
(1990) 11 MAD CK 0031
In the Madras High Court

S. Baheerathy and Others

APPELLANT

Vs

Kanagarathinam (died) represented by her L.Rs. and Others

RESPONDENT

Date of Decision : 29-11-1990

Acts Referred:

Pondicherry Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(a)(i)

Citation : (1991) 281 MLJ 1

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—The legal representatives of the respondent (tenant) in H.R.C.O.P. No. 27 of 1985 on the file of the Rent Controller,

Karaikkal, are the petitioners in this civil revision petition. The legal representatives of the petitioner (landlady) in the said H.R.C.O.P. are the

respondents in this civil revision petition. For the sake of convenience the parties are referred to by the nomenclature given to them in the

H.R.C.O.P.

2. The petitioner filed H.R.C.O.P. No.27 of 1985 on the file of the Rent Controller, Karaikkal u/s 10(2)(a)(i) of the Pondicherry Buildings (Lease

and Rent Control) Act, 1960, hereinafter called "the Act", for eviction on the ground that the petition mentioned premises is required for her own

occupation.

3. The respondents resisted the application contending that the petitioner's requirement for her own occupation is not bona fide.

4. The Rent Controller, on a consideration of the entire evidence on record, held that the requirement of the demised building for the personal

occupation of the petitioner is bona fide, Consequently allowed the H.R.C.O.P.

and ordered eviction.

5. The legal representatives of the respondent, aggrieved by the order of eviction passed in H.R.C.O.P. No. 27 of 1985, filed an appeal, C.M.A.

No. 8 of 1987 before the Additional District Judge, Pondicherry at Karaikkal. The Appellate Authority confirmed the findings of the Rent

Controller and dismissed the appeal. As against the order of the Appellate Authority the legal representatives of the respondent have filed this civil

revision petition.

6. Mr. T.P. Manoharan, learned Counsel for the legal representatives of the respondent would contend that C.M.A. No. 8 of 1967 was disposed

of by the Appellate Authority on 5.8.1988 and that subsequently on 29.8.1988 the petitioner-landlady died and, therefore, the ground on which

the eviction was sought for and ordered, viz., for the personal occupation of the petitioner, is no longer subsisting and that in view of the

subsequent events the order of eviction passed by the Rent Controller and confirmed by the Appellate Authority is liable to be set aside. The

above point was raised in ground No. 15 of the memorandum of grounds of revision, in the following terms:

It is respectfully submitted that the landlady had died on 29.8.1988 namely after the delivery of the judgment in C.M.A. Therefore, the eviction

sought for and ordered on the ground of personal occupation is no longer subsisting and available to the L. Rs., of the landlady to execute and

evict the petitioners from the demised premises and hence the order of eviction should be set aside to put an end to the lis.

There is substance in the contention of the learned Counsel for the legal representatives of the respondent. In *Pasupuleti Venkateswarlu Vs. The*

Motor and General Traders, . The Supreme Court has held as follows:

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with

the current realities, the Court can and in many cases must take cautious cognisance of events and developments subsequent to the institution of the

proceeding provided the rules of fairness to both sides are scrupulously obeyed.

In *Hasmat Rai and Another Vs. Raghunath Prasad*, : , the Supreme Court has held as follows:

If a landlord bona fide requires possession of a premises let for residential

purpose for his own use he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the Court which would be his cause of action. But that is not sufficient. This requirement must be continues throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final Court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act.

In the above decision the Supreme Court observed that when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but, must exist on the date of the appellate decree or the date when a higher Court deals with the matter and during the progress and passage of life proceeding from Court to Court if subsequent events occur, which, if noticed, would non-suit the plaintiff, the Court has to examine and evaluate the same and mould the decree accordingly. The

Supreme Court in the decision referred above has further observed as follows:

Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration subsequent events

In the present case, the petition for eviction was filed by the landlady on the ground that she required the demised building for her own occupation.

As already pointed out, after the disposal of the civil miscellaneous appeal on 5.8.1988 the landlady died on 29.8.1988 and thereafter the present

civil revision petition is filed by the legal representatives of the respondents on 28.9.1988 against the legal representatives of the petitioner. As

pointed out by the Supreme Court in the decision referred to above, the

requirement pleaded by the landlady must not only exist on the date of action but must subsist till the final decree or an order for eviction is made and if in the meantime events have cropped up, which would show that the relief cannot be granted to the landlady, her action must fail.

7. Mr. S. Rajagopalan, learned Counsel for the legal representatives of the petitioner, would contend that the application for eviction was filed on

the ground that the landlady required the premises for the use of the petitioner and her husband who is, examined as P.W. 1 in this case. Though

the landlady died on 29.8.1988 the demised premises is still required for the personal use of the husband of the landlady. The evidence in this case

discloses that when the husband of the landlady was examined on 14.10.1985 as P.W. 1 his age is given as 81 that means his present age will be

86. The specific case of the landlady in the petition for eviction is that throughout she was staying with his son at Pondicherry and because of the

strained relationship between herself and her son she wanted to leave Pondicherry and settle in Karaikkal along with her husband in the demised

house. The first respondent in this revision petition, who is the husband of the landlady, has not filed any affidavit before this Court stating that even

after the death of his wife the building is still required for his personal use and that he can live alone in the demised premises. If we take note of the

subsequent events viz., the death of the landlady during the pendency of the proceedings and the advanced age of the petitioner's husband, it has

to be held that the ground on which the eviction was sought for, is no longer in existence and, therefore, the order of eviction passed by the Rent

Controller and confirmed by the Appellate Authority is liable to be set aside. Accordingly, the civil revision petition is allowed, the order of eviction

by the authorities below are set aside and the H.R.C.O.P. No. 27 of 1985 is allowed. There will be no order as to costs.