

(1996) 08 MAD CK 0033

In the Madras High Court

Case No : Civil Revision Petition No. 1789 of 1996

Ramaswamy Nadar

APPELLANT

Vs

V.S. Alagar

RESPONDENT

Date of Decision : 02-08-1996

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 2(6A)

Citation : (1996) 2 CTC 301

Hon'ble Judges : D. Raju, J

Bench : Single Bench

Advocate : V. Radhakrishnan, for the Appellant;

Final Decision : Dismissed

Judgement

D. Raju, J.—The tenant is the petitioner in the above revision petition. The landlord has sought for eviction of the petitioner - tenant u/s

10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act") on the ground that the building is

required for the occupation of the landlord's father, who is not occupying any residential building of his own in the town. It is unnecessary to deal

with the other details relating to the nature of the tenancy, monthly rent, etc., except advertng to the fact that the landlord is said to be in Canada

and his father aged 72, a widower wants to settle at Srivilliputhur, so that during his last days he can visit and have darshan of Shri Andal temple at

Srivilliputhur. It was also claimed that the father is a member of the family and therefore, the building is required for bona fide occupation.

2. The tenant contested the claim on several grounds including that there are two other sons, that the request that the building is required for the

occupation of the father is not bona fide and that the father in India could not be

said to be the dependent of the son at Canada. The petitioner also appears to have made a claim about effecting certain improvements spending his own money.

3. On the above claims and counter-claims, the learned Rent Controller by his order dated 14.8.1991 ordered eviction on being satisfied with the genuineness and bona fides of the claim of the requirement of the building for owner's occupation and granted, at the same time, two months' time for vacating and delivering vacant possession. Aggrieved, the petitioner pursued the matter on appeal before the Appellate Authority in RCA.No.28 of 1991 and the Appellate Authority by his order dated 12.6.1996 concurred with the finding of the learned Rent Controller and dismissed the appeal, but granting, at the same time, two months' time for vacating and delivering vacant possession. Not satisfied, the petitioner has filed this revision petition.

4. Mr. Radhakrishnan, learned counsel appearing for the petitioner contended that the request made by the landlord cannot fall within the scope of Section 10(3)(a)(i) of the Act, for the reason that to be a member of the family of the landlord, one should be either the spouse, son, daughter, grand-child or dependent parents and the father living in India cannot be said to be a dependent parent of the son staying overseas at Canada. It was also further submitted that the respondent is not the only son of his father and that he has two other sons, with whom he was living hitherto and therefore also, the father in this case cannot be considered to be a dependent of the respondent-landlord. The learned counsel took me at length through the orders of the authorities below as well as the relevant provisions of law to substantiate his claim.

5. I have carefully considered the submissions of the learned counsel for the petitioner. To be a dependent, one need not live in physical proximity to the other and it is enough if the person concerned is shown to depend either for support or otherwise. Viewed in that context, a person who is not by himself self-sufficient would also answer the description of the dependant. As a matter of fact, under the Hindu Law relating to maintenance, the father is envisaged as a dependent of his son for the purpose of maintenance, which need not necessarily be for providing with financial assistance alone. The son who is living overseas with his father away in this

country, who happens to be also a widower of 72 years eager to live in their ancestral place in a house to spend his last days by offering daily worship of the presiding deity of a particular place, cannot be said to be ineligible to invoke the provisions contained in Section 10(3)(a)(i) read with Section 2(6A) for recovery of possession to accommodate such a father. Nearness of living could not be envisaged in the provisions as relevant to determine the state of dependency and the very term is a relative one, the construction of which will very much depend upon the fact situation in a case before the Court apart from the word making colour from the object of the legislation and the context in which it has been found used. On the facts and circumstances of the case, in the absence of any material to show that the father himself owns a house of his own and in the matter of accommodation he is self-sufficient in owning or possessing a house of his own for his occupation or living the desire of the son to accommodate such a father and to provide for a living house to satisfy his desire to live in his last days in their place to offer worship to the deity of his choice, cannot be said to be lacking in any bona fides and the contention that the father, in those circumstances, cannot be called a dependent of his son, does not merit my acceptance. I am in agreement with the findings of the Courts below in this regard.

6. That apart, even the plea that there are other sons and the respondent - landlord is not the only son so that the father could be said to be dependent of the landlord also does not appeal to me. It is not merely the presence of a son or more than one son that matters in considering the issue of the nature before this Court. There may be sons, who are indifferent or the relationship may be such that the father does not like to be with the other sons or that there may be some other genuine or relevant reason for living separately from other sons. The question is, whether the desire of the father to live in a particular place with an avowed devotional purpose and the object of the son, may be one among several other sons, to provide for an accommodation to him to satisfy the pious wishes of the father, can be said to be a totally irrelevant factor in deciding about the bona fides of the claim and if it is not so, I fail to see any justification for rejecting the claim of the son, be he not the only son and deny him the obligation which he desires to discharge towards his aged father. Consequently, I

see no merit whatsoever in the above revision petition. The revision petition, therefore, fails and shall stand rejected. Taking into account the circumstances of the case, I am of the view that the petitioner may be granted three months" time to vacate and deliver vacant possession to the respondent. The petitioner shall have three months" time to vacate and deliver possession in accordance with the orders of the Courts below. Consequently, CMP.No.9771 of 1996 is dismissed.