
(1983) 08 MAD CK 0036
In the Madras High Court

Sarojini Ammal

APPELLANT

Vs

Sohanlal Jain

RESPONDENT

Date of Decision : 08-08-1983

Acts Referred:

Citation : (1984) 1 MLJ 50

Hon'ble Judges : M. Fakkir Mohammed, J

Bench : Single Bench

Judgement

M. Fakkir Mohammed, J.—The landlady is the revision" petitioner. The landlady filed H.R.C.O.P. No. 122 of 1980 u/s 10(3)(a)(iii) of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 for her husband's occupation for non-residential purposes, since the business of the husband which is carried on in the front portion of the residential building, which belongs to the landlady, has expanded. The tenant resisted the application stating that the landlady's husband is carrying on business in her own building and that, therefore, the requirement is not bona fide.

2. The Rent Controller allowed the application. On appeal preferred by the tenant, appellate authority reversed the decision of the Rent Controller and dismissed the eviction petition. Hence this revision by the landlady.

3. The learned Counsel for the revision petitioner contends that the approach of the appellate authority that the landlady's husband is carrying on his business in her building, is not correct, since the business carried on by her husband is in the residential building of the landlady and, that therefore, the conclusion of the appellate authority that the husband of the landlady is already in occupation of non-residential building is not correct, since the dominant purpose for which the existing building of the landlady is put to is residential, though in a portion of it the business is carried on by the husband of the landlady Section 103 (3) (a) (iii) of the said Act reads as follows:

In case it is any other non-residential building, if the landlord of any member of

the family is not occupying for purposes of a business, which he or any member of his family is carrying on a non-residential building of his own in the commune concerned.

It is with reference to the words "a non-residential building of his own in the Commune concerned" in Section 10(3)(a)(iii) of the Act, the learned Counsel for the landlady interprets that the building in which the husband of the landlady is carrying on business is only a residential building and not a non-residential building, attracting Section 13(3)(a)(iii) of the Act and hence the landlady is entitled to require the demised building, which is a non-residential building. In support of the said contention, the learned Counsel for the landlady has cited *V. Balakrishna Menon Vs. M.A.K. Govindan*, and *Dakshinamoorthy v. Thulja Bai* (1952) 2 M.L.J. 390, and *Ranga-swami v. Postmen's Co operative Credit Society* (1978) 2 M.L.J. 167 : 91 L.W. 403 : ILR (1978) Mad 87, In all the above judicial decisions, it was held that, since non-residential or residential building has not been defined in the Act, the question whether a building is a non-residential or a residential one has to be determined on the basis of the dominant purposes for which the building is put to. The above decisions are applicable to the facts of this case, since in the building, in which the landlady and her husband are admittedly residing, her husband is carrying on his business in a portion and it has to be determined whether it is a residential building or a non-residential building for deciding whether the building comes within the ambit of Section 10(3)(a)(iii) of the Act or not.

4. It is not disputed that only a small portion in the front is used for the business of the husband of the landlady and the major portion of the building is used for residential purpose. Therefore, applying the test enunciated in the above judicial decisions and even under the principles of common sense, it has to be decided that the building in which the landlady is residing with her family members has to be determined only as a residential building and not a non-residential building, taking into account the dominant purpose for which the building is put to. Once such a conclusion is arrived at, then Section 10(3)(a)(iii) of the Act is attracted. Once Section 10(3)(a)(iii) is attracted; on the requirement of the landlady for the purpose of her husband, the landlady is entitled to an order of eviction. Admittedly, the landlady's husband is not carrying on his business in any rented non-residential building or in any other non-residential building of his own or that of his wife. The eventual conclusion will be that the landlady is entitled to require the demised building for the purpose of her husband's business

5. The learned appellate authority has come to the conclusion that the landlady is not entitled to require the demised building only because of his conclusion that her husband is occupying a non-residential building of the landlady. Once it is found that the husband is not occupying a non-residential building, the conclusion the appellate authority has to be reversed. In the above view of the matter, the conclusion of the learned Rent Controller is found to be quite correct and hence the finding of the appellate authority stands reversed, since the same

cannot be sustained in law.

6. In the result, therefore, the civil revision petition is allowed, the order of the appellate authority is reversed and the order of the learned Rent Controller stands restored. The parties are directed to bear their own costs. The tenant is granted four months" time from this date to vacate the demised building.