

(1976) 04 MAD CK 0078
In the Madras High Court

R.V. Balasubramania Chettiar and Others	APPELLANT
Vs	
J.B.M. Mohammad Yahaya and Others	RESPONDENT

Date of Decision : 28-04-1976

Acts Referred:

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

Citation : (1976) 89 LW 606 : (1977) 1 MLJ 40

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—In these petitions the question involved is whether the respondents are entitled u/s 10(3) (a) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to ask for possession of the portions in the occupation of each of these petitioners on the ground that one of the owners who owns the building required the property for his own non-residential activities. Admittedly, the respondents are the owners of the suit premises. They are of course co-owners not only knit by a bondage of kinship but also by a legal tie by which they have associated themselves together to own the suit premises. One of the respondents expressed a desire to setup a printing press. For that purpose, the respondents chose the building in the occupation of the petitioners as quite suitable for the commercial activity. All the respondents as co-owners filed the application u/s 10 (3) (a) (iii) of Act No. XVIII of 1960 for possession of the building in their respective occupation of the tenants (petitioners). This was resisted on the ground that the respondents cannot be said to be a "family" and one of the co-owners cannot be said to be a member of that "family" which privilege only could entitle joint owners to ask for eviction of the tenants u/s 10 (3) (a) (iii). The other contention was that the respondents, each of them, some of them, or all of them own considerable properties in the town of Erode and there is no bona fides in asking for the suit premises when very many other non-residential premises are available and when, in fact, some nonresidential buildings are vacant on the date when the petition was filed. Both the Rent Controller and the Appellate Authority found that the respondents were entitled

to an order for eviction under the above provision. Hence the revision petitions.

2. Mr. Sivasubramanian, learned Counsel for the petitioners (tenants) in each of these cases raised the query whether a co-owner as the term is legally understood can be considered to be a member of a "family" within the meaning of Section 10 (3) (a) (iii) of the Act. His other contention is that there is no bona fides in the respondents" seeking to evict the petitioners particularly avoiding other more comfortably suited premises in more important situations in the town. As regards the last point this Court has taken the view that it is not for the tenant to dictate the choice or the method to choose to the landlord and it is for the landlord himself to select amongst his various available premises one of them for the purpose of personal occupation whether the residential or non-residential.

3. As regards the first point the parenthesis "any member of his family" which was introduced by an amending Act, 1973 was the result of judicial decisions which took the view that prior to the amendment the landlord cannot ask for a building in the occupation of the tenant for being used by any member of his family, such as son, daughter, etc. This has necessitated the Legislature to make the object more comprehensive and full. The result is that in case it is in regard to a non-residential building, if the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on, the non-residential building in the city or town which is his own, then he can apply to the Controller for an order directing such tenant to put him in possession of the building if the occupation of the relative tenant. It is not in dispute here that the respondents as a whole or in particular the first respondent for whose benefit the petition was filed was occupying a premises of his own in which he was carrying on a non-residential activity. The question therefore is whether a body of co-owners or an association of persons who knit themselves by contract or otherwise to own a property can set the purpose adumbrated in Section 10 (3) (a) (iii) of the Act in motion for the benefit of one of the members of such an association. In the context in which the parenthesis any member of his family" appears, read in conjunction with the word "landlord" which precedes it, compels the Court to interpret the same liberally instead of putting a rigid, matter of fact interpretation, on the expression "family" appearing in Section 10 (3) (a) (iii). The word "family" means, according to the Oxford Dictionary, members of a house-hold, parents, children, servants, etc. Again, the dictionary would say that a family means people from common stock or "brotherhood of persons united by some common objects. If therefore two or more persons unite themselves by a contract or otherwise to own property by themselves, then they would be forming themselves into an association of persons inspired by a common object of owning the property for the common benefit of all. The principal object of Section 10 (3) (a) (iii) appears to be that if "A" owns a building, then "A" can ask for possession of that building from the tenant if it is intended to benefit any member of his family. It is this purpose behind this provision which has to be high-lighted when applying the principal object which

has to be interpreted in the present case. I am of the view, that a member of an association or a co-owner in a body of co-owners who own a premises could be equated to the word "landlord" which precedes the parenthesis "any member of his family", and the words "any member of his family" in the context as it appears in the text of the statute could also mean any co-owner of the co-owners or a member of the association which owns the premises in question. The sine qua non which would entitle the body of co-owners or the association of persons to ask for eviction u/s 10 (3) (a) (iii) is that the premises is required for the benefit of one of its limbs viz., a co-owner or a member of the association. If this is established then the necessary foundation is laid which would enable the association of persons or the co-owners as a whole to set the above provision of law into motion and seek for eviction. The Courts below found that the requirement of the premises is to benefit one of the co-owners. This is a concurrent finding of fact. I am unable to interfere with this finding. As the respondents satisfy not only the text but also the spirit of the Section 10 (3)(a) (iii) of Act XVIII of 1960, I am unable to agree with the learned Counsel for the petitioners that this application is not maintainable, in law. The revision petitions fail and they are dismissed. The petitioner in each of these cases is granted six months time to vacate. No costs.