
(1950) 02 MAD CK 0001

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 8910 of 1949

V. Somasundara Mudaliar and Another

APPELLANT

Vs

The Madras Provincial Co-operative Marketing Society Ltd.
and Another

RESPONDENT

Date of Decision : 20-02-1950

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1946 — Section 7(2)

Citation : AIR 1950 Mad 711 : (1950) 63 LW 610 : (1942) 55 LW 610

Hon'ble Judges : Rajamannar, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : V. Ramaswami Aiyar and T.K. Rajagopalan, for the Appellant; R. Ganapathi Aiyar, for K.S. Narayana Aiyar, for the Respondent

Judgement

Rajamannar, C.J.—The main facts which have led to this application are not in dispute. The premises in question belonged to the second

petitioner, V. Sridharan who during his minority was represented by his mother and guardian Navaneethammal. It was only acting as guardian of

his son that she let the building to the contesting respondent before us. Admittedly a portion of the premises was sub-let in October 1947. It was

also admitted that this sub-letting was done without the written consent of Navaneethammal, the only person who could have at that time given

such consent on behalf of the owner, her son. The property was transferred to petitioner 1 before us on 17th February 1949. On 1st April 1949

the contesting respondent attorned to plaintiff-petitioner 1. An application was filed both by the vendor and the purchaser for eviction on the

ground that a part of the building had been sub-let after the commencement of the Act without the written consent of the landlord. The Rent

Controller passed an order of eviction but on appeal the appellate authority, the Court of Small Causes, reversed the decision of the Rent

Controller and dismissed the petition for eviction as not maintainable on two grounds (1) that as the sub-letting had taken place when the

ownership of the premises was with the vendor, the purchaser could not take advantage of that fact and make it the basis of an application for

eviction and (2) that the sub-letting was done with the consent and approval of the Accommodation Officer. Mr. Ganapathi Aiyar who appeared

for the contesting respondent fairly and properly conceded that the approval of the Accommodation Officer can at best show that the action of his

client had been bona fide, but cannot furnish him with any legal support. The only question, therefore, which falls for decision is whether when the

sub-letting has admittedly taken place after the commencement of the Act, without the written consent of the then landlord, that is, the landlord at

the time of such sub-letting, a subsequent purchaser can avail himself of that sub-letting and file a petition for eviction. It is contended by Mr.

Ganapathi Iyer for the respondent that as the Act was a special enactment and as it was self-contained, general notions prevailing in respect of the

relationship between landlords and tenants should not be imported into a construction of the provisions of the Act. We agree. We do not agree

with him that construing the language of the material provisions of the Act in a reasonable manner, anything compels us to hold that a subsequent

purchaser cannot take advantage of the action of the tenant before his purchase. The argument on behalf of the respondent was that the landlord

whose written consent would save the tenant from the consequences of sub-letting after the commencement of the Act would be the landlord who

has actually filed an application for eviction. In this case, the purchaser was the landlord who had filed the application. He could not have possibly

given his written consent to the sub-letting which took place long prior to his purchase. It follows that the present landlord cannot rely up an the

sub-letting which took place before the date of his purchase. So the argument ran. We fail to see why we should construe the plain language of the

provisions of Section 7, Sub-section (2), Clause (ii) (a) in such a manner as to lead to this absurdity. No doubt the landlord who is seeking eviction

must satisfy the controller that the tenant has done one or other of the things mentioned in the several clauses in Sub-section (2) of Section 7. One

of such things is that the tenant has after the commencement of the Act transferred his right under the lease or sub-let the entire building or any portion thereof. There is nothing from which it can be urged with any force that the transfer or sub-letting must have been made not merely after the commencement of the Act but also after the date on which the petitioning landlord became a landlord. According to the definition, the term "landlord" would include both the vendor and the purchaser. It appears to be an unreasonable construction to confine the rights of the landlord to rights which accrued to him only after he became a landlord. In the clause "without the written consent of the landlord," the obvious reference is to the landlord at the material time who could have given his written consent, that is to say, the landlord at the time of the alleged transfer or sub-letting. If such landlord had given his written consent, then, of course his successor or his assignee would be bound by that consent. He cannot be heard to say that after the accrual of rights in his favour the tenant had again to obtain his written consent. The respondent's learned counsel's other argument that the relationship of landlord and tenant between petitioner 1 and his client commenced only from 1st April 1949 and that after that date there has been no sub-letting is only the above argument put in another way and therefore need not be dealt with separately.

2. Learned counsel also sought to contend that as Navaneethammal who let the respondent into possession continued to treat the respondent as a tenant, even after he had sub-let a portion of the premises without her written consent she lost the right which was conferred on her u/s 7, Sub-section (2), Clause (ii) (a), and therefore, petitioner 1 did not obtain by reason of the transfer in his favour any right to take advantage of the sub-letting. Here again, we must observe that there is nothing in the Act itself which permits the tenant to defeat an application for eviction, when one or other of the conditions specified in Section 7 Sub-section (2) is satisfied, for reasons not mentioned in the enactment.

3. Mr. Ganapathi Aiyar referred us to a decision of the Queen's Bench in *Cohen v. Tannar*, 1900 2 Q. B. 609: 69 L. J. Q. B. 904, but we do not think it useful to discuss the general law on the subject as he very properly conceded that the general law would not prevail over the specific enactment.

4. There was also another aspect of the matter which was not very much pressed but which we may notice and that is that what Section 7, Sub-section (2), Clause (ii) (a) contemplates is a sub-letting for the first time after the commencement of the Act. It was said that if a portion of the premises was being sub-let prior to the commencement of the Act, the fact that there was a change in the sub-tenants would not make the sub-letting one after the commencement of the Act. A similar argument was rejected by this Court on a prior decision. Following our ruling in the prior case, we refuse to accept the same argument in this case.

5. The order of the appellate authority is vitiated by patent errors of law in respect of both the grounds which form the basis of the order. The order is therefore quashed. Time to vacate three months from today.