

(1979) 11 MAD CK 0059
In the Madras High Court

The State of Tamil Nadu

APPELLANT

Vs

K.N. Dhanasekaran

RESPONDENT

Date of Decision : 09-11-1979

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (1980) ILR (Mad) 380 : (1980) 93 LW 207 : (1980) 1 MLJ 395

Hon'ble Judges : S. Padmanabhan, J

Bench : Division Bench

Judgement

S. Padmanabhan, J.—The question that arises for consideration in this revision petition and which has been referred for decision by the

Bench is when the building had been taken over by the Government under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as

amended by Tamil Nadu Act XXIII of 1973(hereinafter called the Act) and when the Government became a tenant as provided for in the Act,

whether the Government is liable to pay the fair rent fixed under the Act subsequent to such tenancy from the date of the commencement of the

tenancy or from the date of application for fixing the fair rent. The revision petition has been directed to be posted before a Bench by My Lord the

Chief Justice in view of the Bench decision in *George Oakes Ltd. Vs. The Chief Judge, Small Causes Court and Another*, , and that of *Ismail, J.*, in

Dr. S.S. David by Power of Attorney Agent M. Palaniappan v. State of Madras represented by District Collector, Coimbatore S.A. No. 1615 of 1969.

2. The facts of the case may be briefly stated as follows:

3. The revision petitioner, the Accommodation Controller, Madras, requisitioned

the ground floor of premises No. 3/1, Subbiah Naidu Street, Madras-7 belonging to the respondent under the Act. The rent was originally fixed at Rs. 150 per month. The tenancy commenced from 1965.

The respondent then filed a petition before the Rent Controller, (Court of Small Causes at Madras), H.R.C. No. 1458 of 1975 for fixation of fair

rent for the premises u/s 4 of the Act. The petitioner therein prayed that the rent should be fixed at Rs. 492 per month, on the ground that the plinth

area of the tenanted portion of the building which was constructed in the year 1955 was about 1,000 sq. ft. and that the building is situate in a very

busy locality in the City.

4. The revision petitioner, Accommodation Controller, resisted the claim for fixation of fair rent at Rs. 492 per month. Along with the counter-

statement the revision-petitioner filed a detailed report regarding the cost of construction as prepared by the Public Works Department. On the

basis of the said report, the revision-petitioner contended that the fair rent of the premises would come to Rs. 304.

5. The learned Rent Controller, on a consideration of the documentary and oral evidence in the case, fixed the fair rent at Rs. 245 per month, by

the order, dated 4th May, 1977. He directed that the revision petitioner should pay the fair rent of Rs. 245 from the date of presentation of the

petition. The respondent-landlord filed H.R.A. No. 302 of 1977. He directed that the revision-petitioner Act (the Court of Small Causes at

Madras). The Appellate Authority set aside the order of the Rent Controller and allowed the appeal. The Appellate Authority fixed the fair rent at

Rs. 304. The Appellate Authority further held that the fair rent fixed would become effective from the date of commencement of the original

tenancy itself subject to the law of limitation. The Appellate Authority followed the decision of Ismail, J., (as he then was) in Dr. S.S. David by

Power of Attorney Agent M. Palaniappan v. State of Madras, represented by District Collector, Coimbatore S.A. No. 1615 of 1969.

6. Aggrieved by the order of the Appellate Authority, the Accommodation Controller has filed this revision petition.

7. The revision petition was in the first instance heard by the learned Chief Justice. The learned Chief Justice on being referred to the Bench

Decision in George Oakes Ltd. Vs. The Chief Judge, Small Causes Court and

Another, , and that of Ismail, J., in Dr. S.S. David by Power of Attorney Agent M. Palaniappan v. State of Madras, represented by District Collector, Coimbatore S.A. No. 1615 of 1969, felt that the principle laid down in the aforesaid Bench decision appeared to be preferable even though, the Bench decision was rendered with reference to the Act of 1946 and in relation to voluntary tenancies.

8. Mr. Suryaprakasam, the learned Government Advocate urged two contentions: (1) The order of the Appellate Authority fixing the fair rent at

Rs. 304 is erroneous. The learned Government Advocate pleaded that the Appellate Authority should have accepted the fair rent fixed by the Rent

Controller. (2) The order of the Appellate Authority stating that the fair rent would become effective from the date of commencement of the original tenancy is wrong in law.

9. We have no doubt that the first of the contentions of the learned Government Advocate that the Appellate Authority erred in fixing the fair rent

at Rs. 304 per month is without substance. In the counter-statement filed by the Accommodation Controller before the Rent Controller he

definitely took the stand that the fair rent of the premises would be Rs. 304 per month. Along with the counter-statement the Accommodation

Controller filed a detailed report prepared by the Public Works Department regarding the cost of construction, age of the building etc., and it was

on this basis that the Accommodation Controller took the stand that the fair rent for the premises would be Rs. 304 per month. However, during

the trial revision-petitioner-tenant filed Exhibit R-1 a report prepared by R.W. 1, an engineer. This engineer admittedly was engaged by the allottee

of the Government to prepare Exhibit R-1 report regarding the cost of construction etc., for the purpose of arriving at the fair rent. The learned

Counsel for the respondent-landlord argued that since in the counter-statement the revision petitioner took the definite stand on the basis of the

Public Works Department's valuation report filed along with it, that the fair rent would be Rs. 304 per month the landlord did not bother to let in

any further evidence and was prepared to accept the fair rent as stated by the revision petitioner in the counter statement. However, it was only

after the landlord had closed his evidence that the revision-petitioner examined R.W. 1 and marked Exhibit R-1 and therefore the landlord was

effectively prevented from letting in evidence showing the correct valuation of the building and the land.

10. We are satisfied that the contention of the learned Counsel for the respondent-landlord is well founded. When the revision petitioner has filed

the valuation report prepared by the Public Works Department along with the counter-statement and taken the definite stand that as per the said

valuation report the fair rent would be Rs. 304 he could not turn round and say that the fair rent was much less and that the valuation report

prepared by the Public Works Department and filed with the counter-statement should not be accepted. The learned Government Advocate

would urge that it could be seen from Exhibit R-1 and the evidence of R.W. 1 that there were certain mistakes in the valuation report prepared by

the Public Works Department and filed with the counter-statement. Assuming that there were some mistakes in the valuation report prepared by

the Public Works Department, the revision petitioner ought to have examined the very person who prepared the report and brought out what

exactly were the omissions or commissions in the said report. By filing Exhibit R-1 which is prepared by a private engineer who is not in any way

connected with the Public Works Department and who has been engaged by the allottee himself, it cannot be shown that there were mistakes in

the report of the Public Works Department and that Exhibit R-1 represents the true state of affairs. The utmost that can be argued is that Exhibit

R-1 and the valuation report prepared by the Public Works Department and filed along with the counter-statement do not tally. The non-

examination of the officer who prepared the valuation report of the Public Works Department to show that there were mistakes in the original

report as pointed out by R.W. 1 in his report Exhibit R-1 is fatal to the case of the revision-petitioner. Further, we are not convinced that there is

any substantial mistake in the Public Works Department valuation report. We are of the view that the evidence given by R.W. 1, that since the

valuation is made with respect to the ground floor alone, the cost of water proofing and the foundation cost should be subdivided into two cannot

be accepted. The opinion of R.W. 1, that allowance should be given for locational disadvantages and the dilapidated condition of the garage is not

entitled to any weight because these cannot be considered to be any mistakes according to the valuation report of the Public Works Department.

We have therefore no doubt that the Accommodation Controller should be pinned to the Public Works Department valuation report filed along with the counter-statement. As rightly contended by the learned Counsel for the landlord-respondent the latter would have been led into a sense of false security by the stand taken by the Accommodation Controller in the counter-statement and would have been satisfied to accept Rs. 304 per month as fair rent, On this basis, he would not have let in any evidence to show that the premises would fetch higher rent by way of fair rent as claimed by him in the petition. Having led the landlord to believe that according to the Accommodation Controller the fair rent would be Rs. 304 he cannot be allowed to turn round and say at the time when his turn comes for evidence that the cost of construction of the building would be much less than what is stated in the Public Works Department valuation report and that the fair rent would be far below Rs. 304. Even assuming that it would be open to the Accommodation Controller to prove that the Public Works Department valuation report was wrong, on account of certain inherent mistakes in it, that fact should have been proved only by the very person who prepared the Public Works Department valuation report. Exhibit R-1 report and the examination of R.W. 1 will not prove that the earlier report prepared by the Public Works Department and filed along with the counter-statement contained errors. As pointed out already, it can only be said that the two reports do not tally and in view of the non-examination of the very person who prepared the Public Works Department valuation report, we have no doubt that the Accommodation Controller is bound by the Public Works Department valuation report. We are therefore satisfied that the Rent Controller was wrong in having acted upon Exhibit R-1 and fixing the fair rent at Rs. 245 and that the order of the Appellate Authority in fixing the fair rent at Rs. 304 on the basis of the Public Works Department valuation report filed along with the counter-statement is correct. We therefore confirm the finding of the Appellate Authority that the fair rent to be fixed for the premises is Rs. 304 per month.

11. Let us now take up the next contention of the learned Government Advocate that the order of the Appellate Authority holding that the fair rent would become effective from the date of commencement of the original tenancy is wrong in law. The Act contains a scheme enabling the

Government to obtain possession of any premises if the Government should require the premises for the occupation of a servant of the Government or of any local authority or of any public institution under the control of the Government, Section 3(1) of the Act states that notice of vacancy under stated circumstances should be given by the very landlord to the authorised officer authorised in that behalf by the Government within seven days after the building becomes vacant. Section 3(2) of the Act enjoins that every tenant who ceases to occupy the premises or whose tenancy gets terminated should give notice of the vacancy in writing to the authorised officer within seven days of the occurrence of the event. Section 3(3) of the Act provides that within ten days of the receipt by the authorised officer of a notice from the landlord under Sub-section (1) or subsection (2), the Government or the authorised officer should intimate to the landlord in writing whether the building is or is not required for the purposes of the State or Central Government or of any local authority or of any public institution under the control of any such Government or for the occupation of any officer of such Government. If no such intimation is given the landlord shall be at liberty to let the building to any tenant or to occupy it himself. u/s 3(4) where intimation is given under Sub-section (1), the landlord shall not let the building to a tenant or occupy it himself, or use or permit the use of the building in any manner by any other person before the expiry of the period of ten days specified in Sub-section (3), unless in the meantime he has received intimation from the authorised officer that the building is not required for the purposes or for occupation by any of the officers specified in that sub-section.

12. Section 3(5) states:

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 and the fixtures and fittings in or on the buildings, in good tenantable repairs and condition, to the authorised officer, or to the allottee named by the authorised officer, as the case may be, and the 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 subsection (2), the terms of the tenancy being such as may be agreed upon between the landlord and the tenant and in

default of an agreement, as may be determined by the Controller.

Provisos 1 and 2 to Section 3(5) of the Act are not relevant for our present purpose. Provisos 3 and 4 which are relevant and most important for

our purpose are as follows:

Proviso No. 3. Provided also that the rent payable shall be the fair rent, if any, fixed for the building under the provisions of the Act; and if no fair

rent has been so fixed, such reasonable rent as the authorised officer may determine, in such manner as may be prescribed

Proviso No. 4 : Provided also that the reasonable rent fixed by the authorised officer under the foregoing proviso shall be subject to such fair rent

as may be fixed by the Controller.

13. From a perusal of Section 3(5) the following points emerge. When once the authorised officer or the Government intimates the landlord that

the building is required for any of the purposes mentioned in Sub-section (3), the landlord shall deliver possession of the building in good condition

to the authorised officer or to the allottee named by the authorised officer. When once such possession is delivered to the authorised officer or the

allottee named by the authorised officer, the Government shall be deemed to be the tenant of the landlord. The tenancy will date back

retrospectively to the date on which the authorised officer received notice under Sub-section (1) or (2) of Section 3. The terms of the tenancy may

be settled between the landlord and the tenant, viz., the Government acting through the authorised officer. If there is no agreement, the terms of the

tenancy may be determined by the Controller. The third proviso makes it clear that the rent payable by the Government shall be the fair rent fixed

for the building under the provisions of the Act. In case no fair rent had already been fixed for the building under the act, the authorised officer is

empowered to determine a reasonable rent in the manner prescribed therefor. The fourth proviso makes it clear that such reasonable rent as may

be fixed by the authorised officer under the third proviso shall be subject to such fair rent as may be fixed by the Controller. In this connection, it

may be stated that Section 4 of the Act empowers the Controller to fix the fair rent of a building on an application made by the tenant or landlord

of a building and after holding an enquiry in that behalf. It also sets out the principles on the basis of which the fair rent has to be fixed. In other

words, Section 3 itself provides that fair rent shall be the actual rent payable by the Government to the landlord for the building that is requisitioned by the Government, for any of the purposes mentioned in Section 3(3) of the Act. The fixation of a reasonable rent by the Authorised Officer in such cases where no fair rent has already been determined under the provisions of the Act, shall only be tentative and not final and depended on the determination of the fair rent, u/s 4 of the Act. That no finality or conclusiveness will be attached to the reasonable rent that may be fixed by the authorised officer in the first instance is expressly made clear by the words "subject to" used in the fourth proviso to Section 3(5). That being the position, when once fair rent is determined u/s 4, it must relate back to the date of tenancy which according to Section 3(5) will be the date on which the authorised officer received notice of vacancy u/s 3(1) or 3(2). This is so because under the third proviso the rent payable by the Government shall be the fair rent. Therefore, on the language of Section 3(5) read with third and fourth provisos, the only inference that can be drawn is that the fixation of fair rent by the Controller in cases where there has been no such fixation at the time of the commencement of the tenancy and therefore only a reasonable rent has been fixed by the authorised officer will take effect from the date of the commencement of the tenancy. Mr. Suryaprakasam, learned Government Advocate referred to the proviso to Section 7(k)(b) and stated that by virtue of the proviso the landlord will be entitled to fair rent only from the date of application for fixation of fair rent. This proviso is not applicable to the question that is now being considered. This proviso will come into play only when the fair rent that is fixed by the Controller is less than the agreed rent between the parties at the commencement of the tenancy. In such cases, it will become necessary for the landlord to refund the excess amount received by him by way of rent over and above the rent fixed as fair rent u/s 4, When such a claim for refund is made by the tenant or if the tenant claims an adjustment of the excess amount against the advance amount already lying with the landlord, the proviso will intervene. Under the proviso the claim for refund or adjustment shall be limited to the amount paid in excess for the period commencing on the date of application by the tenant or landlord under Sub-section (1) of Section 4 or Sub-section (3) of Section 5, as the case may be, and ending with the date of such fixation or

refixation. It is therefore very clear that this proviso does not apply to a case where the fair rent fixed by the Controller is higher than the agreed

rent at the commencement of the tenancy or the reasonable rent fixed by the authorised officer u/s 3(5) and when the landlord will be entitled to

claim the difference in rent consequent upon the fixation of fair rent. In fact, Section 3(5) itself contains an explanation the language of which is

more or less similar to the proviso to Section 7(1)(b) which is to the following effect:

Where before the fixation of fair rent, rent has been paid in excess thereof, the refund or adjustment shall have retrospective effect from the date on

which the Government shall be deemed to be the tenant of the landlord, provided the application for fixation of fair rent, is made within a period of

ninety days from such date; where such application is made after the said period of ninety days, the refund or adjustment shall be limited to the

amount paid in excess for the period commencing on the date of application by the tenant or landlord for the fixation of fair rent and ending with the

date of such fixation.

Two results flow from this Explanation. If the application for fixation of fair rent is made within a period of 90 days from the date on which the

Government shall be deemed to be the tenant of the landlord and if the fair rent fixed is higher than the reasonable rent fixed by the authorised

officer, the fixation of fair rent will have retrospective effect and take effect from the date of commencement of tenancy. But if the application for

fixation of fair rent is made after a period of 90 days from the date on which the Government would be deemed to have become a tenant of the

landlord the fixation of fair rent will not have retrospective effect but will have effect from the date of application for fixation of fair rent filed either

by the tenant or the landlord. Now this Explanation also deals with cases of refund or adjustment of excess rent paid and the question of

adjustment or refund of excess payment made will arise only in cases where the fair rent fixed by the Controller at the instance of either the

landlord or the tenant is lower than the reasonable rent fixed by the authorised officer. Therefore, neither the proviso to Section 7(1)(b) nor

Explanation to Section 3(5) which is relevant for our present purpose is applicable to a case where the landlord is entitled to claim excess amount

by way of rent from the Government when the fair rent fixed by the Controller is higher than the reasonable rent fixed by the authorised officer.

14. The learned Government Advocate then argued that the same principle that is contained in Explanation to Section 3(5) of the Act must be

applied to cases where as a result of the fixation of fair rent the landlord has to get excess amount from the Government by way of rent. If the same

principle is applied, then the landlord would be able to recover the fair rent only from the date of the application for fair rent and not from the date

of commencement of the tenancy. If the same principle is not applied, then the landlord may come with an application for fixation of fair rent, after

a lapse of a long period and if he gets the fair rent fixed at a figure much higher than the reasonable rent fixed by the authorised Officer, the tenant

would be called upon to pay a huge amount by way of arrears and this would cause great inconvenience and hardship to the tenant. Therefore, to

avoid such inconvenience and hardship the principle in Explanation to Section 3(5) may also be extended in a case where as a result of fixation of

fair rent the landlord has to get excess amount from the Government by way of rent. The answer to the above contention of the learned

Government Advocate is that it is not the function of the Court to read into an Act a definite provision of which the Act itself is silent. Here is a

case of casus omissus: Maxwell on Interpretation of Statutes, Tenth Edition, page 13, has observed as follows:

It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar

adequate grounds to justify the inference that the legislature intended something which it omitted to express... A case not provided for in a statute is

not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently to have

been unintentional.

15. Craies on Statute Law, 6th edition at page 70 states:

Logical corollary of the rule of plain meaning or literal construction is that a statute may not be extended to meet a case for which provision has

clearly and undoubtedly not been made.

16. Crawford has observed thus in his "Construction of Statutes", 1940 edition at page 269:

Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute.

17. The Privy Council in *Crawford v. Spooner* (1846) 6 Moore P.C. 1, has observed thus:

The Court cannot aid the legislature's defective phrasing of an Act or add and amend or by construction make up deficiencies which are left in the Act.

18. Lord Halsbury in *Commissioner for Special Purposes of Income Tax v. Pemsel* (1891) A.C. 531, has observed:

It is not competent to any Court to proceed upon the assumption that the legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said.

19. In *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 it has been observed:

Even where there is *casus omissus*, it is for others than the Courts to remedy the defect.

20. In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, it has been stated thus:

It is certainly not the duty of the Court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of an Act.

21. In *G. Narayanaswami Vs. G. Pannerselvam and Others*, the Supreme Court stated the dictum in the following words:

The omission by the Constitution-makers or by Parliament to prescribe graduation as a qualification of the candidate for the graduates"

constituency is deliberate and the Court cannot infer such a qualification as necessary by resorting to a presumed legislative intent as it would

amount to adding it to those expressly laid down which is not generally

permissible.

22. In *Dhoom Singh Vs. Prakash Chandra Sethi and Others*, , the doctrine has been succinctly stated by the Supreme Court in the following

words:

The legislature in its wisdom has chosen to make special provisions for the continuance of the election petition only in case of its withdrawal or

abatement. It has yet not thought it fit to make any provision in the Act permitting intervention of an elector of the Constituency in all contingencies

of failures of the election petition either due to the collusion or fraud of the original election petitioner or otherwise. It is not necessary for this Court

to express any opinion as to whether the omission to do so is deliberate or inadvertent. It may be a case of *casus omissus*. It is a well-known rule

of construction of statutes that a statute, even more than a contract, must be construed *ut res magis valeat quam pereat* so that the intentions of the

legislature may not be treated as vain or left to operate in the air. A second consequence of this rule is that a statute may not be extended to meet a

case for which provision has clearly and undoubtedly not been made.

23. In the light of these principles, it is not possible for us to extend the principle contained in Explanation to Section 3(5) of the Act to a case

where the landlord has to get excess amount consequent on the fixation of fair rent by the Controller and hold that such fair rent would be effective

only from the date of application for fair rent and not from the date of tenancy. Therefore, we reject this contention of the learned Government

Advocate.

24. The argument of the learned Government Advocate based on inconvenience and hardship also has no substance. Only in a case where the

language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the

enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which

modifies the meaning of the words, and even the structure of the sentence, *Firm Amar Nath Basheshar Dass Vs. Tek Chand*, , it is observed thus:

The Courts are not concerned with the policy of the legislature or with the result, whether injurious or otherwise, by giving effect to the language

used nor is it the function of the Court where the meaning is clear not to give

effect to it merely because it would lead to hardship.

In Shivamurti Vs. Vijaysing Vinayakrao Dudhe, , it is observed thus:

Considerations like hardship cannot affect the construction of a statutory provision when the intention of the legislature is manifest from the language used in and the tenor of the enactment. It is a platitude that hard cases make bad law. In such cases, the remedy, if any, lies with the legislature and not with the Court which must interpret an enactment as it stands. Therefore, we reject the argument based on inconvenience and hardship.

25. Ismail, J. (as he then was), in Dr. S.S. David by power of Attorney Agent, M. Palaniappan v. State of Madras represented by District

Collector, Coimbatore S.A. NO. 1615 of 1969, was also confronted with the identical question. The learned Judge after referring to the two

provisos to Section 3(5) has observed thus:

In my opinion, the expression "subject to such fair rent" clearly contemplates that, the reasonable rent fixed by the authorised officer is only

provisional and is liable to be changed as a result of fixation of fair rent. There can be no doubt whatever that the words "subject to" has an

overriding effect. The expression destroys the finality of the reasonable rent fixed by the authorised officer and replaces the same by the fair rent,

fixed by the Controller on an application if filed by either party to the transaction. If and when an application is filed in this behalf and the Controller

fixed the fair rent, the question is with effect from what date that fair rent will become payable. There is absolutely no indication in the statutory

provisions extracted above to show that the fair rent will become effective either from the date of such fixation or from the date of filing of an

application for fixation of fair rent, except in the case covered by the Explanation. Unless the statute has expressly provided that the fair rent fixed

under; the provisions of the Act will be effective from the date on which such fair rent was fixed finally by the authorities constituted under the Act,

it is impossible to import into the proviso the notion of the fair rent being payable only from the date of such fixation. Equally, there is nothing in the

proviso to indicate that such fair rent will become payable only from the date of filing of an application for fixation of fair rent... I am clearly of the

opinion that the fair rent fixed pursuant to the proviso to Section 3(5) will become effective from the commencement of the tenancy itself and does

not become effective only from the date of the application.

The learned Judge after referring to Explanation to Section 3(5) has further observed:

The legislature took care to restrict the period for which the refund or adjustment can be made, where the rent already paid is in excess of the fair

rent fixed. But it did not seek to make any such provision where the rent already paid is less than the fair rent fixed. Therefore, so long as the

legislature has not made any specific provision to meet such a contingency, it is not for the Court to supply the omission and to infer by implication

that that would have been the object or intention of the legislature. Simply as a matter of construction of the relevant proviso I am of the opinion

that, whenever fair rent is fixed pursuant to the proviso, that fair rent becomes effective from the date of commencement of the tenancy itself,

subject to the exception in the case where the rent fixed happens to be less than the rent already paid as the reasonable rent fixed by the authorised

officer, which exception is covered by the Explanation.

We have already come to this conclusion by reference to the relevant provisions of the statute independently of the reasoning of Ismail, J. We are

therefore in agreement with the dictum laid down by Ismail, J. in *Dr. S.S. David by Power of Attorney Agent M. Palaniappan v. State of Mysore*

represented by District Collector, Coimbatore S.A. No. 1615 of 1969. No doubt in the Bench decision in *George Oakes Ltd. Vs. The Chief*

Judge, Small Causes Court and Another, , it has been held that where a landlord or tenant applies for fixation of fair rent under the provisions of

the Act and fair rent is fixed, the fair rent so fixed will become effective from the date of the application filed therefore and not from the date of the

order of the authorities constituted under the Act. The Bench decision dealt with a situation where the landlord had applied for fixation of fair rent

where the property had been let out under private treaty and the learned Chief Justice was concerned with the interpretation of Sections 4 and 7 of

the Madras Act XV of 1946. Naturally therefore the learned Judges in the Bench decision had no necessity to deal with the question of fixation of

fair rent between the landlord and the Government when the latter requisitioned the building under the Act and therefore that question was not

considered. In the circumstances, the principle laid down in the Bench decision is

not applicable to the present case.

26. We therefore hold that the fair rent fixed pursuant to the provisos to Section 3(5) of the Act will become effective from the date of

commencement of the original tenancy itself subject to the law of limitation regarding the recovery of excess, where the fair rent fixed is more than

the reasonable rent fixed by the authorised officer. Where the fair rent fixed is less than the reasonable rent fixed by the authorised officer, then

Explanation to Section 3(5) would be attracted and the recovery of the excess amount or adjustment of the same shall be governed by the terms of

the Explanation.

27. In the result, there are no merits in the revision petition and the same is dismissed. However, there will be no order as to costs.