
(1961) 07 MAD CK 0001
In the Madras High Court

T. Balakrishna Mehta

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-07-1961

Acts Referred:

Citation : (1961) 74 LW 737 : (1962) 1 MLJ 167

Hon'ble Judges : S. Ramachandra Iyer, O.C.J.

Bench : Single Bench

Judgement

S. Ramachandra Iyer, Offg. C.J.

1. This Civil Revision Petition raises a question u/s 3(5) of the Madras Buildings (Lease and Rent Control) Act, 1949, as to whether the State

Government would be liable to pay rent in respect of a building required by them for the occupation of their officers but possession of which was

not given by the owner thereof. The petitioner is the owner of premises No. 38-B, Mount Road, Madras. The-Burmese Consul who was

occupying the building vacated it on 5th August, 1955, the owner of the building gave notice of the vacancy to the Accommodation Controller, but

he intimated also by the same notice that the building was in a bad state and required immediate repairs not in a fit condition for occupation. The

owner also requested the Accommodation Controller not to allot the building to anyone. The Accommodation Controller, however, did not agree

to the owner's request but allotted the building to the Regional Savings Officer, Madras, with effect from 23rd August, 1955. The order

specifically stated that the petitioner would be entitled to receive rent from the date on which possession was handed over to the allottee. The

allottee never got possession and on the petitioner moving in the matter the

building-was later released to him by the Accommodation Controller.

The petitioner, thereafter filed a suit for recovery of a sum of Rs. 360, from the Government as representing rent from 23rd August, 1955, the date

on which the premises were taken over to the date on which the building was released, at the rate of Rs. 200 per mensem. His claim was

contested by the Government. The suit was dismissed on the ground that as possession of the premises was not given, the landlord would not be

entitled to any rent. This view was accepted by the Full Bench of the Small Cause Court on the application for a New Trial.

Section 3(5) of the Act runs:

if the building is required for any of the purposes or for occupation by any of the officers, specified in Sub-section (3) the landlord shall deliver

possession of the building to the authorised officer and the State Government shall be deemed to be the tenant of the landlord, with retrospective

effect from the date on which the authorised officer received notice under Sub-section (1) or Sub-section (a) the terms of the tenancy being such

as may be agreed upon between the landlord and the tenant....

2. It is contended for the petitioner that the section creates a statutory right in favour of the landlord whose building had been required by the

Government, to claim rent from the date specified in the notice and as the section itself contemplates payment of rent in respect of the period during

which the premises are in the possession of the landlord, he would be entitled to claim rent for the period covered by the suit. In other words the

contention is that although possession of the premises was not given to the Government, it should be deemed to be a tenant under the landlord and

therefore liable to pay rent till the date when the building was released as not required for their use. Reliance is also placed in this connection on the

terms of the order of release issued by the Accommodation Controller which stated that

the Government's tenancy in respect of the premises is hereby terminated and the premises; is released to the owner.

3. It is contended that as the Government themselves recognised that they were the tenants of the premises till the date of the release of the building

to the owner, they would be bound to pay the rent claimed. The question involved in the case, namely, whether there has been a relationship of

landlord and tenant between the petitioner and the Government cannot be decided on the incautious recital contained in Exhibit P-8. As the learned Judges of the Court of Small Causes point out, the Accommodation Controller had employed only the usual printed form and if there was no tenancy in fact or under the law between the parties Exhibit P-8 cannot itself create one. The substantial question therefore is whether the Government can be deemed to be a tenant liable to pay rent when the landlord was not ready and willing to put them in possession of the premises. Section 3(5) of the Rent Control Act states that the Government shall be deemed to be the tenant of the property with retrospective effect from the date on which the authorised officer received notice under Sub-section (1) or Sub-section (2). What is and should be implicit in such a notice is the readiness of the landlord to allow the Government to occupy the building. On the contrary the landlord in the instant case stated that the building was not in a fit condition for occupation and wanted a release of the building. Section 3(5) in so far as it provided for payment of rent from the date of allotment cannot be held to apply. It is particularly so as the landlord was able to obtain release of the building. The mere circumstance that the Accommodation Controller allotted the building to one of the Government officers cannot alter the fact that at no time the petitioner was ready and willing to give possession of the premises. The officer to whom the building was allotted never occupied the same. The notice of vacancy given in the instant case by the owner has to be read as a whole, namely, that the building was not in a fit condition for occupation. Section 3(5) of the Act will not be applicable to such a case as the owner was not willing to give possession. The order of the lower-Court rejecting the claim of the petitioner is correct. The Civil Revision Petition is dismissed with costs.