

(1993) 08 MAD CK 0009
In the Madras High Court

Sultan Hardware Corporation and Others	APPELLANT
Vs	
CT. Meiyammai Achi and Others	RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(2)(iii)

Citation : (1993) 2 MLJ 442

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The tenants who are unsuccessful in both the courts below are the petitioners in the above revision petition. One PL.

Chidambaram, the erstwhile landlord has filed R.C.O.P. No. 5632 of 1982 on the file of the Rent Controller, Court of Small Causes at Madras,

praying for eviction of the tenants on grounds of wilful default, commission of acts of wastes and material alteration of the building without the

written consent of landlord and bona fide requirement of the portion under the occupation of the tenant as additional accommodation for the

respondents" business under Sections 10(2), (1), 10(2)(iii) and 10(3)(c) of the Tamil Nadu Buildings, (Lease and Rent Control), Apt, 1960,

hereinafter referred to as "the Act". The tenants contested the claims of the erstwhile landlord for eviction and recovery of possession on the above

grounds, by filing a detailed counter affidavit. During the pendency and trial of the petition, after giving deposition, the erstwhile landlord died on

6.11.1987. The legal representatives of the deceased landlord have filed an application for bringing the respondents herein (petitioners 2 to 6,

therein), on record to continue the proceedings and the same was ordered on 12.11.1990 in M.P. No. 50 of 1988. The Rent Controller, after

considering the oral and documentary evidence placed on record by the respective parties, rejected the claim made under Sections 10(2)(i) and

10(2)(iii) of the Act, but sustained the claim for recovery of possession made on the ground of bona fide requirement of additional accommodation

u/s 10(3)(c) of the Act, by his order dated 23.10.1991.

2. Aggrieved, the tenants filed R.C.A. No. 1185 of 1991, challenging the order of eviction. The appellate authority also by its order dated

23.4.1992 confirmed the order of eviction made on the ground of bona fide requirement of the landlords for additional accommodation and

rejected the appeal. Not satisfied, the tenants have come before this Court objecting to the orders of the authorities below.

3. Mr. V. Krishnan, learned Counsel appearing for the petitioners/tenants, contended that the R.C.O.P. among other grounds was filed by the

erstwhile landlord PL. Chidambaram, for eviction and recovery of possession on the ground of his bona fide requirement for his business and

consequently his legal representatives cannot continue the said petition after coming on record as the legal representatives of the deceased landlord

in the absence of a specific claim and proof of their bona fide requirement for their business. It was contended that the claim made by the deceased

landlord was personal to him and on his death, the legal representatives cannot sustain or continue the petition already filed for additional

accommodation. The learned Counsel also invited my attention to Section 10(3)(c) of the Act and the difference in phraseology relating to the

claim for owner's occupation as envisaged u/s 10(3)(a)(iii) of the Act and also invited my attention to the decisions in Dr. Muhammad Ibrahim Vs.

Rahiman Khan and Others, , R. Govindaraj v. Venkateswaran (1972) 2 M.L.J. 231, Vijayaraghavan Vs. Mohammed Yakub Rowther (died) and

Others, and Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, .

4. Mr. S. Jagadeesan, learned Counsel appearing for the respondents-landlords, while traversing the claim and submissions made on behalf of the

petitioners-tenants, relied upon the decisions in R. Govindaraj v. Venkateswaran (1972) 2 M.L.J. 231 and Akilandammal v. S.C. Shah 92 L.W.

324, as well as the amendment ordered to the petition and also the examination of P.W.5, one of the legal representatives of the deceased landlord

on 20.9.1991 to reiterate and affirm and continued need and necessity and bona

fide requirements of the landlords for the purposes of the business

carried on by the erstwhile landlord which they are continuing even after his death. In other words, the submission of the learned Counsel for the

respondents is that so long as the business and the requirement for the business continues to subsist, there is no infirmity or disability in law for the

heirs of the deceased landlord continuing the petition for eviction made even on the ground of additional accommodation.

5. Before considering the issue raised, the various decisions referred to by the learned Counsel appearing on either side may be referred to with

particular reference to the principles laid down therein. In *Dr. Muhammad Ibrahim Vs. Rahiman Khan and Others*, , a learned single Judge of this

Court had an occasion to construe Rule 7-A, (2-A) of the then Madras House Rent Control Order, 1945 and hold that an order of the Rent

Controller directing the tenant to put the landlord in possession of his house on the ground that the landlord desired to occupy the house himself is

one for the personal benefit of the landlord and is not capable of execution after the death of the landlord at the instance of his legal representatives.

It was also observed that if in the future there are circumstances which will entitle the legal representatives to ask for eviction against the tenant,

they can do so on a proper application being made to the Rent Controller and Section 7-A(5) of the Rent Control Order, was not a bar to such an

application.

6. in *R. Govindaraj v. Venkateswaran* (1972) 2 M.L.J. 231, a learned single Judge of this Court had an occasion to consider the issue as to

whether an order of eviction made on an application by the landlord u/s 10(3) (c), of the Act on the ground of additional accommodation needed

for the purpose of his business can be questioned on the demise of the landlord on the ground that the additional accommodation was for the

personal benefit of the deceased. The learned judge while distinguishing the decision reported in *Dr. Muhammad Ibrahim Vs. Rahiman Khan and*

Others, , held that in a case where even after the death of the landlord his business continued and his legal representatives were entitled to carry on

his business, the purpose for which the additional accommodation asked for was still there and cannot be said to have been lost merely with the

death of the person who filed the eviction petition, and particularly having regard

to the facts disclosed in the said case that the order of eviction came to be passed only by the appellate authority by reversing the order of the Rent Controller and by the time, the appellate authority disposed of the appeal, the legal representatives were brought on record after notice and that the order of eviction passed in the presence of the tenants after hearing both parties with no objections taken to the same on the ground that an order of eviction cannot be passed on account of the death of the landlord who filed the application for eviction. The tenant, it was held, cannot question the eviction order so passed. It was also observed by the learned Judge that the definition of landlord in the Act was wide enough to include the heirs of the landlords also.

7. In the decision reported in *Vijayaraghavan Vs. Mohammed Yakub Rowther (died) and Others*, . Rama prasada Rao, J. (as the learned Judge then was) considered a similar issue in the context of the maxim *"actio personalis moritur cum persona"* to a case like the one under consideration.

That was a case where the landlady sought for eviction on grounds of wilful default and need for personal occupation for carrying on business. The original authority ordered eviction and during the pendency of the appeal by the tenant, the landlady died resulting in the husband, son and daughter

being brought on record. After the appeal filed by the tenant was dismissed, the same was challenged before this Court in revision and the husband

also died pending revision. The question that cropped up for decision was whether the son and daughter were entitled to the order of eviction. The

learned Judge held that the Latin maxim referred to supra, had certain exceptions and one such exception could be invoked having regard to the

peculiar nature of the right obtained by the landlord or landlady under the provisions of the Act. Of course, the learned Judge placed reliance on a

decision of the Supreme Court in *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, , which later came to be declared as no longer good law in

a subsequent decision reported in *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, .

8. In the decision reported in *Akilandammal v, S.C. Shah* 92 L.W. 324, Varadarajan, J.) (as the learned Judge then was), had an occasion to deal

with a similar issue. That was a case where eviction was sought for u/s 10(3)(a) (iii) of the Act, on the ground of owners' occupation for

accommodating the printing business carried on by the landlord as a tenant in another place. The business was being carried on by joint family consisting of father and two sons in partnership and that even after the death of the father, the business continued. In that context, it was held taking note of the death of landlord, pending disposal of the eviction petition in the trial court and the subsequent fact of bringing the legal representatives on record and the continuance of the business by the legal representatives that the eviction sought for can be granted. The eviction petition was ordered on the ground that the cause of action survived to the remaining partners of the firm. Though the appellate authority set aside the order of eviction, when the matter was taken to this Court, the learned Judge, after considering the two Supreme Court decisions referred to above, held that order of the appellate authority was wrong and restored the order of eviction passed by the original authority.

9. A reference may also be made to the decision in *Rathinam Vs. Syed Beevi (died) and Others*, , *Sathiadev, J.* wherein the learned Judge after referring to the decision reported in *Dr. Muhammad Ibrahim Vs. Rahiman Khan and Others*, and other pronouncements, held the decision of the learned single Judge reported in *Dr. Muhammad Ibrahim Vs. Rahiman Khan and Others*, to be no longer good law after the decision of the Supreme Court reported in *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, . That was also a case wherein both the Rent Controller and the appellate authority held that the legal representatives could continue the proceedings filed u/s 14(1)(b) of the Act for demolition and reconstruction. In the context of a claim whether statutory undertaking given by the landlord in that case u/s 14(1)(b) of the Act would survive and enure to the benefit of the legal representatives, it was held that the same will be binding on her legal representatives also inasmuch as it was given with reference to the property as such.

10. In *L.K.K. Gafoor Vs. M.T. Lakshmana Mudaliar (died) and Another*, , *Venugopal, J.* had an occasion to deal with a similar issue. That was case where the landlord of a non-residential building filed an eviction petition against the tenant of a portion requiring the same for running a tea stall. Though the eviction petition was dismissed by the Rent Controller, the appellate authority allowed the same and the tenant filed a revision

before this Court. Pending revision, the landlord died and his wife was brought on record as the legal representative. The tenants claimed that requirement of the landlord was personal to him and on his death, it lapsed and could not enure to the benefit of his legal representatives. The learned Judge after considering some of the decisions already noticed by him has held that a right to have an eviction of a tenant under the Act cannot be characterised as a personal right which came to an end with the death of the landlord inasmuch as it was, in the view of the learned Judge, an incorporeal right annexed to the estate of the deceased and, therefore, it could be taken advantage of by the legal representatives of the deceased. Consequently, it was held that the right annexed to the property could not be divested by the death of the landlord and, would therefore, pass on to the heirs as being part and parcel of the property owned by the landlord.

11. In *Dharmalinga Mudaliar v. Annamalai*, 94 L.W. 487, Ratnam, J. had an occasion to consider the question as to whether an application for eviction on the ground of requirement of additional accommodation for the use, of the landlord's son and his family u/s 10(3) (c), of the Act could be maintained. The tenant in the said case before the learned Judge resisted the application for eviction contending that it would be open to the landlord to ask for additional accommodation for only himself and not on the ground of the requirement of the son or any other member of his family mainly trying to take advantage of the language used in Section 10 (3) (c) in contrast to Section 10(3)(a)(iii) of the Act. The learned Judge after considering a catena of earlier decisions of this Court, rightly repelled the objections and held that it was certainly open to a landlord to ask for additional accommodation even in order to enable his son to live comfortably with the members of his family enjoying all facilities and it is not for the tenant to dictate that this should not be done on question of relative hardship. In the view of the learned Judge, there cannot be any objection on principle in applying the expanded interpretation introduced by the amending Act 23 of 1973 to Section 10(3)(a)(i) to (iii), of the Act, to Section 10(3)(c) and in coming to such conclusion, the learned Judge also placed reliance upon the decision of a Division Bench of this Court in *K.C. Devassay Vs. The State of Madras and Another*, and another decision in *Surekha v. The United Bank of India*, 93 L. W. 284.

12. The principles laid down by the various decisions referred to supra, would go to fortify the stand taken by the learned Counsel for the respondents. The judicial opinion throughout appears to have been consistent for more than two decades in holding that so long as the basis or ground on which the additional accommodation was sought for subsisted and continued even after the death of a landlord/landlady who initially filed the application for eviction of a tenant and recovery of possession u/s 10(3)(c), the legal representatives are entitled to continue the proceedings for their benefit also and the same do not come to an end with the death of the landlord who initially filed it. This view appears to have gained ground with courts on the peculiar nature of the right secured to the owner of the property under the Act and also on account of such right and claim being an adjunct to the rights in the property as such and also fortified by the bona fides in the requirement for additional accommodation when as in the present case, the owner has filed the application seeking recovery of possession as additional accommodation for the business that was being carried on in the same premises and it is also shown that notwithstanding the death of the erstwhile owner, the legal representatives who stepped into the shoes of the landlord have also succeeded to the business and successfully continuing the same. There will be no rhyme or reason or logic in stating that the application for eviction should be also held to have suffered a natural death with the person who filed it. In that respect, there does not also appear to be any difference in the position, depending upon the application being either one u/s 10(3)(a)(iii), or Section 10(3)(c) of the Act. Consequently, I am unable to persuade myself to agree with the submissions of the learned Counsel for the petitioners.

13. Coming to the facts and circumstances of the case, it is seen that the deceased landlord filed the eviction petition for additional accommodation on the ground and for the purpose of the business carried on by him as Publishers and Booksellers in the name and style of "Bharathi Pathippagam in a portion of the building and the requirement of the additional accommodation on the exigencies and increasing needs of the business. It is not in dispute that the erstwhile landlord was examined as a witness in support of his claim prior to his death. After his death, an application has been made by the legal representatives of the deceased landlord who are his wife and sons of which one was a minor at that time. The said application

was ordered and in paragraph 5 of the petition which contained the reasons for the claim for additional accommodation, the reference to

"petitioner" was substituted as reference to "petitioners". That apart, CT. Palaniappan, one of the sons/legal representatives of the deceased

landlord was examined as P.W.5. He has categorically stated that the business under the name and style of "Bharathi Pathippagam" is still being

continued and run by the heirs of the deceased and that the business is being continued jointly by the heirs. It has not been established by the

tenants either in the cross-examination of P.W.5 or otherwise that the claim about the subsistence and continuance of the business originally run by

erstwhile landlord is not true.

14. A careful analysis of the findings of the trial court on issue No. 3 and the findings of the Appellate Authority in paragraph 10 of its order

disclosed that the erstwhile landlord as well as his legal representatives have substantiated by overwhelming material meticulously considered by

both the authorities below that the need for additional accommodation for the business in question is a bona fide or as a matter of fact, the learned

Counsel for the petitioners in this Court could not, in the face of such material, seriously attempt to challenge the factual findings of the authorities

below, in this Court.

15. For all the reasons stated above, in my view, there are no merits in the above revision petition and the same, therefore, fails and shall stand

dismissed. But, in the circumstances of the case, there will be no order as to costs.

16. The tenants are granted two months" time to vacate the petition premises.