
(1960) 07 MAD CK 0005
In the Madras High Court

The State of Madras

APPELLANT

Vs

S. Natwarlal Davey

RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 3(5)

Citation : (1960) 2 MLJ 384

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Single Bench

Judgement

P.V. Rajamannar, C.J.—Though the application for fixation of fair rent was disposed of on the facts and this Court cannot interfere with the

finding arrived at by the learned Judge regarding the quantum of fair rent, the learned Government Pleader has raised several interesting questions

of law turning on the interpretation of Section 3(5) of the Madras Buildings (Lease and Rent Control) Act of 1949. His contention, if I understood

him right, was that in the case of buildings taken over by the State u/s 3 of the Act, there cannot be at any time any application for the fixation of

fair rent. Section 3(5) inter alia says that if the building is required for any of the purposes 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 tenant of the landlord from the date on which

the authorised officer received notice under Sub-section (1) or Sub-section (2). In such a case, the terms of the tenancy shall be such as may be

agreed upon between the landlord and the tenant. In default of an agreement the terms may be determined by the City Civil Court in the City of

Madras and elsewhere by the Subordinate Judge's Court and where there is no Subordinate Judge's Court, by the District Court. To this Sub-

section there are three provisos of which the first is the material one. It runs thus:

Provide that the rent payable shall be the fair rent, if any, fixed for the building under the provisions of this Act; and if no fair rent has been so fixed,

such fair rent as may be determined by the Court aforesaid in accordance with the provisions of this Act.

The learned Government Pleader's contention was that this proviso has no application when the rent is agreed upon between the landlord and the

tenant, that is, the state Government. This contention is evidently based upon the assumption that rent is one of the terms of the tenancy and the

main Sub-section declares that the terms of the tenancy would be such as may be agreed upon between the landlord and the State Government.

According to him, once the rent has been agreed upon, it would not be open to the landlord to have recourse to an application for fixing of fair rent

am unable to agree with this contention. Assuming that ordinarily the rate of rent is one of the terms of the tenancy, the proviso specifically deals

with that term and as in proviso has to be read in conjunction with the main Sub-section, the result is that the proviso takes out the rent from the

operation of the main Sub-section. To give an instance, suppose the State Government in ignorance of a prior final order to the Controller fixing the

fair rent for a building agrees with the landlord to pay rent at a higher rate the logical result of the learned Government Pleader's argument will be

that the State Government would be precluded from having resort to the Controller to get the fair rent fixed. The Government would be compelled

to go on paying at the higher rate agreed upon, though it may be an unfair rent. I am clearly of opinion that this is not a correct interpretation of

Section 3(5) read with the first proviso. The position is very simple. If fair rent has been fixed for the building-concerned, under the provisions of

the Act, then that is the only rent which is payable even when the State Government are agreed upon a particular rate of rent and the landlord and

the Government are agreed upon a particular rate of rent and the landlord continues to receive rent at that rate, then per se there is nothing invalid.

It will be always open to the landlord or the tenant to file an application for the fixation of fair rent if it is felt that the rent being paid is not a fair

rent. Only in the case of buildings taken over by the State Government it is not the Controller who fixes the fair rent but the City Civil Court in the

City of Madras and the Subordinate Judges Court elsewhere, and where there is no such Court, the District Court.

2. There is, however, one lacuna in the Act, that is there is no provision for an appeal against an order of the City Civil Court or the Subordinate

Judge's Court or the District Court fixing fair rent. It is doubtful if any of these Courts would fall within the definition of Controller. In any event this

may be clarified by Government when any amendments are undertaken at a subsequent date.

3. I find no ground on which I can interfere with the order of the learned Judge in this case. The Civil Revision Petition is dismissed.