

(1946) 09 MAD CK 0017
In the Madras High Court

S. Raja Chetty and Another

APPELLANT

Vs

Jagannathadas Govindas and Others

RESPONDENT

Date of Decision : 16-09-1946

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1946 — Section 7(2)(i)

Citation : (1949) 2 MLJ 694

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—This is an application for the issue of a writ of certiorari to quash the order of the Second Judge, Small Causes Court, Madras, sitting as the appellate authority, made by him on the 16th August, 1949, in H.R.A. No. 1077 of 1949 setting aside the order of the Rent Controller, dated the 2nd August, 1949, and directing eviction of the petitioner from the premises described as "Maharani Talkies".

2. By a registered deed, dated the 15th November, 1948, executed by and between the petitioners and the respondents 1 to 3, the respondents as lessors demised to the petitioners as lessees the cinema theatre known as "Maharani Theatre or Maharani Talkies", Madras, situated in Washermanpet. What was demised is thus described in the indenture:

All the piece of ground with the new cinema theatre including the buildings and stall erected thereon known as "Maharani Theatre" or "Maharani Talkies"...together with all easements and appurtenances whatsoever thereunto belonging and also all the fixtures, fittings, cinematographic talkie equipments, machinery, furniture, scenery and things in, upon and about the said theatre specified in the inventory hereunder.

3. The lease was for a term of five years commencing from the 1st October, 1948. The monthly rent and hire was fixed at Rs. 3,200 and this sum is expressed to be made up as follows:

- (1) Rs. 1,600 being rent for the ground and superstructure,
- (2) Rs. 800 being hire of furniture, and
- (3) Rs. 800 being hire of talkie equipment, machinery, fittings and lessors' fixtures.

4. The provisions of the lease deed which are material for the purpose of this application are contained in Clause I, Sub-clauses (2) and (3), Clause 25 and Clause II; Sub-clause (4) proviso.

Clause I(2):--to pay the monthly reserved rent and hire regularly each English calendar month's rent and hire being payable on or before the 10th of the respective succeeding month (whether demanded or not) irrespective of the question whether the necessary permission or licence from the municipal, police or other authority has or has not been applied for or obtained by the lessees and irrespective of the suspension or revocation temporarily or otherwise of the licence or permission and irrespective of the question whether the cinema or theatre is run or not.

(3) to pay to the lessors an advance of Rs. 21,000 of which sum the lessees have already paid Rs. 10,000 and the balance of Rs. 11,000 being payable at or before the execution of these presents. The said advance shall not carry any interest and shall be returnable to the lessees on the termination of the lease hereby created but subject to the lessees having complied with their covenants hereinafter contained. The lessors shall be at liberty to adjust the said advance towards the arrears of rent and hire if any remaining unpaid and towards damages, losses, charges, costs and expenses recoverable both under this deed and in law.

Clause 25: To yield up subject to the exceptions and provisos hereunder mentioned, the demised premises together with the said fixtures, fittings, talkie equipment, machinery, furniture, scenery, articles and things and additions, alterations thereto and to the said buildings whether severable or otherwise and whether they are lessors' or lessees' fixtures or additions and also all effects which shall be brought upon the said premises in addition thereto or substitution thereof at the expiration or sooner determination of the said term in good and substantial repair and condition and with a full and working stock for the requirements of the cinema, and the theatre, belonging to the lessors, and otherwise in a fit, proper and working condition to be used for cinema and theatrical representations.

Clause II, Sub-clause (4), proviso (1):--If the rent hereby reserved (or any part thereof) shall remain unpaid for two tenancy months after the same becomes payable (whether legally or formally demanded or not) or if the lessees shall fail or neglect to perform or observe any of the covenants herein contained and on their part to be performed or observed other than Clauses 1(9) and (10) subra or if the lessees or either of them shall be adjudged insolvent, then and in any of the said cases, it shall be lawful for the lessors at any time thereafter to re-enter

upon the demised premises or any part thereof in the name of the whole and thereupon the demise shall absolutely determine but without prejudice to the right of action of the lessors in respect of any breach of the lessees' covenants herein contained, and it shall be lawful for the lessors to make and effect such re-entry even without the consent of the lessees and without subjecting themselves to any action for trespass or otherwise and without recourse to legal proceedings.

5. On the 30th April, 1949, the petitioners, lessees, addressed a letter to the lessors enclosing a cheque for Rs. 3,200 being the rent for the month of March, 1949-The cheque however was post-dated 5th May, 1949. On 4th May, 1949, the respondents returned the cheque and intimated that as the petitioners had defaulted in the payment of the rent due for the month of March, 1949, they were applying for their eviction from the theatre. On the same day they filed an application before the Rent Controller, Madras, u/s 7(2)(i) of the Madras Buildings: (Lease and Rent Control) Act, 1946, praying for vacant possession of the said talkies (land and buildings). The allegations in the petition were that under the lease the monthly rent of Rs. 1,600 for the ground and superstructures was payable on or before the 10th of the respective succeeding month and that the lessees did not tender or pay to them the rent due for March, 1949, till 30th April, 1949, when they sent a post-dated cheque and by reason of the default made by the lessees they had become entitled to evict them, from the land and buildings. The lessees pleaded that the application was unreasonable and contrary to the specific purport of the Act, that they were not statutory tenants but tenants governed by the express provisions of a registered lease and hence the application for eviction u/s 7 of the Act was not maintainable. They also pleaded that forfeiture of the lease for non-payment of the rent could be availed of only when the rent for a particular month remained unpaid for a period of two tenancy months, after the same became payable and the rent for March had been tendered within the period fixed in the indenture of lease and therefore the provisions of the Act were not attracted. They also contended that a sum of Rs. 21,000 was in the hands of the lessors and it was obligatory on their part to adjust from the said advance the arrears of rent if any and they were therefore precluded from filing this application. We are not concerned with the other pleas raised in their counter statement.

6. The Additional Rent Controller dismissed the application on the ground that there was no default. It is not clear how and why she came to that conclusion. The main argument addressed on behalf of the lessees was that parties were aware of Madras Act XV of 1946 and by this lease they had contracted out of the statute and therefore the application was not maintainable. The Rent Controller was evidently not inclined to uphold this contention. There was an appeal by the lessors. The appellate authority approached the case from the stand-point that as eviction was claimed under the said Act, Madras Act XV of 1946, and not under the general law in accordance with the agreement between the parties, the only question to be considered was whether there was a default within the meaning of Section 7(2)(i) of the Act. As there was clearly such a default he

found that the lessees were liable to be evicted. He overruled their plea that the arrears of rent should be adjusted from the advance of Rs. 21,000. He therefore allowed the appeal and set aside the order of the Rent Controller, and passed an order for eviction. The petitioners are the lessees.

7. We may at the outset briefly dispose of one of the contentions pressed upon us by Mr. V. Raghakrishnayya for the petitioners, namely, that because a sum of Rs. 21,000 had been paid to the respondents and because under Clause I (3) the lessors were at liberty to adjust the said advance towards arrears of rent and hire if any remaining unpaid, it cannot be said that there has been a default in payment of the rent for March, 1949. We think that this contention cannot prevail because the sum of Rs. 21,000 was not only security for the due payment of rent but also security for damage and loss and expenses which the lessors may sustain and incur on account of non-compliance of any of the covenants by the lessees. The advance is returnable to the lessees on the termination of the lease and presumably the adjustment either towards rent or towards damages or expenses is to be made also at the same time, namely, on the termination of the lease.

8. It was next contended by Mr. Radhakrishnayya that though Clause I, Sub-clause (2) of the lease provided for the payment of the rent of each month before the 10th of the succeeding month, we should take into account the subsequent provision which provides for re-entry if the rent remains unpaid for two tenancy months after the same becomes payable. The result is that the time fixed in the agreement of tenancy must be deemed to be not the 10th of the succeeding month but two months thereafter--so the argument ran. We think that the contention is very far fetched. The time fixed in the agreement of tenancy for payment of the rent of any month is certainly the 10th of the succeeding month. The later provision deals with the right of the lessors to re-enter on the premises in a particular contingency. In fact this later provision itself alludes to rent remaining unpaid after the same had become payable. This contention cannot be accepted.

9. The most important contention of Mr. Radhakrishnayya then remains and this has given us considerable difficulty. Neither side has been able to cite any direct authority or any authority which gives any material assistance in the decision of the question. The contention is this. The parties knew or must be deemed to have been aware of the provisions of Madras Act XV of 1946. It was open to the parties to enter into a contract containing terms manifestly inconsistent with the provisions of the Act. There is nothing illegal in such a course. As regards matters expressly provided for in the contract between the parties, the terms of the contract relating thereto would prevail over the provisions of the statute in so far as they are inconsistent. Incidentally the learned Counsel also argued that the parties did not contemplate that the contract of lease which they were entering into was to be governed by the provisions of Madras Act XV of 1946. In fact having regard to the peculiar nature of the lease with which we are

concerned, it was contended that the Act would not apply to it.

10. After giving the question our careful consideration we have come to the conclusion that the provisions of Madras Act XV of 1946 would not apply to the lease in question. In coming to this conclusion we have been impressed by the fact that the lease was entered into long after the Act had come into force and it must be presumed that the parties knew of its provisions. 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)(i) 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. Under that provision in a case where the rent is payable every month, even default in payment of the rent for one month entitled the landlord to apply for eviction of the tenant. This provision certainly is made for the benefit of the landlord. It is a well-established principle of law that

every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Maxwell, 9th edition, page 389

11. There is no express prohibition against contracting out of it. Though we realise that the Act was passed in accordance with a general policy, we cannot say that that policy would be violated if a contract is entered into between a landlord and tenant giving the tenant larger rights and greater privileges than those conferred on him by the Act. In the present case though u/s 7(2)(i) of the Act the landlord may be entitled to apply for eviction even when there was default in payment of a month's rent, the lease deed expressly provides that it is only if the rent remains unpaid for two tenancy months after the same became payable that the landlord is entitled to re-enter upon the demised premises. In the absence of authority that it is not permissible for the parties to contract themselves out of the provisions of this Act we hold that they can agree to be governed by terms and conditions which may be inconsistent with some of the provisions of the Act. There is no provision in the Act which has a material bearing on this aspect couched in imperative terms, as, for example, found in some enactments which declare that any action done in contravention of the enactment is void. Even assuming that a plausible argument can be raised that on the grounds of public policy the tenant should not be bound by any term inconsistent with the Act which is to his detriment, we see no offence to public policy in allowing a landlord to abridge his rights. Otherwise it comes to this, that an Act intended to prevent unreasonable eviction of tenants can be used for the perpetration of the very thing sought to be prevented.

12. Mr. Ramachandra Aiyar argued that there is no reference to the Act in the lease deed and therefore it cannot be said that they contracted out of it. Merely

because there was no reference to it we cannot presume that the parties or their legal advisers who evidently prepared the lease were not aware of the Act. Though the learned advocate attempted to contend that it would be against public policy to permit the parties to contract out of this statute, he did not make good this contention by either citation of authority or otherwise. In this connection we have found the judgment of Farewell, J., in *Soho Square Syndicate, Ltd. v. E. Pollard and Co.* (1940) 1 Ch. 638, very instructive, and applying the test laid down by the learned Judge in that case we cannot say that any ground of public policy compels us to hold that it was not open to the lessor to abridge his right to evict his lessees.

13. We have come to the conclusion that the lessors' application in this case is not maintainable on other grounds as well. In our opinion the lease in question is not governed by the provisions of Madras Act XV of 1946. That Act regulates only the letting of residential and non-residential buildings. In Section 2 building has been defined as to include the garden, grounds and out-houses appurtenant to the building and furniture supplied by the landlord for use in such building. In the case before us, there is no lease of a mere building or a building with compound and furniture of the sort covered by the definition. The lease is of land and building together with fixtures, fittings, cinematographic talkie equipments, machinery and other articles. The lessors, evidently aware of the composite nature of the demise, have prayed in their petition for eviction of the lessees from the land and buildings only. On behalf of the respondent, Mr. K.V. Ramachandra Aiyar relied strongly on the provision in the deed which splits up the monthly rent and hire of Rs. 3,200 into Rs. 1,600 being rent for the ground and superstructure, Rs. 800 being hire of furniture and Rs. 800 being hire of talkie equipments and machinery, fittings and lessors' fixtures. We have no hesitation in holding that this splitting is purely notional and nominal and intended probably for purposes relating to the municipal assessment and other extraneous considerations. When we asked Mr. Ramachandra Aiyar what would happen, in this case, when there is an eviction of the lessees from the land and building, to the machinery and equipments, etc., and whether there was any provision in the deed relating to them, he confessed that there was no specific provision in the deed. Obviously they cannot be governed by Madras Act XV of 1946 and so he said they must be governed by the general law of contract. He also conceded that if the lessees paid Rs. 1,600 but defaulted in the payment of the balance which is due as hire, the lessors have no right to ask for eviction under the Rent Control Act. We think that the attempted division of the lease and separation of rights in regard to two classes of property is in the highest degree artificial, never contemplated by the parties. Here is a lease of a talkie house with every thing that is necessary to run cinema shows. To Split up such a composite lease as this into separate contracts of lease and hire is to destroy it altogether. Mr. Ramachandra Aiyar argued that the furniture which was covered by the lease fell within the definition of Section 2 of the Act. We do not agree. The observations of the learned Judges in App. No. 590 of 1945 (Patanjali Sastri,

and Bell, JJ.) in dealing with the plant, machinery and other moveables which were demised along with a factory are very apposite in this connection,

No doubt in one sense the buildings comprised in the lease did contain articles supplied by the landlord; but we cannot agree that what was so supplied can be considered in any modern sense as being furniture.

Though in that case the learned Judges were dealing with the lease of a factory called the West Coast Match Co., which consisted of land and buildings including a bungalow used for residential purposes together with plant, machinery and moveables contained therein, we think the principle of that decision would apply equally to the case before us in which there is a lease not merely of a building but of a cinema theatre with all necessary equipment for the exhibition of films.

14. We therefore hold that the appellate authority had no jurisdiction to direct eviction of the petitioners under the provisions of Madras Act XV of 1946. His order must be and is hereby quashed. There will be no order as to costs.