(1961) 10 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 33 of 1961

S. Maim Ponnammal APPELLANT

Vs

The State of Madras and others RESPONDENT

Date of Decision : 13-10-1961

Acts Referred:
Constitution of India, 1950 — Article 19, 226

Citation : (1961) 10 MAD CK 0006

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Advocate : P. Sherfuddin, for the Appellant; A. Seshachari, N. Srinivasan and A. Srinivasan and The Addl. Govt. Pleader for the State, for the Respondent

Final Decision : Dismissed

Judgement

Ganapatia Pillai, J.—The petitioner in this application under Art. 226 of the Constitution seeks a writ of certiorari for quashing G.O. No.

3513 Revenue dated 4th November 1960. By this order the Government exempted the premises Nos. 15 and 16, East Veli Street, Madurai, from

the provisions of S. 10 of the Madras Buildings (Lease and Rent Control) Act at the instance of the landlord, the second defendant to this

application. The premises consist of an enclosed vacant space used as a cart stand in the City of Madurai. The deceased husband of the petitioner

was the tenant of this premises, and after his death, it is said the petitioner is continuing in possession as tenant. The reasons which impelled the

Government to exercise their powers under S. 13 of the Act are sufficiently disclosed by the following paragraph in the order:

As regards premises Nos. 15 and 16, East Veli Street, Madurai, the Government consider that the Trust being a charitable institution the enlargement of its receipts is a cause which should be furthered. The Government consider that would be in the public interest to see that the

resources of the Trust are augmented. The Government also find that there will be no serious hardship to the lessee of premises Nos. 15 and 16,

East Veli St. Madurai, became she has been getting a very large income from the premises for the past sixteen years and she has sublet the

premises to others and has been paying only a very small amount per month as rent. The Government consider that this is a case where the

intermediary, viz. the tenant has been getting by far the major share of the income from this property and the landlord has been getting only a

meagre rent. The Government therefore consider that the eviction of such a tenant cannot and will not be unreasonable.

2. The reasons put forward by the Government can be classified under the following three heads: (1) The rent paid is very low having regard to the

present day conditions. (2) It is necessary in the public interest to augment the resources of the trust which is the owner of these premises so as to

enable the trust to perform its charitable functions more efficiently. (3) The property is being used by the tenant by sub-letting and the enormous

income received by the tenant by such sub-letting is unconscionable, and the real income from the property should go to the trust and therefore the

eviction of the tenant will not be unreasonable.

3. The learned Counsel for the petitioner argued that none of the reasons which found acceptance with the Government would be a valid ground

for exercising the power vested in the Government under S. 13 of the Act. He maintained that by the decisions of this Court the fact that by sub-

letting the premises the tenant was making a large profit at the expense of the owner of the property which might amount to profiteering, would be

no relevant consideration, and since the Act itself provides for reasonable grounds for eviction if a particular case does not fall within the provisions

of the Act permitting such eviction, the exercise of the power of exemption would not be a reasonable exercise. Learned Counsel also pointed out

the provisions in the Act for fixing fair rent and contended that if the rent payable for the premises was meagre according to the present day market

conditions that would be no ground for exercising the power. He mainly relied on the Bench decision of this Court i Abdul Subhan Sahib and Sons

Vs. State of Madras by Secretary, Home Department and Another, , to which I was a party as laying down these propositions. On the facts of

that case these distinguishing features must be noticed. The building there was a residential building and a tenant was occupying a portion of it and

subletting the remaining portion. The observation in that judgment that subletting by itself if permissible under the contract would not be a ground

for evicting a tenant under the Act and consequently could not be a ground for enabling the Government to exercise the power under S. 13 of the

Act must be read in the context of the facts of that decision. The distinguishing feature there was that the tenant was occupying a portion himself

and subletting the remaining portion. That feature is not present in this case.

4. This decision was explained by the subsequent decision in M. Chinniah Servai Vs. The State of Madras and Another, , to which also I was a

party. Referring to the principle of the decision in Globe Theatres Ltd., v. State of Madras (1954) 2 M.L.J. 110= 67 L.W. 64, it was laid down

that it was only when the provisions of the Rent Control Act did not cover a particular case, that there was legitimate scope for the exercise by the

Government of the powers conferred by S. 13 of the Act. In The Globe Theatres case (1954) 2 M.L.J. 110= 67=L.W. 64, a tenant was in

occupation of a cinema theatre and was running his own business of a cinema theatre by being the owner of another theatre. The landlord had no

theatre of his own except the theatre which had been let to the tenant. On the application of the landlord the Government exempted the theatre

from the operation of the Act which enabled him to get possession of the theatre. This would not be a ground for eviction of the tenant under the

provisions of the Madras Buildings (Lease and Rent Control) Act. Yet the justice of the case required that the landlord should be given possession

to enable him to run the business himself. It was emphasised in this decision that the principle in Abdul Subhan Sahib and Sons Vs. State of

Madras by Secretary, Home Department and Another, , applied only to the facts of that case, that is to say, the Government should not step in to

reverse the orders of the Tribunal on the same materials placed before the Tribunals where the Tribunals constituted under the Act had decided

that the landlord had not made out any ground for eviction. Here the landlord has not approached the Tribunals for eviction. Indeed, the ground put forward before the Government would not be a ground for which eviction could be had under the Act.

5. This raises the general question whether Government have power to exempt a building under S. 13 of the Act for the purpose of enabling a

landlord to obtain eviction on grounds which would not be available under the Act. In The Globe Theatres case (1954) 2 M.L.J. 110= 67 L.W.

64, it was specifically laid down that the power of exemption granted to the Government was only for this very purpose, viz., to do justice in cases

where the provisions of the Act did not afford relief to the aggrieved party. That is clear from the following passage (at page 118):

There are bound to be cases in which an inflexible application of the provisions of the Act may result in unnecessary hardship not contemplated by

the Legislature. I would even go further and say that the enforcement of the provisions of the Act may amount to an unreasonable restriction on the

exercise of the right conferred by Art. 19 of the Constitution It is eminently desirable that there should be some authority vested with the power to

make exceptions to the general application of the Act and its provisions in proper cases.

6. This overriding principle has also been accepted by Ramachandra Iyer, J., as he then was, in W. P. No. 996 of 1958 where a middleman who

had taken a lease of some buildings was not occupying the buildings himself but letting out portions at exorbitant rents and making huge profits for

himself. The learned Judge considered that to the case of such a middleman the benefits of the Act were inapplicable and it would be a proper

exercise of the power on the part of Government to exempt the building in such a case. I respectfully agree with this view of the learned Judge.

7. Mr. Sherfuddin for the petitioner argued that the principle laid down by Ramachandra Iyer, J., would not apply to the case here because the

petitioner in this case was not a middleman but the tenant in actual occupation of the property. In one sense Counsel is right, but, in another sense

he is not right. A middleman is a person who owns the tenancy for purposes of profit by making money out of the transaction as distinct from a

person who owns the tenancy for his own occupation. In that sense the petitioner here is a middleman because the property is not intended for the

occupation of the petitioner but is actually used as cart stand and money is being collected from cartmen who bring their carts to the place. I do not think it would be doing violence to the language if such a person is called a middleman.

8. The other facts upon which the Government have relied, viz., that the rent is unconscionably low, that the present market conditions would

indicate that the present rent is not reasonable rent as the property is likely to fetch Rs. 1000 per month and that the trust is in need of

augmentation of funds for carrying out the objects which it has to perform cannot be disputed by the petitioner. I do not therefore find any reason

to quash the order of the Government. The writ petition is dismissed, and the rule nisi is discharged but in the circumstances, there will be no order

as to costs.