
(1969) 06 MAD CK 0006
In the Madras High Court
Case No : Writ App. No. 114 of 1969

P.N. Raju Chettiar

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 25-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(3), 29

Citation : AIR 1970 Mad 306 : (1970) ILR (Mad) 237 : (1969) 82 LW 695

Hon'ble Judges : K. Veeraswami, C.J.; K.N. Mudaliyar, J

Bench : Division Bench

Advocate : A.K. Srinivasan, for the Appellant; V. Thiagarajan and T. Aravamudha Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, C.J.—The State Government by an order dated 3-3-1967 made u/s 29 of the Madras Buildings (Lease and Rent Control)

Act, 1960, exempted the portion under tenancy in premises No. 176/2 in Anna Pillai St. George Town, Madras, from the provisions of Section

10. The appellant, who is the tenant, filed his objections stating inter alia that the respondent landlord was but a poojari and was not carrying on a

business for which he could bona fide require the premises for his occupation. With reference to that the impugned order says-

The Government are satisfied that the claim of the landlord that he required the shop portion in the occupation of the tenant for starting and running

a business of his own is bona fide. But the landlord is yet to commence the business.

On that view, the order proceeded on the basis that the landlord had no remedy under the provisions of the Act and exercise of the powers u/s 29

was called for. The appellant unsuccessfully pursued the matter before the Government by means of what he called a revision petition which was eventually dismissed on 28-12-1968. On 24-1-1969 he moved this court under Article 226 of the Constitution for quashing the exemption.

Alagiriswami J. dismissed. It on the ground that it was belated.

2. We agree with the appellant that the ground on which the writ petition was dismissed cannot be sustained. The appellant was until the end of

December 1968 pursuing and we should think bona fide the matter before the State Government. Then, when he was unsuccessful, he promptly

resorted to this court. We are clearly of opinion that, in the circumstances, there was no delay, and, if there was, it should have been condoned.

3. In the circumstances, we thought it best that we should ourselves deal with the merits of the appellant's contention against the validity of the

exemption. It is strenuously pressed upon us for the appellant that the respondent landlord had a remedy under the provisions of the Act so that the

exemption was without jurisdiction. It is now well settled that the remedy by way of exemption u/s 29 is not a substitute for remedies available to a

landlord for eviction under the Act. If he asks for eviction under the provisions of the Act, there could certainly be no occasion for the State

Government to exercise its powers u/s 29. The two powers are mutually exclusive. To that extent the appellant is right.

4. But the point is whether any remedy was available to the landlord u/s 10. As we mentioned. It was urged before the Government as well as

before us, that the landlord, being a poojari, did not and was not carrying on a business. The finding in the impugned order is also that he was not

actually carrying on the business and in fact, he had yet to commence the business. In such circumstances, could the landlord have resorted to the

remedies u/s 10? Sub-clause (iii) of clause (a) of Sub-section (3) of that section speaks of-

If the landlord or his son is not occupying for purposes of a business which he or his son is carrying on"".

At first sight the impression the words give, is that actually carrying on business, is a condition. That is how Basheer Ahmed Sayeed J. read them in

C.R.P No. 137 of 1955 (Mad). He observed:--

As a matter of fact it seems to me that the intention is to give this right of

eviction only to such of the landlords as are actually carrying on business and who may require their own non-residential building in that connection and not to others who might have had a business or who might think of starting a future business.

If this view is accepted, nothing could be said against the validity of the exemption in question but, subsequently, at least three single Judges of this

Court were not prepared to place that literal construction, but, at the same time, they did not go to the full length of saying that, short of any

tangible concrete indication of commencement of a business, mere intention to carry on business will enable the landlord to resort to Section 10(3)

(a) (iii). Ramaswami J. in C.R.P. 1891 of 1956 (Mad) held that a preparation to do business would suffice to enable the landlord to invoke that

provision. Panchapakesa Ayyar, J. in K.S. Nataraja Achari Vs. J.K. Balasubramaniam, and Ramachandra Iyer, C. J. in Ramaswami Pillai v.

Karmega Thevar, 1964 2 MLJ 89, more or less subscribed to that view.

5. 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 Saveed 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. But if there is no step at all whatever and the matter is only in the

stage of intention, it is difficult to bring such a case within the phraseology of the statute. It follows, therefore, that the State Government was right in

proceeding upon the basis that the landlord was yet to commence the business and therefore he could not have made use of Section 10(3) (a) (iii).

The exemption order was, therefore, competent and does not suffer from any infirmity.

6. Counsel for the appellant made an impassioned appeal to us that his client had been in the premises for many years and that he had invested

large funds in his business and it would be a great hardship if he was evicted. But that in the particular circumstances of the exemption, may not be

relevant. After all, what the tenant is entitled to is a statutory protection subject to the provisions of the statute, and, the Act, in our opinion, should

be administered in such a way that it maintains balance between landlords and tenants, and, in cases of hardship it is relieved, wherever it lies. In

1964 2 MLJ 89 case, the exemption was as we have already mentioned, grounded on the bona fide requirement of the landlord. It was suggested

for the appellant that the landlord being only a poojari there was no bona fide in his claim that he required the premises for carrying on his business.

We do not think that we can sit in judgment over the finding in this respect as in an appeal. In exercising the powers u/s 29, it was open for the

authority to go into the question of bona fides. There is nothing unreasonable or perverse about the finding on the question of bona fides.

7. The appeal is dismissed with costs. Counsel's fee Rs. 100.