

(1961) 12 MAD CK 0018
In the Madras High Court

R. Srinivasalu Chetty

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 20-12-1961

Acts Referred:

Citation : (1962) 75 LW 438 : (1962) 2 MLJ 333

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The petitioner is a tenant of the premises No. 17-B, Broadway, Madras, which is said to belong to one Singam Chetty,

Attendrooloo Chetty's charities. He got an order of eviction against his sub-tenant one Srinivasalu Naidu on 10th April, 1957, who pursuant

thereto, surrendered possession to him of the portion in his occupation on 13th October, 1958. The petitioner failed to notify the vacancy in the

first instance as required by Section 3(1) of the Madras Buildings (Lease and Rent Control) Act, 1949, but occupied the portion covered by the

earlier sub-tenancy. The Accommodation Controller by his order, dated 22nd January, 1959, called upon the petitioner to notify the vacancy,

which he complied with on 31st January, 1959. The intimation of vacancy was received by the Accommodation Controller on 2nd February,

1959. On 26th March, 1959, the petitioner was asked to show why he should not be prosecuted for contravention of Section 3(1)A prosecution

followed which ended in the conviction of the petitioner. On 2nd July, 1959, the petitioner was served with an order of the Accommodation

Controller, dated 26th June, 1959, directing him to deliver possession of the premises within a week since the same was required for Government

purposes. This communication added that in default the petitioner would be forcibly dispossessed u/s 3(8). This petition is to quash this order.

2. The ground of attack is that although the intimation of vacancy was not made within the period specified by Sub-section (1) of Section 3, the

intimation given on 31st January, 1959, was a valid one, and there having been no response thereto from the Accommodation Controller u/s 3(3),

he was entitled to occupy the disputed portion and that the impugned order is therefore illegal. That the intimation of vacancy on 31st January,

1959, notwithstanding the fact that it was beyond the time specified in Section 3(1), is a valid one for the purpose of Section 3(3) cannot be

questioned, in view of Pakkiriswamy Naidu alias Varadarajalu Naidu v. State of Madras (1957) 1 M.L.J. 161. There, Rajagopala Ayyangar, J.,

as he then was, was of the view that a notice of vacancy, though sent, beyond the period of seven days, is nevertheless a valid notice. With due

respect, I agree with this view. The Accommodation Controller has not acted upon that notice of vacancy and intimated to the petitioner within the

time specified by Section 3(3) that the portion in question was required for Government purpose. Instead, the Accommodation Controller

purported to act u/s 3(8) and issued the impugned order. There having been no intimation from the Accommodation Controller u/s 3(3) Within the

specified period, the petitioner was entitled to proceed upon the footing that the particular portion was not required for purposes of the

Government. But it is contended for the Government that it would be the case only if the petitioner had intimated the vacancy within the time

prescribed by Section 3(1), and that he having not done so but occupied the premises even from the time the portion fell vacant, the petitioner by

doing so contravened Sections 3(3) and (3)(4). It is said, therefore, that the Accommodation Controller was in the circumstances entitled to act

under the first limb of Section 3(8)(a)(i) and take possession of the portion of the premises.

3. There can be no doubt that in view of the decision of this Court in Govindarajalu Appa v. Accommodation Controller W.P. No. 656 of 1958,

the petitioner, by occupying the portion immediately after it became vacant and even before intimation of vacancy was given, contravened Sections

3(3) and 3(4). Rajagopalan, J., in that case considered the scope and effect of the relative provisions in Section 3 in expressing that view. Here

again, I may state, with due respect, that I agree with it.

4. But the question is whether by reason of the contravention of those statutory provisions alone the Accommodation Controller is entitled to act

u/s 3(8)(a)(1) and direct dispossession. The answer to this question involves ascertainment of the true scope and intention of this provision. The

learned Judges of this Court who decided T.G. Ramachandran v. Accommodation Controller, and Anr. W.P. No. 402 of 1958, P.G.

Viswanathan v. Revenue Divisional Officer and Anr. W.P. No. 860 of 1958 and Govindarajalu Appa v. Accommodation Controller W.P. No.

656 of 1958, if I may say so with respect, did not particularly deal with this aspect, namely, whether even where there is no statutory tenancy

coming into existence by virtue of Section 3(3) any part of Section 3(8)(a)(i) could be availed of by the Accommodation Controller. In W.P. No.

860 of 1958, notwithstanding an intimation of vacancy, the officer concerned did not act u/s 3(3) but proceeded u/s 3(8). Balakrishna Ayyar, J.,

took the view that Section 3(8)(a)(i) made a distinction between occupation and possession and where the landlord was not shown to be in

occupation, the first limb of Section 3(8)(a)(i) could not be invoked. The learned Judge did not have to consider as to what would be the position

if the landlord was in occupation but without there being an intimation u/s 3(3). In the other Writ Petitions too this precise question was neither

argued nor decided.

5. Section 3(8)(a)(i) states that any officer empowered by the State Government in that behalf may summarily dispossess any landlord, tenant or

other person occupying any building in contravention of the provisions of this section or any landlord who fails to deliver to the State Government

possession of any building in respect of which they are deemed to be tenants by virtue of this section and take possession of the building including

any portion thereof which may have been sublet. There is a proviso to this provision which is not material for the purpose of this petition. If regard

is had to the scheme of the entire Section 3 it does not appear to me to be the intention of Section 3(8)(a)(i) that even where the officer concerned

does not avail himself of Section 3(3) and intimate that the premises are required for purposes of the Government he could invoke Section 3(8)(a)

(i). It is true that this provision is in two parts the first relating to any landlord,,

tenant or other person in occupation in contravention of the provisions of Section 3 and the other to any landlord who fails to deliver possession to the State notwithstanding that the State is deemed to be a tenant by virtue of the section. Where, assuming for purpose of argument it is permissible, under the first part of this provision, a landlord, who is in occupation, is made to surrender possession of the premises, it will be instructive to consider as to what is the nature of such possession in the hands of the Government. Will that be a case of a tenancy and if so under what provision? The answer, in my opinion, will have to be in the negative to both the questions. The only provision under which the Government is to be deemed to be a tenant is Section 3(3). There is no indication in Section 3(8)(a)(i) that where possession is taken under the first part thereof the Government is deemed to be a tenant. Though this provision, as I said, appears to be in two parts, on a careful consideration, to my mind, even the first part of the provision can be invoked only where the Officer concerned has acted u/s 3(3) and intimated that the premises in question are required for purposes of the Government. Where there is no tenancy in favour of the Government created statutorily under the other provisions of Section 3 in my opinion, Section 3(8)(a)(i) does not in itself have the effect, when it is invoked, of creating such a tenancy. It appears to me that, though Section 3(8)(a)(i) is unhappily worded, its intention is clearly that the landlord in occupation of a building in contravention of the provisions of Section 3 can be dispossessed only if the Government could claim that it is a statutory tenant and not otherwise. Section 3(8)(a)(i) was inserted, as it appears to me, only to supply a remedy which did not exist earlier, namely, that where the Government requires the premises u/s 3(3) and the landlord or the tenant concerned would not surrender possession, it did not have to institute a suit to recover possession. Before Section 3(8)(a)(i) was introduced, there was no other provision under which the Government, pursuant to its intention u/s 3(3) could except by a suit, take possession of the required premises. It was apparently to obviate this difficulty, the enabling provision u/s 3(8)(a)(i) was inserted.

6. The above view of the said provision, I think receives support also from Section 3(8)(c). Under that provision the Government is enabled to

recover rent for the period of the unauthorised occupation on the footing evidently that the Government is a tenant and this could be only u/s 3(3).

It is clear therefore, that Section 3(8)(a)(i) does not by itself create a tenancy. Its language does not, to my mind, lend itself to any other

construction. If tenancy of the Government is ruled out, it is not possible as the provisions of Section 3 stand now, to say that the Government

other than as a tenant is entitled to recover possession.

7. I hold, therefore, that the order of the Accommodation Controller, dated 26th, June, 1959, does not enable him to dispossess the petitioner.

The order is, therefore, quashed. The petition is allowed and the rule nisi is made absolute. There will however be no order as to costs.