

**(1984) 06 MAD CK 0035**  
**In the Madras High Court**

S.V. Kamaladevi

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

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**Date of Decision :** 21-06-1984

**Acts Referred:**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 3A, 3A(1)(a)

**Citation :** (1984) 97 LW 641 : (1984) 2 MLJ 498

**Hon'ble Judges :** G. Ramanujam, J

**Bench :** Single Bench

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**Judgement**

G. Ramanujam, J.—The petitioner herein is seeking in this writ petition a certiorarified mandamus to quash the order of the first respondent dated 6-4-1979 in G.O. Rt. No. 1386 confirming the order of the second respondent dated 1-8-1978 and to direct the respondents herein to release the north-east portion of the premises bearing door No.27/1, New Door No.37, Halls Road, Madras-8. The said premises, in respect of which, relief is sought for by the petitioner, is under Government tenancy on a monthly rental of Rs. 40/-. The petitioner, who is the owner of the said premises, and who is in occupation of the other portion of the same premises measuring about 651 sq.ft. applied for release of the north-east portion, which is under Government tenancy, on the ground that the same is required for her own occupation and that the portion already under her occupation is quite un-sufficient for accommodating herself and her family members. The request of the petitioner was rejected by the Accommodation Controller by his order dated 1-8-1978 on the ground that the petitioner's request is not either bona fide or reasonable. The petitioner filed an appeal against the said order before the first respondent and the first respondent by his order dated 6-4-1979 affirmed the order of the Accommodation Controller and rejected the petitioner's appeal. Hence the present writ petition.

2. According to the petitioner, the portions of the said premises under Government tenancy was let out long time before when the petitioner's children were minors; that now after the minor daughters have come of age, the portion

of the premises which is under their occupation is found to be quite insufficient for their living and it is out of sheer necessity, they have come forward with a request for the release of another portion of the said premises. The Accommodation Controller rejected the request of the petitioner finding

that there are on the whole eight portions in the petition premises, out of which only four portions are under Government tenancy. The landlady is occupying one portion and out-house is used for her guests and relatives. The other two portions are kept vacant. If the landlady, is really in need of additional accommodation, apart from the portion in occupation which itself is quite sufficient to her, she can make necessary arrangements to use the vacant portions. The landlady's request is therefore not to be considered either bona fide or reasonable.

In the impugned order of the Government affirming the order of the Accommodation Controller, an additional reason has been given, namely, that u/s 3-A of the Act a landlord/landlady can apply for release of a portion under Government tenancy if he or any member of his family does not own any other house in the City, Town or Village concerned and in the instant case the landlady owns two other buildings other than the petition premises. The undisputed facts are that the petitioner owns a fairly big premises comprised in door No.37, Halls Road, Madras. One portion of the said premises is occupied by the petitioner and that measures about 651 sq.ft. The main building has been divided into two compartments by making wooden partition. The eastern portion measuring 390 sq. ft., has been let out long ago and that portion is under the Government tenancy. Apart from this, there are several other structures, such as out-houses, etc., numbering about six and four of them were under Government tenancy. Thus out of eight portions in the said premises, five were under Government tenancy. Recently one portion under the Government tenancy fell vacant, and since nobody applied for the same, it could not be allotted to any Government servant. According to the petitioner the condition of the building was such that nobody could occupy the same. But the reason given by the second respondent is since the petitioner is already in possession of a portion of the main building, measuring 651 sq. ft., and the other three portions within the same compound, which the petitioner is using for accommodating her guests and friends, the petitioner cannot have any need at all for additional accommodation. According to the petitioner the three portions said to have been possessed by her, apart from the portion in the main building, are all dilapidated and are uninhabitable. Even then one of the portions is under Government tenancy. It was not possible for the Government to find a tenant for the same and it is for that reason they released the same. Thus all the three portions in her occupation are dilapidated and the same cannot be occupied unless extensive repairs are made at a considerable cost. The petitioner says that she is not a position to meet heavy costs for repairing those portions. Therefore, the Accommodation Controller is not justified in making the statement that if the petitioner's requirement is so urgent and needy, she could have repaired that portion and occupied the same

by herself. Therefore, the material, on the basis of which, the second respondent held that the requirement of the landlady is not bona fide and reasonable, cannot be sustained on the facts of the case. When it is found that the petitioner is living in a portion of the main building with grown up daughters, who are all of marriageable age, she cannot be compelled to live in a portion of the building of a small extent, especially when the other portion of the same building, which she wants to get released, has been separated by a wooden partition. Therefore, I do not see any material from which the request of the petitioner can be taken to be unreasonable or not bona fide. The learned Government Pleader contends that Section 3-A of the Act does not enable the landlady to get release of a portion of the building for additional accommodation and that it is only when the landlady is not in possession of any building of her own, she can move for the release of the building. As the petitioner is already in possession of a portion of the building in the same premises, her application can only be taken as one for additional accommodation and such an application cannot be entertained u/s 3-A of the Tamil Nadu Buildings (Lease and Rent control) Act. I am not in a position to agree with the learned Government Pleader. Section 3-A of the Act says that in the case of a residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and the landlord or the member of his family is not occupying any residential building of his own in the city, town or village concerned, the landlord may apply to the authorised officer for the release of the building. In this case, it is no doubt true that the landlady is occupying a portion of the residential building. But according to her that portion is quite insufficient for her living and therefore she requires the adjoining portion also for her own occupation. If the landlady requires a portion of the premises for her own occupation, the section will stand attracted. Here admittedly the landlady requires it for her own occupation and not for any other purpose. Though she is occupying a portion of the building, since her need for more accommodation is bona fide, she is entitled to the relief u/s 3-A(1)(a) of the Act. In this view of the matter, it is not possible to uphold the order of the second respondent as affirmed by the first respondent. Hence the orders of the first respondent in G.O. Rt. No. 1383, Home Department, dated 6-4-1979 confirming the order of the second respondent dated 1-8-1978 in K. Dis. No. B3/23204/76 will stand quashed and a direction will issue to the second respondent to release the north-east portion of the building, which is under Government tenancy in favour of the petitioner. The writ petition is allowed. No Costs.