

(1962) 09 MAD CK 0041
In the Madras High Court
Case No : C. R. P. No. 825 of 1962

P.L. Kannappa Chettiar And Co.

APPELLANT

Vs

T.R. Venkatarama Iyer and Brothers and another

RESPONDENT

Date of Decision : 21-09-1962

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 7(3)(a)(iii)

Citation : (1962) 09 MAD CK 0041

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : K. Rajah Ayyar, R. Rangachari and V. Rajagopalan, for the Appellant;
S. Mohan Kumaramangalam and N. Vanchinathan, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—The revision petitioner is a tenant who has suffered an order for eviction of his premises under the Madras Buildings (Lease and Rent Control) Act. The facts relating to this matter have to be carefully set forth, for an adequate appreciation of the question of law upon which the proceeding really turns. The application by the landlord for the eviction of the revision petitioner was upon two grounds, namely, (i) wilful default in the payment of rent for six months and (ii) as the landlord bona fide required the premises, which are nonresidential in character for the conduct of his business. With regard to the first point, we might now take it as held by the Courts below that there was no wilful default in the payment of rent. The position therefore is that this ground proposed for eviction, is no longer available to the landlord.

2. It is with regard to the second point that the real difficulty in the case has arisen. Unfortunately, though the facts have been referred to in some detail in the judgment of the learned Subordinate Judge in C. M. A. No. 40 of 1960, attention does not appear to have been focussed upon the precise issue, which arose from the respective contentions of the parties. The order of the learned District Judge in C. R. P. No. 37 of 1962 is even more unhelpful, being a brief

order to the effect that that Court was satisfied that the landlord was bona fide in requiring these non-residential premises for his business; the learned District Judge proceeded to observe that he saw no ground to interfere in civil revision. But the real situation is that the land lord was already in possession and occupation of certain premises, namely, No. 1, Chinnakadai St., where the land lord was carrying on a certain wholesale and retail business in textiles. If so much is taken as established, it would follow that the landlord might not be entitled to possession of the non-residential premises of the tenant (revision petitioner) having regard to the provisions of S. 7 (3) (a) (iii) of the 1949 Act, which runs as follows:

In case it is any other non-residential building, if the landlord is not occupying for purposes of a business which he is carrying on, a non-residential building in the city, town or village concerned, which is his own or to the possession of which he is entitled.....

3. Dealing with this aspect, all that the learned Subordinate Judge observed, in conclusion was that

it has not been shown that the landlord is occupying another non-residential building of his own wherein the business could be carried on. It must be held therefore that the requirement pleaded is bona fide.

4. I agree that this conclusion of the learned Subordinate Judge expressed in this cryptic form, does not really do justice to the actual question of fact, which is somewhat complicated. From one point of view it has been pleaded for the landlord that he requires possession of the premises of the revision petitioner, not for his wholesale business, but for a different business that he is about to commence, namely, a retail business in textiles. But Mr. Rajah Iyer, for the tenant (revision petitioner) has sought to counter this argument by pointing out, from the record itself an admission to the effect that the land lord was carrying on both wholesale and retail business of some kind in his own premises No. 1, Chinnakadai St. If that were so, the landlord could not in fairness claim possession of the present non-residential premises, on the pretext that this is of the character of an Independent line of business. S. 7 (3) (a) (iii) set forth above, would ordinarily preclude the landlord from seeking to evict the revision petitioner.

5. But, as Sri Kumaramangalam for the respondent (landlord) has rightly emphasized, the whole problem of applying S. 7 (3) (a) (iii) of the Act turns on the question whether the premises occupied by the landlord already, namely, No. 1, Chinnakadai St., must be considered as residential or as non-residential in character. The Courts below do not appear to have analysed the record from this particular perspective. But I find from the record adequate material to show that the premises already occupied by the landlord in Chinnakadai St., have really to be regarded as residential in character. That is because the landlord is living there, and using the premises for his residence; it might be that he is also

incidentally storing some textiles, for his business; but that will not alter or affect the basic character of the building concerned. On this aspect, there is an explicit admission by the revision petitioner, which is practically conclusive. The revision petitioner, admitted in cross-examination "petitioners live in No. 1, Chinnakadai Street". The landlord himself stated (as P. W. 1) that he was living in No., Chinnakadai St., and that there were no looms in that premises. The precise point came up for consideration before a Bench of this Court in *Kota Ananda Krishna Chetty Vs. M.K. and Company alias Mahomed Kasim and Company and Another*, Rajamannar, C.J. delivering the judgment of the Bench observed that the landlord was in occupation of a residential building in which he was also carrying on his business was not sufficient to prevent him from obtaining possession of another non residential building for the conduct of his business under S. 7 (3) (a) (iii) of the Act. The essential condition which must be satisfied before a landlord can be denied his right to get back possession was that he should carry on business in a non-residential building of his own.

6. Mr. Raja Iyer for the revision petitioner has attempted to meet this argument by pointing out that the word "building" as defined in the Act would include a portion of a building, and hence it might be that a part of the building, in No. 1, Chinnakadai Street, is non-residential in character, that the landlord may be conducting some business with reference to that building as so defined, and that his effective occupation of those premises would preclude him from obtaining possession of the present premises (non-residential) let out to the revision petitioner as tenant. But assuming that this proposition is perfectly valid, I am unable to see how it helps the revision petitioner. It is not a principle of law, about which there is any room for controversy or doubt; it is essentially a matter depending on the facts of the individual case. In the present case, there is a total absence of evidence to show that the landlord is in occupation of his residential premises as a distinct and severable shop or place of business, converting that portion thereby into a separate non-residential building. Actually, this ground was not even adverted to in any of the Courts or even here, prior to the arguments in the case. Hence, I am of the view that the land lord was entitled in the present case to possession of the non residential premises tenanted by the revision petitioner, as he required those premises bona fide for the conduct of his own business, and he has not been in possession of any other separate non-residential premises for that purpose. The order of the Courts below is correct and must be confirmed, dismissing this petition. However, as the premises are situated in a crowded locality of Madurai City, and the revision petitioner may be hard put to find an alternative accommodation for his business, I direct that he be granted a further time of six months from this date for shifting to alternative premises before eviction can be enforced against him. The parties will bear their own costs.