

(1958) 11 MAD CK 0012
In the Madras High Court

The Union of India (UOI)

APPELLANT

Vs

V.M.P. Swami

RESPONDENT

Date of Decision : 14-11-1958

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 7(2)(b), 7(2)(iii)

Citation : (1959) 72 LW 568 : (1960) 1 MLJ 62

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition by the Union of India for revising and setting aside the order of the District Judge, South Arcot,

in C.M.P. No. 468 of 1957, who had dismissed that revision petition and confirmed the order of eviction passed against the petitioner by the

Appellate Authority, the Subordinate Judge of Cuddalore, who had reversed the order of the Rent Controller who had dismissed the eviction

petition in limine as not maintainable in view of a Government Order.

2. The facts were briefly these : The petitioner took House No. 133, Hospital Road, Villupuram, from the landlord, Swami, the respondent herein,

for running an office of the Telegraph Department. The original tenancy agreement was only to run the Office. But later on, the petitioner wanted to

instal a telephone repeater-station in the premises. In spite of the objection of the respondent to the installation of that heavy machinery the

repeater-station was installed in the premises, and this old house had several holes dug in the walls and floor for the installing the repeater-station

and putting underground cables. There was also much vibration resultant on the installation of the repeater-station, and the respondent complained

of serious damage to his old building. Finally, by his letter Exhibit B-1, dated 28th July, 1954, the respondent, who said that he wanted the building for his own use, added that he expected at least a reasonable enhanced rent because of the installation of the repeater and the putting of the house to a different and more wearing use, but left the enhanced rent to be fixed by the Divisional Engineer himself. The Divisional Engineer, however, replied that the holes made in the walls and floor would be closed when the department vacated the building, but that no enhanced rent would be paid, as demanded. This he intimated by his letter Exhibit B-3, dated 30th July, 1954.

3. The landlord then filed H.R.C. No. 62 of 1954, under Sections 7(2)(b) and 2(iii) of the Madras Buildings (Lease and Rent) Control Act, for evicting the petitioner on various grounds, the principal of which were that the building was not used for the purpose for which it was leased but was being used for a different and unauthorised use, and that he wanted the building for his own occupation. The Union of India contested the petition vigorously, urging that under G.O. Misc. 2472(Development), dated 14th May, 1948, buildings taken on lease by the Central Government were exempted from the operation of Section 7(2) and (3) of the Act, and, so, the petition for eviction was not maintainable. The Rent Controller agreed with this contention and dismissed the petition in limine without costs, and did not go into the merits.

4. The landlord took the matter in appeal. The Appellate Authority, the Subordinate Judge, Cuddalore, held that the petition, was maintainable because G.O. No.2472 dated 14th May, 1948, was illegal and ultra vires, as the exemption in it was a truncated one, injurious to the subject as it did not also cover Section 7(1) of the Act and it, therefore, illegally barred the remedy of the landlord to apply for eviction under; the Transfer of Property Act, in addition to barring his remedy under the Rent Control Act. He relied on the ruling of Rajagopala Ayyangar, J., in *Govindaraja Mudaliar v. State of Madras* (1955) 1 M.L.J. 492, in support of his view. Therefore, he held that the petition was maintainable, and going into the merits, held that as the building originally let out for purely office purposes had been unauthorisedly converted into other uses, like the installation of a repeater-machine and its accessories, digging holes in the walls and floor, and causing endless vibrations and damage to this old building, the

tenant had rendered himself liable to be evicted, especially as the value and the utility of the building were likely to be impaired materially. So, he set aside the order of dismissal passed by the Rent Controller and directed the eviction of the petitioner, but granted two months' time to the petitioner for vacating the premises. He directed the petitioner to pay the landlord Rs. 25 as costs in the appeal, besides Rs. 25 as costs in the petition before the Controller.

5. The petitioner took the matter in revision to the District Judge, South Arcot. The learned District Judge, after discussing the matter once more, agreed with the view of the Appellate Authority regarding the maintainability and the merits and dismissed the Revision Petition with costs, including an advocate's fee of Rs. 25. The petitioner has thereupon filed this Revision Petition.

6. I have perused the records, and heard the learned Government Pleader, for the petitioner, and Mr. T. Venkatadri, the learned Counsel for the landlord-respondent. The learned Government Pleader raised several contentions. The first was that G.O. No. 2472 was wrongly held by the Appellate Authority and the District Judge to be ultra vires and that the ruling of Rajagopala Ayyangar, J., in *Govindaraja Mudaliar v. State of Madras* (1955) 1 M.L.J. 492, would have no application to the facts of this case as the exemption here was also u/s 7(3) though Section 7(1) was not covered by the exemption. I see no point in this. In my opinion, the above ruling of Rajagopala Ayyangar, J., will apply to this case also, as even here, the landlord's remedy under the Transfer of Property Act would be barred by the Government Order as the exemption is not also u/s 7(1). There is no power given to the Government to debar a person from taking advantage of the provisions of the Transfer of Property Act by such a truncated exemption and so, when this Government Order took away the remedy of the landlord under the Transfer of Property Act, in addition to barring his remedy under the Rent Control Act, it was doing an illegal thing. In that view, the Appellate Authority and the learned District Judge were both right in holding that the petition of the landlord was maintainable.

7. The next contention of the learned Government Pleader was that the installation of the repeater with its accessories would not be diversion of the

original purpose for which the house was taken on rent, viz., running an office there, to another purpose different from it and not agreed to by the landlord. I cannot agree. A mere office with no machine in it more terrible than a typewriter is quite different from what this house has been converted into with this heavy repeater-machine and its accessories, and cables and vibrations and consequent damage. Indeed, the officers of the department were well aware of it, and that is why they sought the landlord's permission and claimed to have got it, though really the correspondence shows that it was not got. The changed use of the building certainly would impair the value and the utility of the building to some extent. Even, if it did not do so, it would amount to using the building for purposes other than those for which it was leased out, and that would be sufficient to sustain the order of eviction, if the landlord's permission was not proved to have been given. Else, a man can rent out a house for locating his office and later on move his workshop and machinery into it.

8. The next contention of the learned Government Pleader was that the landlord had really agreed to the changed use of the building. He relied on

Exhibit B-2, dated 26th July, 1954, wherein the Divisional Engineer says:

In the personal discussion we had, you stated, that you would have no objection to installation of the equipment in the room occupied by the

S.D.O.T. so long as no structural alterations were made.

9. The landlord stoutly denied the truth of this, and, in Exhibit B-1, dated 28th July, 1954, wanted the rent to be substantially enhanced if he were

to agree to the changed use of the building. So, it was, at best, only a conditional agreement. In Exhibit B-3, dated 30th July, 1954, the Divisional

Engineer says:

I am very thankful to you to have agreed for the temporary installation of the carrier equipment. Your contention that the proposed installation was

not contemplated in our tenancy agreement is not correct.

The inference is irresistible that the two were talking at cross-purposes. The landlord did not agree to the alteration unless the rent was substantially

enhanced, and did contend that the proposed installation was not contemplated in the tenancy agreement. The Divisional Engineer took the

conditional consent of the landlord to the installation, on payment of increased rent, to be an unconditional agreement to the installation. So, this

argument too will not avail the learned Government Pleader. Of course, the landlord's courteously leaving the quantum of the enhancement of rent

to the Divisional Engineer will not enable that officer to refuse all enhancement of rent and call it an exercise of his discretion.

10. Then the learned Government Pleader said that the petitioner was running an essential service in this building and so eviction should not have

been ordered. I agree with the learned District Judge that a Telegraph Office will not be covered by the exemption. Nor will the illegal Government

Order confer such exemption.. The essential nature of the office may only justify grant of a reasonable time for removing the elaborate machinery

installed in the premises to another building either rented out by the petitioner, or newly constructed by the petitioner, or for the purpose of taking

acquisition proceedings regarding this very building if so advised. A second repeater-machine has been installed since the filing of the Civil Revision

Petition according to Mr. Venkatadri increasing the vibration and the crack on the wall and the damage. Further installation is prevented in C.M.P.

No. 4806 of 1958.

11. In the end, therefore, I confirm the order of eviction passed by the learned District Judge and the Appellate Authority and dismiss the Civil

Revision Petition with costs.

12. Then the learned Government Pleader requested for the two years' time to vacate the premises, as there is elaborate machinery there, part of

an essential service, and it has to be removed carefully to a suitable building to be rented out by the petitioner, or to be constructed by the

petitioner, unless the petitioner decides to acquire the present building under the Land Acquisition Act, which also will take some considerable

time. Mr. Venkatadri strongly objected to the grant of any time in view of the delay which has already occurred, and the grant of three months time

already, despite his objection, by the learned District Judge in I.A. No. 40 of 1958. He said the utmost time I should grant should be three months

and that too on condition of the petitioner's paying enhanced rent as the building is being used for purposes other than those for which it was taken

on lease and a lease for these purposes would fetch a higher rent. I consider that the just and reasonable order to pass, in the circumstances, is to

give the petitioner, the Union of India, one year's time from today to vacate the

premises for the reasons urged by the learned Government Pleader (public interests require it) subject to rent from today being paid by the petitioner at the rate of Rs. 150 per month, against the present rent of Rs. 100 under the agreement. It is obvious that such an extraordinary indulgence, like granting time for one year in this already long-drawn-out case, must be saddled with stringent terms,, especially when the building is continued to be put to a use different from the use for which it was taken on lease, in the face of the opposition of the landlord, who was agreeable to such different use only if substantially enhanced rent was paid. It is obvious also that when a building is put to an industrial or quasi-industrial use, a greater rent will be got. A shop will always fetch a greater rent than a house. So too, a building where a repeater machinery is installed than a house used as a mere office. A small plot leased out for a petrol-bunk will fetch ten times the normal rent. I feel no compunction in granting the extraordinary time of one year to the petitioner in view of the enhanced rent I am directing and the difficulty the petitioner will have to find a suitable building in that place to remove this complicated machinery so essential for the public. After all, the landlord's real cry in Exhibit B-1 was. for enhanced rent. At the request of the Government Pleader, I make it clear that the Union of India need pay the enhanced rent at Rs. 150 per month from today, only till they vacate the premises. If they vacate the premises in six months or seven months from now, they need not pay any rent at all thereafter, much less the enhanced rent, though they must vacate the premises within a year from today on pain of eviction proceedings being taken out by the landlord through Court.

13. Mr. Venkatadri urged that I should also provide for damages, especially as the petitioner has installed one more repeater and is trying to instal some unknown, and mysterious machinery in this building for the Geophysical Year and that this machinery may blow up the building or cause it to fall down. The learned Government Pleader denied the reality of any such fear, and said that if such catastrophe happens, by any action of the petitioner, the landlord will, of course, have his remedy under the ordinary law to claim damages but that if this old building falls down from sheer old age, like an old man dying, or from earthquake, flood or other cause beyond the petitioner's control, the landlord will not get any damages. I

need not discuss this question further, as it is not very germane to this petition, and the diabolical instruments apprehended by the landlord as likely to be installed have not so far been installed in that building, and cannot be installed hereafter in view of my order in C.M.P. No. 4806 of 1958.