
(1961) 07 MAD CK 0015
In the Madras High Court

Pannalal Jagannath Prasad Gupta

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 14-07-1961

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 13, 7

Citation : (1962) ILR (Mad) 430 : (1961) 74 LW 604 : (1962) 1 MLJ 426

Hon'ble Judges : Veeraswami, J

Bench : Division Bench

Judgement

Veeraswami, J.—This petition under Article 226 of the Constitution seeks to have G.O. Ms. No. 705, Home, dated 19th March, 1958

quashed which, in exercise of the powers u/s 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, exempted premises Nos. 140/2,

Audiappa Naicken Street and 17/1, Anna Pillar Street, G.T., Madras, from the provisions of Section 7 of the said Act. The petitionei avers in his

affidavit that the building No. 140/2, Audiappa Naicken Street, is a nonresidential one, and this is not in dispute, and he has been in occupation

thereof for over 30 years. He further alleges that at the time of the occupation, the building was an old dilapidated one and he had to reconstruct it

himself at enormous cost, and that he had installed an electric coffee roaster and two electric coffee grinders. The 2nd respondent, who was his

employee, purchased the building from its owner on nth July, 1955. Although the 2nd respondent is occupying five stores for purposes of his

business in the Kotwal Bazaar Market, and did not need the said building for carrying on his business, he applied to the Government for exempting

it from the provisions of Section 7 of the said Act which the petitioner opposed. Eventually the Government by their memorandum, dated 26th

November, 1956 informed the 2nd respondent that his request could not be complied with. But on 5th October, 1957 the 2nd respondent again applied to the Minister-in-charge of Accommodation and Control with a similar request practically on identical grounds, namely, that he required the premises for his own occupation to meet the requirements of his increasing business. Once again, the petitioner preferred his objections. But the Government after calling for a report from the Accommodation Controller passed the order now sought to be set aside. The petitioner contends, on these facts and circumstances that the order is arbitrary and unreasonable and should be set aside. On the other hand, the 2nd respondent opposes the petition and maintains that the Government granted the exemption as they were convinced that the petitioner was in genuine need of the building purchased by him in the normal course of expansion of his business and that the order is perfectly valid. The State of Madras, the 1st respondent, has also filed a counter-affidavit in which the Government have pleaded in justification of the order.

2. The constitutional validity of Section 13 of the Act was upheld by a Division Bench of this Court in *The Globe Theatres, Ltd. v. The State of Madras* (1954) 2 M.L.J. 110, on the view that the discretion given to the Government under the section was not an unguided and arbitrary discretion and that it should be exercised consistent with the declared policy and object of the Act as evidenced from its Preamble and operative provisions and neither arbitrarily nor mala fide. But at the same time, it was pointed out that the propriety or otherwise of the exercise of discretion in particular orders of exemption u/s 13 of the Act would be subject to judicial review. Dismissing the appeal from that decision, the Supreme Court in *P.J. Irani, Administrator to the Estate of Late Mr. J.H. Irani v. The State of Madras* C.A. No. 671 of 1957 which does not so far appear to have been reported, has confirmed the constitutional validity of Section 13 and the view that orders passed under the section are subject to scrutiny by Courts to find out whether they are in accord with the policy and purpose of the Act. In between the two decisions, there have been cases decided by single Judges or Division Benches of this Court in which, in the context of the special facts in each of them, observations have been made as to what was or was not a relevant or pertinent fact or circumstance to be taken into account by the Government in exercising their

discretion in exempting or declining to exempt a building from the provisions of Section 7 of the Act. Such observations have been pressed into

service as precedents and arguments addressed in support or attack of the order now under review. But, in my opinion each case will have to be

examined on its own facts and in all their setting for the Court to satisfy itself that the impugned order is not an arbitrary or unreasonable exercise

by the Government of their discretion contrary to the policy and purpose of the Act. After pointing out with reference to the Preamble of the Act its

three-fold purpose, namely, (1) the regulation of letting, (2) the control of rent and (3) the prevention of unreasonable eviction of tenants from

residential and non-residential buildings, the majority of the Bench of the Supreme Court in P.J. Irani v. State of Madras C.A. No. 671 of 1957

were pleased to affirm that any exercise of discretion in individual cases would be subject to review by the Courts for finding out whether (a) it was

discriminatory so as to offend Article 14 of the Constitution, (b) the order was made on grounds which were germane or relevant to the policy and

purpose of the Act and (c) it was not otherwise mala fide and proceeded to observe:

The entire basis for upholding the constitutional validity of Section 13 of the Act and considering that it did not offend the equal protection of the

law guaranteed by Article 14 of the Constitution was, that the discretion or the power conferred upon Government was not unguided, uncanalised

or arbitrary, but that it had to be exercised in accordance with the policy and object of the enactment gatherable from the Preamble as well as its

operative provisions. The order itself might on its face have shown that it conformed to this requirement, in which event it would have been for the

party challenging the validity of the order to establish to the satisfaction of the Court that it was mala fide or had been passed on grounds not

contemplated by or extraneous to, the object and purpose of the enactment or the principles which should have governed the exercise of the

power. For instance, if the exemption had been in favour of a particular class of buildings, say those belonging to charities - religious or secular -

the classification would have been apparent in the very order of exemption. Where however, the exemption granted is not of any class of buildings

which would ex facie disclose a classification, but the exemption is of a specified building owned by A or in which B is a tenant, when prima facie it

would be discriminatory and when the legality of the order is challenged, its *intra vires* character could be sustained only by disclosing the reasons

which led to the passing of the order.

This being a case of exemption of a specific non-residential building, it would therefore, be *prima facie* discriminatory, and its validity, which is

challenged, can be sustained only on the relevancy and propriety of the reasons disclosed which led to the passing of the order.

3. The order of the Government in question, after setting out the grounds on which the landlord requested for exemption of the premises, stated:

The Government have examined the request of the petitioner in the light of the report of the Accommodation Controller and they consider that the

petitioner is in genuine need of the building purchased by him in the normal course of expansion of his business. In the circumstances the

Government accept the recommendation of the Accommodation Controller and accordingly exempt premises Nos. 140/2, Audiappa Naicken

Street and 17/1, Anna Pillai Street, Madras, from the provisions of Section 7 of the Madras Buildings (Lease and Rent Control) Act, 1949.

The order itself does not *ex facie* contain the reasons for arriving at the finding that the landlord had genuine need for occupation of the building.

But in the counter-affidavit filed on their behalf, the Government have set out the reasons that weighed with them in reconsidering and revising their

earlier order, dated 26th November, 1956:

(i) Shri Pannalal Gupta (petitioner herein) who had stated that he had demolished the old building at the site of the premises and put up a new

building at a huge cost was found to have taken a sum of Rs. 5,000 from the ex-owner for putting up the new buildings and it was not with his own

cost that he had put up the new structure and the present owner must have paid for the new buildings also when he purchased the premises in

1955. (ii) When the building was offered for sale Shri Pannalal Gupta attempted to purchase it but appeared to have been unable to do so and got

the advance made by him for the purchase refunded to him. (iii) The second respondent herein had improved his business in such a way as to have

built up a clientele and a heavy turnover within a short period and he was in real need of the premises purchased by him, in the normal course of

expansion of his Business, (iv) That the second respondent's offer to put Shri

Pannalal Gupta and his subtenants of the premises in possession of the premises occupied by himself within the Kothwal Bazaar seemed to indicate a desire not to harm the business of his tenants occupying the premises in question, (v) That the premises occupied by the second respondent herein will be all right for businessmen of the type of Shri Pannalal Gupta and his tenants.

The Government further pointed out in the counter-affidavit that the lease deed entered into between the tenant of the building and its ex-owner as well as the offer of the present landlord to the tenant of alternative accommodation, were not before the Government when their earlier order was passed and that on the entire facts and circumstances they considered that, in view of the hardship and inconvenience the landlord was suffering, the case was one which merited exemption from the provisions of the Act. They refuted the allegation that a change in the personnel of the Ministry had anything to do with the decision to exempt the building, and that the exemption granted was not in furtherance of the policy of the Act or that it had the effect of nullifying the object of the Act.

4. Sri V.C. Gopalarathnam, the learned Counsel for the petitioner pressed upon me that the impugned order was passed arbitrarily in disregard of the fact that on identical grounds, the Government themselves had earlier declined to exempt the building u/s 13 of the Act, that there was no fresh material relevant to the policy and purpose of the Act, which justified the Government to revise their previous order, and that, even assuming that it was open to the Government to support the order in question by reasons not mentioned therein but in their counter-affidavit, none of them was a legitimate and relevant one in relation to the policy and purpose of the Act. The learned Counsel also suggested that apparently a change in the personnel of the Ministry was the only factor that accounted for the exemption. I may at once state that, in my view, the last of the contentions is totally without substance and deserves no further consideration. There is no material to support the allegation and the mere fact that the earlier order happens to be revised, is no justification for the allegation. In respect of the other submissions of the learned Counsel, Sri K.V.

Venkatasubramania Ayyar, appearing for the 2nd respondent-landlord, urged that the Government did have fresh materials, should they be

required, for revising the earlier order, in the form of a lease deed aforesaid and the offer of the 2nd respondent to put the tenant in occupation of three stalls subject to the permission of their owner, and that the bona fide need of the 2nd respondent for occupation of the building for purposes of his expanding business was by itself a proper and relevant ground that justified the exemption. Sri K.V. Venkatasubramania Ayyar did not seriously press grounds (i), (ii) and (v) set out in the counter-affidavit of the Government though he did not concede that they too could be relevant grounds. But the learned Counsel maintained that grounds (iii) and (iv) were certainly relevant and sufficient to support the order of the Government.

5. It is true that in respect of a non-residential building, the Act has not provided the bona fide requirement by the landlord of such a building for his own occupation as a ground for eviction. It is further true that there are observations in Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, , which appear to lend justification for the contention of the tenant that exemption u/s 13 cannot be granted on a ground not provided for in the Act itself. But subsequent decisions of this Court have explained and pointed out that Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, , really rested upon special facts of that case and that the object of Section 13 of the Act was really to meet cases dependent upon grounds not available under the Act. The same Bench which decided Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, , observed in M. Chinniah Servai Vs. The State of Madras and Another, .

There is no provision in the Act under which the owner of a non-residential building could apply for eviction of a tenant of such a building on the ground that he bona fide requires it for his residential purpose.... There is no provision in the Act under which non-residential buildings of this type could be converted into residential buildings though there is a provision u/s 11(1) of the Act for converting a residential building into a non-residential one. Hence where the justice of any case could not be met by the provisions of the Act, there is legitimate scope for the exercise by the Government of the powers conferred u/s 13 of the Act.

It was further observed in the later decision that if an exemption of a building from the provisions of the Act was rested on the same grounds as

permitted by the Act, it would, in effect, amount to, in certain circumstances, an order passed in excess of jurisdiction and it is this aspect which

compelled the Court to set aside the order of exemption in *Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department*

and Another, . Again in *Globe Theatres, Ltd. v. State of Madras* (1961) 1 M.L.J. 85, a Division Bench of which I was a member, referred to

Abdul Subhan Sahib and Sons Vs. State of Madras by Secretary, Home Department and Another, and said:

It is contended that the Government in passing the order in question were really adding another ground for eviction to the grounds set out in Section

7 of the Act. That they could not do, because of the principle laid down in a decision of this Court in *Abdul Subhan Sahib and Sons Vs. State of*

Madras by Secretary, Home Department and Another, . We confess that there are here and there certain observations in this case which might

appear to support this argument. But when examined carefully it will be evident that it was not the intention of the Division Bench to lay down a

general proposition that the exemption could be granted only on grounds contained in the Act as valid grounds for eviction. Indeed the contrary was

laid down in the leading decision in *The Globe Theatres v. State of Madras* (1954) 2 M.L.J. 110, namely, that if a ground is actually covered by

any provision of the Act, the resort must be had to the Tribunals established under the Act, and if a party had failed in his attempts to get relief from

such Tribunals it would not be open to the Government to give him relief on the same ground.... We may point out in this connection that it would

be wrong to say that by reason of the exemption the Government were adding a new ground for eviction. Actually what happens on an exemption

is that the ordinary law of the land applies, namely, the Transfer of Property Act, and the parties are governed by the provisions of that Act.

It should, therefore, be taken as well settled that bona fide requirements by a landlord of a non-residential building for his own occupation is a

ground well within the scope of Section 13 of the Act and that, in particular circumstances, if the Government are satisfied that the justice of the

case, including relieving hardship or unreasonable severity or rigour in the application of the provisions of the Act, requires it, they may legitimately

and properly grant exemption on that ground.

6. But whether such a justifiable ground exists would depend upon particular facts and circumstances in each case relevant to the policy and

purpose of the Act, not the least of which of course, being prevention of unreasonable eviction of the tenants. The landlord in his petition to the

Government for exemption has appended schedules which contain figures relating to the growing volume of his business from 1940 to 1950 and

the inadequacy of the space available in the rented stalls in his occupation to meet the requirements of his expanding business. I do not see how this

can be regarded as an extraneous consideration. It should be remembered that the Act itself is intended to be a temporary one though its life has

been extended from time to time, and its constitutionality should satisfy the test of a reasonable restriction under Article 19(1) of the Constitution. It

may be that ownership of the building by itself is not a ground for exemption; but the bona fide need by the owner of a non-residential building for

his own occupation is a different matter. The Government were satisfied on the materials placed before them that the landlord had such a need and

it is not for this Court to enquire beyond finding out whether the finding was based on considerations relevant to the Act.

7. It was urged by the learned Counsel for the petitioner that the offer of alternative accommodation, which the Government had taken into

account, was not a relevant consideration and in support, reliance has been placed upon Abdul Subhan Sahib and Sons Vs. State of Madras by

Secretary, Home Department and Another, , in which it was said:

Under the circumstances it would not be open to the Government to add to these grounds either on the score of inconvenience of the landlord or

on the ground of fairness of the proposal put forward by the landlord for alternate accommodation to the evicted tenant.

I have already pointed out the basis on which that decision should be taken to have proceeded in the light of the observations contained in later

decisions of Division Benches. Further I am of opinion that offer of alternative accommodation, which will have a bearing upon the question of

bona fide of the landlord's requirement, cannot altogether be considered to be an irrelevant circumstance to be taken into account in granting

exemption.

8. I hold that the impugned order of the Government is valid. The rule nisi is discharged and the petition is dismissed. But in the circumstances I make no order as to costs.