

(1949) 09 MAD CK 0015

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 5615 of 1949

S. Raja Ghetty and Others

APPELLANT

Vs

Jagannathadas Govindas and Others

RESPONDENT

Date of Decision : 16-09-1949

Acts Referred:

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

Citation : AIR 1950 Mad 284 : (1949) 62 LW 860

Hon'ble Judges : Rajamannar, C.J.; Krishnaswami Naydu, J

Bench : Division Bench

Advocate : V. Radhakrishnayya, for V.S. Rangachari, for the Appellant; K.V. Ramachandra Aiyar and A. Arunachalam, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—This is an application for the issue of a writ of certiorari to quash the order of the Second Judge, Small Clauses Court,

Madras, sitting as the appellate authority made by him on 16th August 1949 in H. R. A. No. 1077 of 1949 setting aside the order of the Rent

Controller dated 2nd August 1949 and directing eviction of the petitioner from the premises described as ""Maharani Talkies"".

2. By a registered deed dated 15th November 1948 executed by and between the petitioners and 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 Washerman pet.

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.

The lease was for a term of five years commencing from 1st October 1948. The monthly rent and hire was fixed at Rs. 3200 and this sum is

expressed to be made up as follows: (1) Rs.1600 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. 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. 21000 of which sum the lessees have already paid Rs. 10000 and the balance of Rs. 11000 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 being 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 affects 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 I (9) and (10) supra 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.

On 30th April 1949, the petitioners, lessees, addressed a letter to the lessors enclosing a cheque for Rs. 3200 being the rent for the month of

March 1949. The cheque however was postdated 6th 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), 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. 1600 for the ground and superstructures was payable on or before 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.

3. The Additional Rent Controller dismissed the application on the ground that there was no default. It is not clear how and why he came to that conclusion. The main argument addressed on behalf of the lessees was that parties were aware of Madras Act XV [15] 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 standpoint that as eviction was claimed under the said Act, Madras Act XV [15] 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.

4. We may at the outset briefly dispose of one of the contentions pressed upon us by Mr, V. Radhakrishnayya for the petitioners, namely, that because a sum of Rs. 21,000 had been paid to the respondents and because under Clause 1 (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 had 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 toward rent or towards damages or expenses is to be made also at the same time, namely, on the termination of the lease.

5. It was next contended by Mr. Radhakrishnayya that though clause 1, 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 2 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.

6. 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 [15] 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 [15] 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.

7. After giving the question our careful consideration we have come to the conclusion that the provisions of Madras Act, xv [15] 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 Edn. p. 389).

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.

8. 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: 1940 2 All E. R. 601 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 lessee.

9 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 [15] 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. Ramchandra Iyer relied strongly on the provision in the deed

which splits up the monthly rent and hire of Rs. 3200 into Rs. 1600 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 [15] 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. 1600 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 everything 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.

Ramchandra Iyer 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 deed 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.

10. We, therefore, hold that the appellate authority had no jurisdiction to direct eviction of the petitioners under the provisions of Madras, Act, XV

[15] of 1946. His order must be and is hereby quashed. There will be no order as to costs.