

(1977) 04 MAD CK 0034
In the Madras High Court

Nilgiri Dairy Farm and Others

APPELLANT

Vs

Manoharan

RESPONDENT

Date of Decision : 19-04-1977

Acts Referred:

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

Citation : (1978) 1 MLJ 357

Hon'ble Judges : A. Varadarajan, J

Bench : Single Bench

Judgement

A. Varadarajan, J.—The petitioners are the tenants, who had succeeded before the Rent Controller, but lost before the appellate authority. They occupy six rooms in the ground floor of the building called "Jaya Mansions" in Periamet, Madras. The respondent's case is that in a partition effected in December, 1972 between himself and his two brothers he obtained 38 rooms in the first and second floors and 11 rooms in the ground floor for his share. He filed petitions for eviction of the petitioners herein and another occupying the said six shops in the ground floor on the ground that he required additional accommodation for locating his kitchen, dining halls, office, servants' quarters and store-room and also for providing an entrance to the vacant space situate behind the building to be used as a car park in connection with his hotel, restaurant, boarding and lodging business.

2. The petitioners herein opposed the petitions contending that the respondent is not already carrying on any hotel, restaurant, boarding and lodging business in the premises and, therefore, he is not entitled to seek their eviction on the ground of additional accommodation u/s 10(3)(c) of the Madras Buildings (Lease and Rent Control) Act, 1960. The petitioners further contended that cars were being parked only on the road previously and that the petitions for eviction are not bona fide as the respondent had no means to start any hotel business having regard to the fact that he had not paid the electricity charges of Rs. 4,000 resulting in the supply of electricity being disconnected and also he was not in a

position to pay Income Tax arrears to the extent of Rs. 50,000 as a result of which the tenants have been compelled to pay the rents to the Income Tax department on pain of distress warrants being issued against them in case of non-payment. The petitioners also contended that the hardship that maybe caused to them by the order of eviction will outweigh the advantage that may accrue to the respondent.

3. The learned Rent Controller upheld the pleas of the petitioners that the respondent is not carrying on any business at present and, therefore, he is not entitled to seek eviction of the petitioners u/s 10(3)(c) of the Act on the ground of requirement of additional accommodation and also that his requirement was not bona fide. He dismissed the petitions without going into the question of the relative hardship that may be caused and the advantage that may accrue to the parties.

4. On appeal, the respondent produced Exhibit P-10, a police licence issued to him after the date of the petition for running a lodging house in the premises and it was admitted as additional evidence by the appellate authority as per order in M.P. No. 160 of 1976. The appellate authority allowed the appeals on the ground that the respondent had made necessary preparations for starting a boarding house and that his request for additional accommodation is bona fide. The appellate authority found that the liability to pay the Income Tax arrears of Rs. 50,000 which has not been paid, would show that the respondent is a well-to-do person having means to carry on the business. He disagreed with the Rent Controller and found that the petitions u/s 10(3)(c) of the Act are maintainable on the ground that the respondent had made necessary preparations by way of white-washing and colour washing of the premises, providing mosaic flooring for the premises and obtaining police licence, Exhibit P-10 and that he was in occupation of 38 rooms in the first and second floors and 11 rooms in the ground floor. He has construed possession as occupation. As regards the hardship the appellate authority found that the advantage to the respondent would be greater than the hardship to the petitioners. It has also found that there was an additional safeguard u/s 10 of the Act which provides that where a landlord who has obtained possession of a building in pursuance of an order under Sub-section (3) does not himself occupy it for the purpose specified in the order within one month of the date of obtaining possession or having so occupied it, vacates it without reasonable cause within 6 months of such date, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building and the Controller shall make an order accordingly notwithstanding anything contained in Section 3 of the Act. On these findings the appellate authority allowed the appeal and ordered eviction of the petitioners.

5. What is established by the evidence is that in a partition which is said to have been effected in December, 1972 between the respondent and his brothers, the respondent got for his share 38 rooms in the first and second floors of the entire

building and 11 rooms in the ground floor and those 11 rooms are in the occupation of 12 tenants including the five petitioners in the civil revision petitions. There is a vacant space measuring 6000 sq. ft. on the rear side of the building and it could not be reached now from the front side for want of necessary access. The respondent had white-washed and colour-washed the premises and provided some mosaic floor. He has alleged in the petitions that he was taking steps to obtain the police licence for running the lodging house in the premises; but in fact he had obtained the police licence, Exhibit P-10 during the pendency of the appeals before the appellate authority and produced the same as additional evidence in M.P. No. 160 of 1976. The respondent has admitted in his evidence that he is not carrying on any hotel, restaurant, boarding and lodging house business at present. The evidence does not establish that the respondent is seeking eviction of the petitioners for any oblique purpose. Though the petitioners had contended in their counter statements that there was a demand for enhancement of rent, no evidence worth the name has been adduced by the petitioners to show that there was a demand for enhancement of rent and the eviction petitions had been filed on account of non-compliance with this demand. In the light of the above said facts which are established by the evidence, it is necessary to consider whether the respondent requires the premises bona fide as additional accommodation and whether the petitions u/s 10(3)(c) of the Act are maintainable.

6. There is evidence to show that the respondent's family had been carrying on a hotel business in some portions of the entire building previously and that business had been stopped on account of misunderstanding in the family as a consequence of which the three brothers got their properties divided in December, 1972. The respondent does not appear to have the necessary means to start any new business of running hotel, restaurant, boarding and lodging house at present, though he seems to own 38 rooms in the first and second floors and 11 rooms in the ground floor of the building which had fallen to his share in the partition effected in December, 1972. The evidence would show that property tax to the extent of Rs. 4,000 has not been paid by the respondent, that the electricity connection for the premises had been disconnected on account of the failure on the part of the respondent to pay electricity charges to the extent of Rs. 5,000 and that the respondent was not able to pay Income Tax arrears due to the extent of Rs. 50,000 as a result of which the tenants including the petitioners had been directed by the Income Tax Department to pay the rents to the Income Tax Department on pain of distress warrants being issued against them in the event of their failure to comply with that demand. It is under these circumstances that the learned Rent Controller has found that the respondent does not have the necessary means to start a hotel, restaurant, boarding and lodging business. It is not possible to agree with the learned appellate authority that the respondent has the necessary means to start the business. It is not possible to agree with him that the fact that Income Tax arrears to the extent of Rs. 50,000 are due from the respondent would show that the respondent owns

properties and that he has means. The learned appellate authority has overlooked the fact that the amount remained unpaid as a result of which the Income Tax Department had directed the tenants to pay the rents to the Department directly on pain of distress warrants being issued against them in case of non-payment. The respondent is not able to pay electricity charges to the extent of Rs. 5,000 and property tax to the Corporation of Madras to the extent of Rs. 4,000. The electricity connection had to be disconnected on account of his failure to pay the electricity charges of Rs, 5,000. Under these circumstances, I agree with the Rent Controller that the respondent does not have the necessary means at present to start a hotel, restaurant, boarding and lodging business.

7. It was strenuously contended on behalf of the petitioners that since the respondent is not admittedly carrying on the hotel, restaurant, boarding and lodging business in the premises and is not occupying any portion of the premises for the purpose of any such business, though he may be in possession of 38 rooms in the first and second floors of the premises, the petitions for eviction u/s 10(3)(c) of the Act on the ground of bona fide requirement of additional accommodation are not maintainable. It was submitted by the learned Counsel for the petitioners that the view that "carrying on business" in Section 10(3)(a)(iii) of the Act would be satisfied when the landlord has made the necessary preparations for carrying on the business and that it is not necessary that he should be actually carrying on the business is only in cases where eviction is sought on the ground of owner's occupation and that such a view has not been taken in the case of the requirement of additional accommodation u/s 10(3)(c) of the Act which according to the learned Counsel for the petitioners, would not apply to the case where the landlord is not in actual occupation of a portion of the same building for the purpose of a business which he is actually carrying on, on the date of the petition for eviction of the tenant on the ground of requirement of additional accommodation. The learned Counsel for the respondent invited my attention to the decision in *R.M. Solai Nadar v. A.T.A.V. Guruswami Nadar & Co.* 1969 All. Ind R.C.J. 767, and *P.V. Raju Chettiar v. The State of Tamil Nadu and Ors.* (1970) All Ind C.J. 440, and also to certain passages at pages 278 and 282 of the twelfth edition of Maxwell on Interpretation of Statutes and contended that the meaning similar to the one given to the words "carrying on business" in Section 10(3)(a)(iii) of the Act must be given to similar words occurring in Section 10(3)(c) of the Act and that the petitions for eviction of the tenants on the ground of requirement of additional accommodation should be held to be maintainable if the landlord has made necessary preparations for starting a hotel business. Ramaprasada Rao, J., as he then was, has observed in *R.M. Solai Nadar v. M/s. A.T.A.V. Guruswami Nadar & Co.* 1969 All. Ind R.C.J. 767 thus:

Thus the case-law is abundant and at once varying. The general principle noticeable in the majority of cases appears to be that bona fide preparation to do business at the place where the tenant is trading coupled with an honest and a genuine need for the same would entitle a landlord for an order under the

section.

8. A Bench of this Court had observed in *P.N. Raju Chettiar v. The State of Tamil Nadu* and Ors. 1970 All. Ind R.C.J. 440 thus:

Ramaswami, J., in Civil Revision Petition No. 1891 of 1956 held that a preparation to do business would suffice to enable the landlord to invoke the provision, *Panchapakesa Ayyer J., in Nataraja Achari v. Balasubramaniam* (1967) 2 M.L.J. 492 and *Ramachandra Iyer, C.J., in Ramaswami Pillai v. Karmega Thevar* ILR (1964) Mad. 712 : (1964) 2 M.L.J. 89 more or less subscribed to that view.

9. On a careful consideration of the language employed by the section and Particularly the words we have extracted and also the view of the several single Judges, we are of the view that while the literal construction placed by *Basheer Ahmed Sayeed, J.*, does not, with due respect, commend itself to us, the other view appears to be reasonable. We think so because "carrying on a business" may consist of a series of steps and, even if one step is proved, we do not see why the requirement is not satisfied.

10. We find the following passages in pages 278 and 282 of the twelfth edition of *Maxwell on Interpretation of Statutes*:

It has been justly remarked that when precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act. Accordingly, in ascertaining the meaning to be attached to a particular word in a section of an Act, though the proper course would seem to be to ascertain that meaning from a consideration of the section itself if possible, yet, if the meaning cannot be so ascertained, other sections may be looked at to fix the sense in which the word is there used. Furthermore, "where a word has been construed judicially in a certain legal area, it is, I think, right to give it the same meaning if it occurs in a statute dealing with the same general subject-matter unless the context makes it clear that the word must have a different construction".

From the general presumption that the same expression is presumed to be used in the same sense throughout an Act or a series of cognate Acts, there follows the further presumption that a change of wording denotes a change in meaning. "Where the Legislature" said Lord Tenterden, G.J., "in the same sentence uses different words, we must presume that they were used in order to express different ideas".

11. It is not possible to agree with the learned Counsel for the respondent that the words "carrying on business" occurring in Section 10(3)(c)(iii) of the Act should be construed in the same manner as similar words in Section 10(3)(a) in the Act had been construed by the Courts as in the aforesaid two decisions. It is enough to give two reasons in support of the view. The first is that Section 10(3) (c) deals with additional accommodation which implies that the accommodation

which is already in the occupation of the landlord for the purpose of the business which he is carrying on is not sufficient, necessitating additional accommodation by evicting the tenants from other portions of the same building which are in their occupation. The second is that the question of relative hardship or advantage does not arise for consideration in cases governed by Section 10(3)(a) of the Act, while it does arise for consideration in cases governed by Section 10(3)(c) of the Act. The proviso to that section provides that in the case of an application under Clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. Therefore, I agree with the learned Counsel for the petitioners that as the respondent is not occupying any portion of the building for the purpose of any business at present, he is not entitled to seek eviction of the petitioners in this case on the ground of additional accommodation.

12. Since the respondent is not occupying any portion of the building for the purpose of any business which he is actually carrying on at present, it is not possible to consider the question of the relative hardship. There is evidence on the side of the petitioners to the effect that it will be difficult to obtain accommodation in the same locality and for alternative accommodation larger amount has to be paid by way of rent, that the petitioners will not get the present customers if they shift their business places and that they will not be able to collect the outstandings if they vacated the premises in question. No doubt, hardship will always be there in all cases where the tenants occupying portions of the building are evicted on the ground of additional accommodation by the landlord. But in the present case, since the respondent is not occupying any portion of the buildings for any business, which he is actually carrying on, on the date of the petition, it could not be stated that he would have any advantage by the additional rooms which may become available to him on the eviction of the petitioners. There is no material and in the nature of things there cannot be any to show that the portions which are available are not sufficient for the purpose of any business which the respondent is carrying on the date of the petition, since, as already stated, no business is actually carried on the date of the petition. Therefore, it is not possible to hold that the respondent will have advantage which will outweigh the hardship which may be caused to the petitioners by the order of eviction.

13. In these circumstances, the Civil Revision Petitions are allowed with costs throughout and the orders of the Rent Controller are restored. Advocate's fee one set.