

(1992) 12 MAD CK 0021
In the Madras High Court

S. Manimudi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Constitution of India, 1950 — Article 31(2)

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 11(4)

Citation : (1993) 1 LW 95 : (1993) 1 MLJ 651

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This is a petition to declare that Section 11(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter

referred to as "the Act"), is unconstitutional, being repugnant to the very object of the Act.

2. The petitioner is admittedly a tenant under the second respondent of premises No. 8, Thulukanam Street, Varadarajapuram, Madras-2. On a

rent of Rs. 50 per mensem. The second respondent filed R.C.O.P. No. 64 of 1983 u/s 10(2)(i) of the Act for eviction of the petitioner on the

ground of wilful default in payment of rent. An application was filed by the second respondent u/s 11 of the Act for a direction to the petitioner to

pay the arrears of rent and in default to stop the proceedings. An order was passed by the Rent Controller directing the tenant to pay the rent and

as he did not comply with the same, an order was passed u/s 11 (4) of the Act on 8.4.1985 directing him to put the second respondent in

possession of the building. The second respondent filed E.P. No. 177 of 1988 for executing the order. The petitioner contested the same and filed

M.P. No. 852 of 1988 u/s 47 of the CPC for dismissal of the execution proceeding. One of the contentions raised by the petitioner was that the

premises fell within an area declared to be slum area by the Government in G.O. No. 1528, dated 4.12.1971, under the Tamil Nadu Slum

Clearance and Improvement Act, 1971. The tenant paid a sum of Rs. 2,000 towards arrears on 6.1.1989 and another sum of Rs. 2,350 on

7.3.1989. The second respondent did not press the E.P. and it was dismissed on 7.3.1989. A fresh E.P. was filed in E.P. No. 312 of 1991. In the

meanwhile, a writ petition was filed challenging the validity of the Notification under the Tamil Nadu Slum Clearance and Improvement Act in this

Court and the same was allowed. The Notification was held to be null and void. Again, the petitioner filed M.P. No. 577 of 1991 u/s 47 of the

CPC raising the same contentions. That petition was dismissed on 7.1.1992. The petitioner filed an appeal against the said order. The petitioner

also filed M.P. No. 138 of 1992 u/s 47 of the Code of Civil Procedure. That was dismissed on 27.4.1992. The petitioner filed R.C.A. No. 572 of

1992 against the said order. That appeal was dismissed on 28.8.1992.

3. The petitioner filed this writ petition on 20.8.1992 and got an interim stay of eviction. In this proceeding the petitioner challenges the

constitutional validity of Section 11(4) of the Act in order to contend that the order of eviction passed against him is consequentially null and void.

The grounds urged by the petitioner in support of his petition.

(1) The section is against the object of the Act, which is a beneficial enactment intended to protect the tenants. Hence, the provision for eviction on

failure to pay or deposit the arrears of rent, even before the disposal of the main petition for eviction runs counter to the object of the Act.

(2) The section is ambiguous. The meaning of the expression "arrears of rent" is not made clear as to whether it would refer to the arrears accrued

prior to the filing of the petition or arrears accrued after the filing of the petition and during the pendency of the main proceeding.

(3) There are no guidelines prescribed by the section on the basis of which the court should act. A view has been taken in some cases that even

time barred arrears can be directed to be paid or deposited under the section. That will place an unreasonable burden on the tenant.

(4) The operation of the section is not confined to a proceeding for eviction on

the ground of wilful default. Whatever may be the ground urged in the main petition for eviction, Section 11 is made applicable to such proceeding. That again causes an unreasonable burden on the tenant.

(5) The section is opposed to principles of equity and natural justice.

(6) There are 45 lakhs of tenants in the City of Madras and only 4 lakhs of landlords. The section confers benefits on the landlords who form a small group when compared with the number of tenants. Hence, the section violates Articles 31(2) and 38 of the Constitution of India.

4. Before considering the various contentions raised by the petitioner as stated above, it is better to refer to the object of the Act. The Rent

Control legislation was first introduced in the State as a temporary measure to meet an emergency brought about by the Second World War. It

was expressly stated on the floor of the Legislature Assembly that the Act was purely a temporary measure and if the pressure as a result of the

World War was over, it would not continue on the statute book. The fore-runner to the present Act was introduced in 1946. That was Act XV of

1946. Subsequently, it was substituted by Act XXV of 1949, which was replaced by Act XVIII of 1960. That was amended extensively by Act

23 of 1973. The Act was then made permanent.

5. As per the preamble to the Act, it is one to amend and consolidate the law relating to the regulation of the letting of residential and non-

residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil

Nadu. It is seen from the preamble itself that the Act is not merely confined to prevention of unreasonable eviction of tenants. It is also intended to

consolidate the law relating to the regulation of the letting of buildings and control of rents. Even the expression ""unreasonable eviction"" is

significant. The Act does not prevent ""reasonable eviction"". It cannot be said that the Act is intended to protect only the tenants. The Legislature

has taken care to protect the interests of the Landlord also. The contention that the provisions of the Act should protect only the tenants and no

benefit shall be conferred on the landlord is, to say the least, preposterous. The Legislature has, in its wisdom, balanced between the rights of the

landlord and the rights of the tenants and brought about the present measure to hold the scales even.

6. The object of the Act has been considered in several decisions of this Court and the Supreme Court. In *S. Raja Chetty and Another Vs.*

Jagannathadas Govindas and Others, , a Division Bench of this Court observed as follows:

This Act was primarily intended to prevent unreasonable eviction of tenants and to regulate the letting of residential and non-residential buildings

and to control the rents of such buildings. Though most of the provisions of the Act are obviously thus intended to safeguard the rights of tenants,

there are provisions which, so far as they go, are in favour of the landlord also. Now Section 7(2)(1) is one of such provisions which gives a right

to the landlord to pray for the eviction of the tenant on default of due payment of rent.

7. Another Division Bench of this Court in *Irani v. Chidambaram Chettiar* (1952)2 M.L.J. 221, dealt with the object of the Act and the scope of

the preamble. The following passage is relevant:

It is common ground that as the preamble to the statute shows the object of the Legislature is to regulate the letting out of residential and non-

residential buildings alike and to control the rent of such buildings and to prevent unreasonable eviction of tenants there from in the State of

Madras. It is common ground too that the preamble which is said to be a good means of finding but the meaning of the statute and, as it were, a

key to the understanding of it may legitimately be consulted to solve any ambiguity or to find the meaning of words which may have more than one

or to keep the effect of the Act within its real scope whenever the enacting part is in any of these respects open to doubt. (Vide Maxwell, on the

interpretation of statutes, Ninth Edn., by Sir Gillat Jackson, page 46.)

8. In *Dr. K.C. Nambiar v. State of Madras* (1953)1 M.L.J. 49, Subba Rao, J. pointed out that the Act was really a restriction on the rights of the

landlord which existed prior thereto and it created certain rights in the tenant. The following passage in the judgment is very instructive:

The contention was that Section 13 is an unreasonable restriction on the petitioner's right to hold a property. So stated, the argument appears

plausible, but ignores the nature of the right, the circumstances under which it was created and the underlying purpose of the restriction imposed.

Before the Act became law, the landlords and tenants were governed by the

contract and the provisions of the Transfer of Property Act. If it was a monthly tenancy, the tenant could be asked to quit after notice for the prescribed period was given. But the Act evolved a scheme imposing restrictions on the landlord. While the main object of the Act was to prevent the arbitrary eviction of the tenants, it took good care to see that interests of the landlords were protected within reasonable limits. A statutory tenant the creation of the Act, with certain rights and restrictions cannot accept the rights and complain of the restrictions. No question of unreasonable restriction on his part would arise as the statute itself created that right "subject to restrictions". He acquired the right not to be evicted except under certain circumstances and one of those circumstances is when the Government exempts a particular building from all or particular provisions of the Act. His right to the user of the properties therefore is not an absolute one, but is circumscribed by the provisions of the Act itself.

9. A similar view was expressed by Somasundaram, J. in P.A. Aiyannah Chetty and Others Vs. Pala Muddukrishnayya and Co., , in the following terms:

The Madras Buildings (Lease and Rent Control) Act curtails, abridges and modifies the ordinary law relating to landlord and tenant and the Act has, therefore, to be construed strictly. No doubt, the policy of the Legislature was that the right of the tenants should not be affected unreasonably but subsequent experience showed that some benefits be conferred on the landlord also. It was with that object in view, that an amendment was introduced in 1951 by the Madras Act VIII of 1951 by which certain rights coupled with certain duties and liabilities were given to the landlord. It cannot be said that this law was intended mainly for the benefit of the tenants and therefore, every section in the statute must be construed only in favour of the tenant and against the landlord. The Act has to be taken as not merely conferring certain benefits on the tenant but also affording protection to the landlord. In short, the ordinary rule of interpretation which has to be applied to enactments, namely, that the provisions of the statute are to be strictly construed are not in any way affected by policy of this enactment.

10. In P.J. Irani v. State of Madras (1962)1 M.L.J. 92, the Supreme Court held that the Act was enacted for achieving three purposes: (1) The

regulation of letting, (2) The control of rents and (3) The prevention of unreasonable eviction of tenants from residential and non-residential

buildings and observed that though the enactment conferred rights on tenants it was possible that the statutory protection could either have caused

great hardship to a landlord or was the subject of abuse by the tenant himself and therefore the power of exemption conferred on the State

Government u/s 13 of Act XXV of 1949 was constitutionally valid.

11. In *K.I. Kangu Vs. Ahmed Unnissa Begum*, , Veerasami, J. emphasised that the Act protected the tenant only against unreasonable eviction.

12. In *R. Venkataswami Naidu and Anr. v. Narasaram Naraindas* (1966) 1 M.L.J. 1, the Supreme Court observed that a preamble is a key to the

interpretation of a statute, but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the

enacting part which is clear and unambiguous.

13. In *Raval and Co. and Another Vs. K.G. Ramachandran and Others*, , a Full Bench of this Court held that the Act of 1960 and the amending

Act of 1964 are valid and not violative of the provisions of the Constitution. Referring to the purposes of the Act, the Bench observed that the

Legislature intended to regulate the letting of buildings and the control of rents and prevent the unreasonable eviction of tenants in the context of

spiralling inflation in respect of urban rent for building, conditions of scarce accommodation and perhaps considerable hardship to tenants

occasioned by evictions strictly under the law.

14. In *K.R. Saraswathi Vs. V. Vadivelu Chettiar*, , Ramaprasada Rao, J. pointed out that the sine qua non of the Act was that tenants ought not to

be unreasonably evicted by landlords and the Act created inroads into the rights of ownership of immovable properties. He observed that it cannot

be presumed that the rights vested in landlord could be curtailed by mere surmises.

15. In *B.S. Nanda Rao and Others Vs. V.M. Lakshmanaswami Mudaliar*, , Natesan, J. observed that the guiding line in the interpretation of the

Act must be that it is intended to confer personal security on a tenant in respect of his home or his business premises and at the same time, the

landlord is protected and the Act provides for his securing a fair return for his investment.

16. In *Gulabibai Jain Vs. District Munsif, Poonamallee Rent Controller and Others*, a Division Bench of this Court held that the preamble to the

Act does not control the statute and it is not unreasonable to evict a tenant within the scope of Section 14(1)(b) of the Act.

17. In *Kewal Singh Vs. Smt. Lajwanti*, the Supreme Court while considering the provisions of the Delhi Rent Control Act, 1958, observed as

follows:

Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is

meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such

restrictions on their right to evict the tenant so as to destroy their legal right to property certain salutary provisions have been made by the

legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the

determination of the tenancy by efflux of time or for default in payment of rent or other grounds after giving notice under the Transfer of Property

Act. This broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine

and dire needs. While the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the

limited relief which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent

Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully

construed so as to make the relief granted to the landlord real and practical.

18. An analysis of the above rulings will clearly show that there is no substance in the contention of the petitioner that the object of the Act is to

protect only the tenants and the provisions of Section 11 of the Act are running counter to the said object inasmuch as they enable the landlord to

get an order of eviction even before the disposal of the main petition for eviction. Learned Counsel for the petitioner relied on the judgments of the

Supreme Court in *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi* and *Another*,

and *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, . In both

the cases, the Court held that welfare statutes must, of necessity, receive a broad interpretation and where the legislation is designed to give relief against certain kinds of mischief, the court should not make inroads by making etymological excursions, and a rule of beneficial construction should be adopted.

19. Neither of the rulings will have any bearing in the present case. As pointed out already, the Act is not intended to protect the tenants exclusively

against any eviction. As stated clearly in the preamble, the tenants are protected only from unreasonable eviction. Section 11 of the Act is enacted

with a view to prevent defaulters from continuing in possession of the property taking advantage of the pendency of an application for eviction

without performing their own part of the obligations. It should be noted that Section 10(2)(i) of the Act recognises the duty on the part of the tenant

to pay or tender the rent due by him within a particular time. Under that subsection, it shall be paid or tendered within fifteen days after the expiry

of the time fixed in the agreement of tenancy or in the absence of any such agreement, by the last day of the month next following that for which the

rent is payable. The Act has not absolved the tenant from the liability to pay the rent within the prescribed time. If the tenant chooses to commit

default wilfully, that itself will give a cause of action to the landlord to file an application for eviction. Even after the filing of the petition for eviction,

the tenant is duty bound to fulfil his obligation to pay the rent regularly within the prescribed time. The tenant should not fail to pay the rent and take

advantage of the pendency of the proceeding; nor should he indulge in delaying tactics in order to protract the proceeding. The Section is intended

only to prevent the tenant from failing to fulfil his obligations and protracting the proceedings for eviction.

20. The purpose and scope of the section have been considered in several decisions. In *V. Janakamma Vs. V.G. Rangaraj*, *Ganapatia Pillai*, J.

considered the scope of Section 7-A(4) of the old Act 25 of 1949, which corresponds to the present Section 11(4). The learned Judge pointed

out that the order passed under the section had nothing to do with the original default in payment of rent on which the application for eviction was

based. The following passage in the judgment is relevant:

It will be seen that Section 7-A(4), of the Rent Control Act deals with payment of

arrears as a condition precedent to the hearing of the tenant on the objection raised by him. The Act empowers the Rent Controller in a case in which eviction is sought on the ground of default in payment of rent to give an opportunity to the tenant to pay off all the arrears up-to-date. Non-compliance of this order results in a termination of the proceeding and making an order directing the tenant to put the landlord in possession of the building. This has nothing to do with the original default on which the application for eviction is based.

21. The above ruling gives an answer to the contention raised by learned Counsel for the petitioner incidentally in the course of arguments. Learned Counsel submitted that under the proviso to Section 10(2)(i) of the Act, the Controller may give the tenant a reasonable time not exceeding fifteen days to pay or tender the rent due by him to the landlord, if he is satisfied that the tenants default to pay or tender rent was not wilful. Learned Counsel submitted that the proviso contains a non obstante clause and the power given to the Controller can be exercised notwithstanding anything contained in Section 11 of the Act. It was argued that while Section 11 of the Act enables the Controller to pass an order of eviction on the failure of the tenant to pay or deposit the rent as directed by the Controller, the proviso to Section 10(2)(i), of the Act enables the Controller to grant further time after the conclusion of the main proceeding for eviction. According to learned Counsel, the two provisions are contrary to each other and they cannot stand together. There is no substance in this contention. As pointed out in *V. Janakamma Vs. V.G. Rangaraj*, , the order in the present Section 11 corresponding to old Section 7-A has nothing to do with the order in the main proceeding. If during the pendency of the proceeding the tenant fails to comply with the order passed u/s 11 of the Act, he is liable to be evicted immediately and there is no question of the tenant claiming the benefit of the proviso to Section 10(2)(i) of the Act in such cases. Hence, there is no inconsistency between the two provisions.

22. In *K. Perumal Chettiar Vs. V. Muthuswami*, , a Full Bench of this Court considered the provisions of Section 7-A of the old Act of 1949 and observed that the Section enabled the Rent Controller or the Appellate Authority to direct the tenant to deposit the rents and it had no reference to the determination of the disputed questions in the main petition, as it was

intended only to prevent defaulters from continuing in possession of the property taking advantage of the pendency of an application without at the same time performing their own obligations.

23. In *Kaluram Onkarmal and Another Vs. Baidyanath Gorain*, a similar provision in the West Bengal Premises Tenancy Act was considered by

the Supreme Court and it was observed that the object obviously appeared to be that when a suit or proceeding had commenced between the

landlord and tenant for ejectment and the tenant had received notice of it, the payment of rent should be made in Court to avoid any dispute in that

behalf.

24. In *P. Lachiram Vs. K.N. Kumaresan*, Ramaprasada Rao, C.J., observed as follows:

A proceeding u/s 11(4) of the Act is intended to accelerate the long-drawn proceedings under the Tamil Nadu Buildings (Lease and Rent Control)

Act. As eviction is possible in a case where the tenant commits wilful default in the payment of rents and particularly, after the recent amendment in

1973 explaining wilful default as meaning non-payment or tender of rent after the issue of a notice calling for such payment of rent by the landlord,

the importance of Section 11 (4) has to be brought to light and in its true light. Section 11(4) is, therefore, intended to make the tenant alert during

the entirety of the proceedings and be conscious of his obligations and statutory duties in the matter of payment of rents. Even here, the Legislature

has provided that the Rent Controller in a case where an application u/s 11 is taken by the landlord should enquire into the dispute as to the

amount of rent to be paid by the tenant and make such enquiry as he deems necessary and summarily determine the rent so to be paid or

deposited. Such enquiry should not be long drawn as in the case with the main proceedings. They are intended to be summary and they have to be

disposed of at least within four weeks from the date when such applications are filed. This would be therefore, a directive to the lower court to see

that applications u/s 11(4) are heard and decided within two months from the date of presentation of such applications. There is absolutely no

justification to keep such applications beyond such time.

25. In *Kesava Naicker Vs. Sivagnana Mudaliar*, Ratnam, J. held that the applicability of the section is not confined to cases where there is an

admission of the tenancy or a prior adjudication as regards tenancy. It is pointed out that a tenant could get over the provisions of the section by

raising a frivolous contention denying the title of the landlord or relationship of landlord and tenant. The learned Judge held that the simple denial of

the relationship of landlord and tenant cannot oust the jurisdiction of the authorities under the Act and it is necessary to find out whether the denial

is bona fide. The learned Judge quoted in extenso from the judgment of the Supreme Court in *Om Prakash Gupta v. Dr. Rattan Singh* (1963)2

S.C.J. 475 and upheld the orders of the Rent Controller and Appellate Authority who found that the relationship of landlord and tenant did exist

between the parties and passed orders u/s 11 of the Act.

26. There is no substance in the contention of the petitioner that the section does not contain any guidelines. The language of the section is very

clear and there is no necessity for any further guidelines. It is for the Courts to understand the Section and act accordingly. This is not a case of any

delegated legislation to warrant prescription of guidelines by the legislature itself. There is also no substance in the content that the section is bad

because time-barred debts could also be collected by enforcing the provisions of the Section. It is held in *Moothalayandum Chettiar v.*

Renganathan & Co. 81 L.W. 383, that the expression ""arrears"" used in the section would imply all arrears due to the landlord irrespective of any

bar of limitation. It was pointed out that the provisions of the Limitation Act would only bar the remedy of the creditor and do not extinguish the

debt. The same view was taken by the Apex Court in *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, ,*

while considering a similar provision in Section 20(4) of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act (13 of 1972). It

was held that the words ""entire amount of rent due"" used in Section 20 (4) of that Act would include rent which had become time-barred. The

decision of the Allahabad High Court was affirmed. Reliance was also placed by the Court on the following observations of Cotton, L.J. in *Curven*

v. Milburan (1889) 42 Ch. D. 424.

Statute-barred debts are dues, though payment of them cannot be enforced by action.

Reference was made to an earlier decision of the Court in *Bombay Dyeing and*

Manufacturing Co. Ltd. Vs. The State of Bombay and Others, . A

similar view taken by a Full Bench of the Patna High Court in Ram Nandan Sharma and Another Vs. Mt. Maya Devi and Others, was approved

by the court. Hence, there is no substance in the contention that because the section enables collection of rent, the recovery of which under the

general law is barred by limitation, the section is unconstitutional. There is no substance in the other contentions urged by learned Counsel for the

petitioner. They are stated only to be rejected.

27. The last contention that there are only four lakhs of landlords as against 45 lakhs of tenants in Madras City has no merit whatever. Article 38 of

the Constitution has no application. Article 31 has been deleted with effect from 20.6.1979. Hence, there is no question of Section 11 of the Act

violating the provisions of Articles 31 (2) or Article 38 of the Constitution of India.

28. Reliance is also placed by learned Counsel on the judgment of the Supreme Court in S. Sundaram Pillai and Others Vs. `R. Pattabiraman and

Others, . The Court had to consider only the expression ""wilful default"" found in Section 10(2) of the Act. The ruling has nothing to do whatever

with the contentions raised in the present case.

29. Learned Counsel also referred to the rulings in Janakiammal v. Natarajan (1988)1 L.W. 416 and Arputham v. Singarayan Nadar (1988)2

L.W. 245. In the former case, I considered the provisions of the Partition Act and observed whether Section 4 thereof curtailed the rights of a

Person which are normally appended to ownership of property should continue in the statute book in the wake of modern progression is a matter

for the Parliament to pnder. I have pointed out that so long as the section continues to exist in the statute book, the court has to give effect to the

same. In the latter case, I have rejected the argument that the Rent Controller should pass a separate order in the first instance in the interlocutory

application u/s 11 of the Act and then pass another consequential order in the main proceedings. I have held that if the tenant fails to deposit as

directed by the Rent Controller, an order u/s 11(4) of the Act would automatically follow and the Rent Controller is not in error in passing such an

order. Neither of the decisions helps the petitioner in present case.

30. I have no hesitation to hold that Section 11(4) of the Act is valid and not violative of any of the provisions of the Constitution of India. 31 The

writ petition fails and is dismissed with costs. Counsel's fee Rs. 500 to each counsel.