

(1972) 09 MAD CK 0034

In the Madras High Court

Case No : Civil Revision Petn No. 2587 of 1971

Saraswathi Sriraman and Another

APPELLANT

Vs

Pappi Chetty Raghaviah Chetti's Charities and Others

RESPONDENT

Date of Decision : 04-09-1972

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1970 — Section 10(2), 10(3), 2(8)

Citation : AIR 1974 Mad 144

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

1. The tenants are the petitioners. The respondent is a Charity and it applied for additional accommodation of the premises occupied by the

petitioners u/s 10(2)(c) of the Madras Buildings (Lease and Rent Control) Act 1970. Various legal contentions were raised by Mr. R. S.

Venkatachari, the learned counsel for the petitioners-tenants. He submitted that one of the sons of the sons of the original tenant, Sri Raman, who

died in 1960 is in the Air Force and as such he belongs to the essential service, and could not be evicted. He relied on the definition of the word

"tenant" in Section 2(8) which includes the surviving spouse, or any son, or daughter, or legal representative of a deceased tenant who had been

living with the tenant in the building as a member of the tenant's family upto the death of the tenant, and submits that the clause ""who had been

living with the tenant in the building as a member of the tenant's family upto the death of the tenant"" would qualify only as the legal representative

and not the surviving spouse, or any son, or daughter. His contention is that usually in a clause like this, the rule of construction would limit the

qualification to the last clause, that is, the legal representative alone. Though

something could be said in favour of the grammatical construction, the entire context as well as the intention of the definition as a whole will have to be taken into account. In extending the meaning of the word "tenant" it is easy to perceive the inclusion of the surviving spouse, son or daughter or legal representative who had been living with the tenant in the building as a member of the tenant's family upto the death of the tenant; but if the son and daughter were separate and were not living with a tenant at the time of his death, there appears to be no reason for including them within the definition of the word "tenant". In the context, therefore, the proper construction would be that the extended meaning of "tenant" would be applicable to a surviving spouse, son or daughter who had been living with the tenant at the time of his death. In this view, as admittedly the son who is in essential service was not living with the tenant at the time of his death, this contention will have to fail.

2. The second submission of Mr. R. S. Venkatachari is that the Trust who is the respondent is in occupation of the downstairs for non-residential purposes and the petitioners-tenants are occupying the upstairs for residential purposes, and therefore, additional accommodation u/s 10(3)(c) can only be given to the landlord when it requires the building for the purpose for which it is used by the tenants. I do not see any such restriction in that clause. Section 10(3)(a)(i) and (iii) makes it clear that when a landlord applies to the Controller for an order directing the tenant to put the landlord in possession of the building, he can either ask for possession of residential buildings under clause 3(a)(i) or non-residential building under clause 3(a)(iii) and there also, the purpose for which the building could be obtained is made specific, while u/s 10(3)(c), the restrictions that are made applicable to Section 10(3)(a) are not insisted as Section 10(3)(c) provides that notwithstanding anything contained in clause (a), the landlord can apply to the controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he required additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be. In Section 10(3)(c), the building referred to is the entire building and not the building with the restricted meaning i.e., in occupation of the tenant alone or of the landlord alone. The building that is in occupation of the

landlord as well as the tenant and when the landlord wants

additional accommodation he may either need it for residential or for non-residential purposes as long as it is in the same building. Strong reliance

was placed on the words "as the case may be" as indicating that he can apply only for residential or non-residential purposes as referred to in

Section 10(3)(a). I am not able to accept this contention for the words are plain enough. The purpose behind the section also appears, to be

obvious that in the case of additional accommodation the landlord is given a little more indulgence. On a reading of the sub-section, I would prefer

the view taken by this court in P. I. Kurian v. Govt. of Tamil Nadu, (1972) 85 MLW 364 rather than the one expressed in C.V. Govindan and

Another Vs. A. Rajagopal Nadar, . This point also fails.

3. It was next contended by the learned counsel for the petitioner that the hardship that is caused to the tenants outweighs the inconvenience to the

landlord and urged that the view taken by the Rent Controller should be accepted rather than that of the appellate court. The appellate court has

given reasons for coming to its conclusion, namely, that the necessity of the landlord is real and that though there may be some inconvenience to the

tenants, it cannot be said to outweigh the inconvenience caused to the landlord. I agree with the view taken by the lower appellate court. All the

points taken by the learned counsel for the petitioners fail and this petition is dismissed.

4. Taking into consideration that the tenants have been living in the premises for over 20 years and there are two school going children, the trust

itself is generous in granting time to the tenants upto 31-3-1973. But the learned counsel for the petitioners pleads for 15 more days as he says that

the schools would close only in April. Time is granted till 15-4-1973. The petitioners tenants will continue to pay the rent regularly as and when it

falls due.

5. Petition dismissed.