Vs

M. Muhammed Ibrahim Rowther

RESPONDENT

Date of Decision : 23-12-1982

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(c)

Citation : (1984) ILR (Mad) 6 : (1983) 96 LW 656 : (1983) 2 MLJ 203

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The revision is by the landlord who sought eviction of the respondent u/s 10(2)(i) of the Tamil Nadu Buildings (Lease and

Rent Control) Act, 1960 (hereinafter called the Act) for wilful default in payment of rent; u/s 10(2)(vii) for denial of title of the landlord; u/s 10(3)

(a)(in) for bona fide need of the landlord for occupation of non-residential premises; and u/s 14(1)(b) of the Act for demolition and reconstruction

of the petition mentioned premises.

2. The petition-property is admittedly a non-residential property which is situate in T. S. No. 2622 in South Main Street, Pudukkottai. This

property as well as the adjoining property bearing T.S. No. 2621 were purchased by the revision petitioner from the previous owner

Jayachandran. This was under the sale deed dated 14th September, 1978, marked as Exhibit A-1. This respondent had been a tenant for more

than 25 years. The petitioner is doing business in a rented building which is opposite to the suit property and he is under the threat of eviction since

the owner of the rented premises had taken eviction proceedings. It is under these circumstances, the application for eviction is filed on the ground

of wilful default in payment of arrears of rent for the months of November and December, 1978 and January, 1979, which totalled upto Rs. 120.

When a notice was sent to the tenant he replied that there was an agreement to sell the petition-property in his favour and therefore the purchase of

the property by the petitioner was on behalf of the respondent as well. This was under the reply notice, Exhibit A-3. In view of this, another ground

was added, viz., wilful denial of title. The other two grounds were, inasmuch as the revision petitioner is carrying on business, in a rented premises

and he is under threat of eviction he needs the petition premises for his own bonafide need for occupation to carry on business in coffee-powder

and selling coffeepowder. Lastly it was urged that the petition-premises was bona fide required for immediate demolition and reconstruction.

3. In defence the tenant (respondent) Contended that the previous owner Jayachandran took out eviction proceedings against him, but that proved

to be unsuccessful and therefore the petitioner has come to purchase the property solely with a view to somehow evict the respondent. Actually

there was a valid agreement for sale in favour of the respondent. In fact, the respondent is not denying the title of the petitioner to the property, but

on the contrary, he was asserting his agreement for sale. There was no bona fide need for personal occupation nor again does the building require

demolition and reconstruction.

4. The Rent Controller, on trial, dismissed the petition holding that none of the grounds alleged in the petition was true. Thereupon the matter was

taken up in appeal. The Appellate Authority concurred with the finding of the trial court on the ground of wilful default. He also held that there was

no denial of title. On the bona fide need for personal occupation he was of the view that though the need had been made out, inasmuch as the

landlord had come into possession of another non-residential building that will preclude him from maintaining the application u/s 10(3)(a)(iii) of the

Act. He also concluded the bona fide need for personal occupation and demolition and reconstruction are mutually inconsistent and therefore the

petitions were liable to be dismissed. It is against these concurrent orders the landlord has come up in revision.

5. The learned Advocate-General appearing for petitioner urges only this point leaving the others, viz., the ground of eviction u/s 10(3)(a)(iii). After

referring me to the relevant statutory provisions the argument proceeds that where applications were filed against two tenants occupying

independent portions by mere reason of the fact that the landlord comes into possession of one of the portions, it does not mean that it is a

subsequent event. On that score it cannot be contended the landlord's application for eviction under (10) 3(a)(iii) is not maintainable and he must

have recourse to Section 10(3)(e). This was not the purport of the riffing of the Supreme Court or the rulings of this Court on this aspect of the

matter. If it were so, the remedy of the landlord would certainly become unworkable. Therefore, in so far as the petitioner's requirement u/s 10(3)

(a)(in) had been fully satisfied in this case, eviction ought to have been ordered irrespective of any other consideration. From this point of view, he

prays that the orders of the Courts below are liable to be set aside and eviction be ordered u/s 10(3)(a)

6. Mr. P. K. Jamal Mohamed, learned Counsel for the respondent, would urge that it is axiomatic that in view of the judgment of the Supreme

Court, reported in Hasmat Rai and Another Vs. Raghunath Prasad, that subsequent, events must be taken note of. One such important subsequent

event in this case is, the landlord obtained possession of the adjoining premises. Once such possession has been obtained, it will be impossible for

the landlord to maintain the application u/s 10(3)(a)(iii) of the Act. On the contrary, he has to do only u/s 10(3)(c). If he proceeds under that Sub-

section, the consideration being very different, viz., that the relative hardship that might be caused to the tenant also requires to be considered,

evidence will have to be let in that regard. Therefore, relying on Kalashasti Chetty v. Balakrishnamurthy Chetty (1948) 2 M.L.J. 70 , it is urged

that rightly the lower appellate Court had taken note of the subsequent event and the finding does not warrant any interference whatsoever.

7. I have myself held in a few cases that it is too late in the day to contend that subsequent events cannot be taken note of. As a matter of fact, the

Supreme Court in three decisions has categorically laid down that in order to afford substantial relief to the parties, the subsequent events will have

to be taken note of, In my considered view, once the landlord says that he bona fide requires two portions of the same premises and files two

applications, if one of them falls vacant and he obtains possession, could it be held that the subsequent application becomes not maintainable. My

considered answer is "No" because the landlord requires both the portions. u/s 2(2) the definition of building would take within it even a portion of

the building. Therefore, he files two independent petitions. The fact of filing these two independent petitions is clear enough to indicate that he

needed both. Of course he has to prove his requirements in accordance with the statutory provisions. The relevant statutory provision in this case is

Section 10(3)(a)(iii). That reads as follows:

(3)(a). A landlord may, subject to the provisions of Clause (d), apply to the Controller for an order directing the tenant to put the landlord in

possession of the building--

(iii) in case it is any other non-residential building, if the landlord or (any member of his family) is not occupying for purposes of a business which he

or (any member of his family) is carrying on, a non-residential building in the city, town or village concerned which is his own:

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply

under this clause before the expiry of three months from the date on which the instrument was registered:

Provided further that where a landlord has obtained possession of a building under this clause, he shall not be entitled to apply again under this

clause--

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(iii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

By a reading of this it is clear that three essentials require to be satisfied:

1. The landlord must be carrying on a business;
2. It should be in a non-residential building which is occupied by him and not his own; and
3. A non-residential building must be in the city or town or village concerned, which is his own where he wants to shift his business.

Barring this, no other requirement has to be satisfied. However, it is only u/s 10(3)(c) the landlord's claim has to be tested whether it is bona fide.

The claim is founded, as I said above u/s 10(3)(a)(ii). Therefore, there is no need to go into the question of his actual requirement which is not

contemplated under the section as seen from the above extract, This is where I am afraid the lower appellate Court as well as the Rent Controller

had committed grievous errors when they started discussing as to whether the portion now obtained would be sufficient or not, That is neither

germane nor warranted under the provisions of the Act.

8. Turning now to the subsequent event in this case, it is not a subsequent event at all because, as I observed above, two simultaneous applications

were filed. If a tenant in his wisdom chooses not to contest after being evicted by the Rent Controller and allows the order to become final by

execution of which the landlord obtained possession, it passes my comprehension to see as to how this could be characterised as a subsequent

event. Only such of those events totally unrelated to the proceedings for eviction if it takes place, which have a bearing on the maintainability of the

petition, then of course it will be a different matter. But, that is not the position here in view of the landlord coming forward with a claim that he

requires both the portions in occupation of two different tenants. Construed in this light, there is no difficulty in reconciling the ruling of the Supreme

Court in *Hasmat Rai and Another Vs. Raghunath Prasad*, .

9. What remains to be dealt with is *Kalahasti Chetty v. Balakrishnamurthy Chetty* (1948) 2 M.L.J. 70 . A careful reading of that ruling clearly

suggests that the Division Bench proceeded more on considerations of requirement, which will be apparent from the following extract:

A purchaser of a house filed an application before the Rent Controller for eviction of two tenants in occupation of portions of the premises on the

ground that the portions were required for his personal occupation. The Rent Controller held that the landlord bona fide required the whole

premises for his occupation and so passed an order for eviction against both tenants. One tenant vacated his portion but the other appealed to the

Chief Judge, Court of Small Causes. It was contended that since the date of the application the landlord had got possession of several rooms in the

premises he cannot be deemed to require the other portions of the house in the occupation of the appellant. The Chief Judge of the Court of Small

Causes considered that this was a matter for investigation namely, whether the portion in the occupation of the landlord was sufficient for him. He

therefore remanded the application for fresh disposal after determination of the

question above mentioned. In a petition to quash that order it was contended that the Chief Judge, Small Causes Court, had no jurisdiction to take notice of the events which happened subsequent to the application and the order of remand was therefore bad. It was also contended that he had no power to direct an investigation into the sufficiency of the portion required by the landlord.

Held, (1) as the application was based on the ground that the portions in the occupation of both the tenants, which would really be two buildings

(vide the definition in Section 2(1) of Act XV of 1946), were required for his personal occupation it was incumbent on the Tribunals, both original

and appellate to determine the question, whether the landlord required both the premises for his own occupation. In the appeal before the Small

Cause Chief Judge the only question which had to be determined was whether the landlord bona fide required the "building" in the occupation of

the appealing tenant, for his own occupation.

In view of this, this ruling is clearly distinguishable.

10. For all these reasons, the revision petition will stand allowed. No costs. The tenant will have time till the end of February, 1983 to hand over vacant delivery of possession of the premises.