
(1989) 08 MAD CK 0023
In the Madras High Court

Raguraman

APPELLANT

Vs

A.S. Kumaresa Mudaliar and Another

RESPONDENT

Date of Decision : 22-08-1989

Acts Referred:

Citation : (1989) 2 MLJ 218

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—The tenant is the petitioner in this Civil Revision petition, which is directed against the order of the appellate authority, Pondicherry, evicting the petitioner from the premises in his occupation, on an application filed by the respondents herein u/s 10(3)(a)(i) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 (Act 5 of 1969) (hereinafter referred to as the Act), as amended by the Pondicherry Buildings (Lease and Rent Control) Amendment Act, 1980, (Act 8 of 1980). The 1st respondent herein is the owner of the building and the 2nd respondent is his son. According to the case of the respondents, in 1980 the property bearing door No. 61 Clave Subbaraya Chetty Street, Pondicherry, was let out to the petitioner for residential purposes on a monthly rent of Rs. 200 which was subsequently raised to Rs. 250. In or about 1985, the petitioner is stated to have used the premises for non-residential purposes and on protests being raised by the respondents, the petitioner promised to vacate the premises, but he did not do so. With reference to the different user of the premises let out to the petitioner, the respondents reserved their right to proceed against the petitioner for eviction to that ground. The respondents further stated that the premises in the occupation of the petitioner is required for occupation by the 2nd respondent and the 2nd respondent was living in the house of the wife of the 1st respondent and misunderstandings have arisen between the wives of the 1st and the 2nd respondent making it impossible for the 2nd respondent and his wife to live peacefully with the wife of the 1st respondent and under those circumstances, in order to restore harmony in the family and to enable the 2nd respondent to lead a peaceful life in a separate residence, the respondents

required the accommodation under the occupation of the petitioner. Stating that neither the 1st respondent nor even the 2nd respondent is in occupation of any residential house of their own in Pondicherry, they filed H.R.C.O.P. No. 57 of 1987 before the Rent Controller (District Munsif) Pondicherry, proving for an order of eviction against the petitioner.

2. In the counter filed by the petitioner, while denying that the premises let out to him has been put to a different user, he disputed the quarrels between the wives of the 1st and the 2nd respondents and the arising of the misunderstandings and stated that the 2nd respondent was in management of the entire properties and, therefore the wife of the 1st respondent very much needed the care and custody of the family of the 2nd respondent, and it was on account of this, the upper portion of the premises had been let out to a third party. The claim of the 2nd respondent that he had no other house of his own was denied and the demand by the respondents for owner's occupation was characterised as contrary of law. The petitioner also put forth the plea that the respondents desired to evict the petitioner with a view to lease it out for a higher rent. The petitioner, therefore, prayed for the dismissal of the application for eviction.

3. Before the Rent Controller, on behalf of the respondents, Exs. P.1 to P.8 were marked and the 2nd respondents and another gave evidence as P.Ws 1. and 2 while, the petitioner examined himself - as R.W.I, on a consideration of the evidence, the rent controller found that the 2nd respondent, a Chartered Accountant by profession, is earning independently, and, he cannot be brought within the scope of the expression "dependent children" within the meaning of the Act, and, therefore, the 1st respondent cannot seek an order of eviction against the petitioner on the ground that the premises is required for the occupation of the 2nd respondent. In that view, the application for eviction was dismissed. Aggrieved by this, the respondents preferred an appeal in MA.No.38 of 1988 before the appellate authority (Principal District Judge), Pondicherry. The appellate authority, however, took the view that dependency contemplated by the provisions of the Act may be total or partial and as the 2nd respondent is entirely dependent on the 1st respondent for purposes of securing accommodation in order to enable him to lead a peaceful life, the 2nd respondent would be comprehended within the scope of expression "dependent children" and therefore, the respondents were quite in order in seeking an order of eviction against the petitioner on that ground. Adverting to the bona fides of the requirement of the respondents, the Appellate Authority found that there was no oblique motive in the filing of the application for eviction and there was nothing to establish that only with a view to secure higher rent for the premises, the application for eviction had been filed, and, therefore, the respondents had made out their bona fide requirement as well. On the aforesaid conclusions, the Appellate Authority allowed the appeal and directed the eviction of the petitioner. It is the correctness of this that is questioned in this Civil Revision Petition.

4. Learned Counsel for the petitioner first contended that u/s 10(3)(a)(1) of the Act as amended by the Amending Act 8 of 1980, read with Section 2(7a) of the Amending Act, defining "member of his family", the 2nd respondent would not by reason of his practising the profession of a Chartered Accountant independently and earning income, be a dependent on the 1st respondent and therefore the 1st respondent cannot seek an order of eviction against the petitioner to enable the 2nd respondent to occupy the premises as a dependent child of the 1st respondent. Reference in this connection was also made to the decision in *Shri Koshori Lal v. Sumitra Devi* 1971 AIRCJ (S.N.) 22. Per Contra learned Counsel for the respondents submitted that dependency of offsprings or their father or mother may be total or partial and since, in this case, it had been clearly established that though the 2nd respondent is a practicing Chartered Accountant, he had not been able to secure a premises of his own and that established at least partial dependency of the 2nd respondent on the 1st respondent for purposes of securing accommodation for living, especially when misunderstandings had arisen between the wives of the 1st and the 2nd respondents and that would fulfil the requirements as that of a dependent child, for purposes of Section 2(7a) read with Section 10(3)(a)(1) of the Act, as amended. Attention in this connection was also invited by the learned Counsel for the respondents to *Anthony Kochuvariathu v. Chokkalinga Nadar* 1971 AIRCJ (S.N.) 38.

5. Before proceeding to consider the aforesaid submissions, it would be necessary to notice certain facts beyond controversy. Respondents 1 and 2 are related as father and son, and the building in question, which was, according to the eviction petition, let out initially for residential purposes, belongs to the 1st respondent. Neither the 1st respondent nor even the 2nd respondent owns any other residential premises, within the municipal limits of Pondicherry. It is in the background of the aforesaid undisputed factual position that the tenability or otherwise of the claim of the respondents in the light of the provisions of the Act, has to be considered. u/s 10(3)(a)(i) of the Act, as it stood prior to its amendment by Act 8 of 1980, an order of eviction could be obtained in the case of a residential building, if the landlord requires it for his own occupation or for the occupation of his son, if he or his son is not occupying a residential building of his own in the commune concerned. By Section 10(ii) of the Amending Act 8 of 1980, in Section 10, Sub-section (3), Clause (a) for the words "his son" Wherever they occur, the words "any member of his family" stood substituted. By Section 3(ii) of the amending Act, Section 2(7a) in the Act was inserted defining "member of his family" in relation to a landlord as meaning, "his spouse and dependent children". Thus, under the provisions of the Act as they now stand, a landlord may seek an order of eviction not only if he requires it for his own occupation, but also for the occupation of any member of his family, if he or the member of his family is not occupying a residential building of his own. Now, the question is, whether the 2nd respondent would be a member of the family of the 1st respondent. That expression, as per the definition, referred to earlier,

means, spouse and dependent children. Examined as P.W.1, the 2nd respondent had stated that he has been practising as a Chartered Accountant and that not a day passed without misunderstandings and altercations between his wife and his mother, with the result that he was unable to concentrate on the pursuit of his profession and also did not have peace of mind. The evidence of P.W.1, also shows that apart from the house owned by the 1st respondent, neither the 1st respondent nor the 2nd respondent owns any other house. From this, it follows that though the 2nd respondent "may be practising as a Chartered Accountant and earning income therefrom, he does not own any house and to the extent atleast of fulfilling his need for accommodation, he is dependent upon the 1st respondent, his father. The dependency contemplated is with reference to the children of the landlord and the use of the expression "Children" should be understood in a wider sense of "an offspring". If so understood, that expression would take in both the sons and daughters of the landlord. The dependency contemplated may be either total or can even be partial. In a case where the dependency is total, there is no difficulty at all, for, the offspring depends wholly and entirely upon the parents for anything and everything. Apart from such instances of total dependency, cases can be conceived of partial dependency by the offspring on the landlord-parent for the purposes of fulfilling limited or particular needs. Such limited or restricted dependency of the offsprings would also fall within the scope of the expression "dependent children". Even taking into account the normal and ordinary meaning of the word "dependent", it would mean reliance placed on somebody or something for purposes of support or aid and such support or aid need not always be economic or monetary, but it would comprehend; a very wide range of needs of an individual.. Viewed thus, on the facts of this case, the" 2nd respondent, though he might have been practising "as a Chartered Accountant, has not " been able to secure his own accommodation, but is dependent upon the 1st respondent for such accommodation in order to enable him to live peacefully with his wife, avoiding misunderstandings between his wife and the wife of the 1st respondent, and practising his profession as a Chartered Accountant, peacefully; To the extent of fulfilling the need of the 2nd respondent in that regard, he is dependent only upon the 1st respondent and it is also only the 1st respondent, who can, in the position of a parent owning a house, satisfy that need of the 2nd respondent. Under those circumstances, the argument of the Learned Counsel for the petitioner that the 2nd respondent, is not a dependent child of the 1st respondent and therefore, the 1st respondent cannot seek to evict the petitioner, is devoid of substance. The decisions relied on by the counsel on both sides may now be briefly referred to. In *Shri Kishorilal v. Sumitra Devi* 1971 AIRCJ (S.N.) 22, the question arose whether an earning and married son of a landlord, would be a dependent for purposes of Section 14(e) of Delhi Rent Control Act (Act 5 of 1958). It was held that a son married or unmarried, in service, cannot be regarded as wholly independent in view of the prevailing rate of rents, if he is unable to set up a separate residence and that the concept of dependency is not confined to financial dependency alone and the dependency contemplated is not

necessarily total. This decision, far from Supporting the contention of the learned Counsel for the petitioner, fortifies the interpretation given earlier, and cannot, therefore, be of any assistance to the petitioner. The other decision in *Anthony Kochuvariathu v. Chokkalinga Nadar* 1971 AIRCJ (S.N.)38 arose u/s 11(3) Of the Kerala Buildings (Lease and Rent Control) Act (2 of 1965) and the question that arose was regarding the scope of the expression "dependency" u/s 11(3) of that Act and the Court held that the dependency contemplated u/s 11(3) of the Kerala Buildings (Lease and Rent Control) Act has to be viewed from a broader and humane angle for that purposes of residence, sons may be entirely depending on their father, even when they have their own sources of income and they may be dependent on the father for that purpose. It was also further pointed out that the matter should be viewed from the stand point of father, viz., the desire of every father to have peace in the family house and the avoidance of misunderstanding and unpleasantness between the members and that the father can claim eviction of a tenant to provide accommodation for the married son, even when his son had his own source of income. This decision undoubtedly supports the stand of the learned Counsel of Section 10(3)(a)(1) of the Act, as amended, in the light of Section 2(7a) of the Act, the appellate Authority was right in holding that it was open to the 1st respondent herein to seek an order of eviction against the petitioner on the ground that the premises in the Occupation of the petitioner was required for providing residence to the 2nd respondent, his son, as a dependent son, though he was practising a profession and earning income, but had no accommodation, where he could live peacefully. The first contention of the learned Counsel for the petitioner has, therefore, to be rejected.

6. Learned Counsel for the petitioner next contended that the application for eviction lacked in bonafides. A careful consideration of the evidence of the petitioner, examined as R.W.I, does not make out that there was lack of bonafides in the application filed by the respondents. There is no other reliable or a acceptable evidence establishing that the respondents had resorted to the filing of the eviction petition with the oblique motive of throwing out the petitioner and securing a higher rent by letting it out to others later. On the other hand, the evidence of P.Ws.1 and 2 clearly shows that the frequent quarrel is between the wives of the 1st between the wives of the 1st and the 2nd respondents compiles the 2nd respondent to live away in another residence, in order to have a peaceful life and under those circumstances, the application for eviction filed by the respondents was rightly found by the Appellate Authority to be bona fide. As pointed out earlier, there is no material to detract from the bona fides of the application, as established by the evidence. The second contention of the learned Counsel for the petitioner also has to be rejected.

7. Lastly, learned Counsel for the petitioner faintly contended that the premises in the occupation of the petitioner is a non-residential premises and that the respondents cannot seek an order of eviction on the ground that the building is required for residential user, as that would violate Section 21 of the Act. This argument is misconceived, for, Section 21 of the Act provides for conversion of a

residential building into a nonresidential building, except with the permission in writing of the Controller. If, according to the learned Counsel for the petitioner the building in the occupation of the petitioner is a non-residential building, the conversion thereof into a residential building, would not fall within the scope of Section 21 of the Act at all. However, it may be pointed out that even in the application for eviction, the respondents have clearly stated that the premises had been let out in 1980 to the petitioner for residential purpose and that in 1985, the petitioner put the premises to a different user, With reference to this, the stand of the petitioner in his counter was that there was no different user of the premises at all. That would mean that the petitioner continued to use the premises for residential purposes and therefore, no exception could be taken by the petitioner to an order of eviction prayed for by the respondents on the ground that the premises is required for residential purposes. This argument also deserves to be rejected. No other point was urged. Consequently, the Civil Revision petition fails and is dismissed with costs.

8. Learned Counsel for the petitioner prayed that in the event of the order of eviction being upheld, the petitioner may be granted some time for vacating the premises in his occupation and learned Counsel for the respondents had no objection to grant three months time to enable the petitioner to vacate and hand over vacant possession of the premises in his occupation. Accordingly, the petitioner is granted three months from to-day to vacate and hand over vacant possession of the premises in his occupation to the respondents, subject to the condition the petitioner files an affidavit of undertaking to that effect before this Court within ten days from today failing the order of eviction can be put into execution forthwith.