

(1984) 07 MAD CK 0044
In the Madras High Court
Case No : Writ Petition 6674 of 1984

V.K. Joseph

APPELLANT

Vs

State of Tamil Nadu, Madras and Others

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Constitution of India, 1950 — Article 245
Presidency Small Cause Courts Act, 1882 — Section 19
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 2, 2(3)

Citation : AIR 1985 Mad 116

Hon'ble Judges : S. Natarajan, J

Bench : Single Bench

Advocate : K.V. Padmanabhan, for C. Jose Ukkar, for the Appellant; P. Srinivasan, for the Respondent

Judgement

S. Natarajan, J.—A peep into a statute, a look at the Constitution and off to Court may appear to be a good enough formula for the

petitioner to file a petition under Art. 226 of the Constitution, but not to the Court, because it will not issue rule nisi on the basis of scanty material.

2. After the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act) has been on the statute book for nearly

a quarter century, the petitioner herein, who is facing an action for eviction filed by the owner of a building for non-payment of rent, claims to have

discovered a constitutional flaw in S. 2(3) of the Act and a statutory contravention in S. 18(l) of the Act. As stated earlier, the owner of a building

in the occupation of the petitioner has filed a petition in R.C.O.P. 3069 of 1983 on the file of the Rent Controller (VIII Judge, Court of Small

Causes, Madras) on the ground of wilful default in payment of rent. The petitioner's defence would appear to be that he has not committed any

default in payment of rent and his occupation of the building is referable to an agreement of sale and part performance thereof.

3. Even before that case has been taken up for trial, the petitioner has come to this Court praying for the issue of a writ of prohibition to prohibit

the Rent Controller (2nd respondent) from hearing and disposing of the petition under the Rent Control Act. According to the petitioner, Sec. 2(3)

of the Act, empowers the Government to appoint "any person" as a Controller under the Act and the conferment of such sweeping powers on the

Government without prescription of qualifications for the person to be appointed as Controller amounts to conferment of arbitrary and unguided

powers on the Government. The second contention is that under the Presidency Small Cause Courts Act, 1882, a Judge of a Small Cause Court,

has no jurisdiction to entertain a suit for recovery of immovable property. But in violation of this provision, the second respondent has been

conferred with powers of eviction under the Act.

4. Both these contentions have to be rejected at the threshold itself because of the patent fallacy contained in them. Sec. 2(3) of the Act which

defines the term "Controller" reads as follows -

"Controller" means any person appointed by the Government, by notification, to exercise the powers of a Controller under this Act for such area

as may be specified in the notification.

No doubt, a reading of the sub-section in isolation would suggest an inference that any man, woman or child living on earth may be appointed by

the Government by notification to exercise the powers of a Controller. Thus, reading the sub-section with blinkers and then straightway jumping to

the provisions of the Constitution, the petitioner would raise an argument that Sec. 2(3) of the Act confers arbitrary powers on the Government

and is, therefore, violative of the Constitution. The fallacy contained in the petitioner's argument lies in his attempt to construe the words "any

person" in isolation.

5. Before the words contained in a statutory provision are construed, the Act must be viewed in its entire conspectus and the object of the Act as

well as all relevant provisions must be taken into account. Seen in that manner, it may be noticed that the preamble of the Act sets out that it is -

an act to amend and consolidate the law relating to the regulation of the letting

of residential and non-residential buildings and the control of rents

of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu"".

6. Then, it has to be pointed out that the Act contemplates two kinds of authorities. (1) Rent Controller, and (2) Authorised Officer. Whenever a

vacancy arises of a premises attracting the provisions of the Act, a notice of vacancy has to be given by the landlord to the Authorised Officer

under Sec. 3. In respect of Government tenancies, a landlord can approach the Authorised Officer for seeking recovery of possession of the

building for carrying out repairs or for demolition and reconstruction (S. 12), and under S. 13 the Authorised Officer can call upon the landlord to

redeliver the possession of the building, if he has not carried out the repairs or demolished a substantial portion of the premises.

7. In so far as the Controller is concerned, he has been granted the following powers under the various provisions of the Act. Sec. 4 fixation of fair

rent; Sec. 5 effecting change in fair rent; Sec. 10 passing an order of eviction against a tenant/subtenant, on grounds of wilful default in payment of

rent; unauthorised subletting; putting the building to a different user; committing acts of waste; conviction in a criminal court for, user of the building

for immoral or illegal purposes, causing nuisance to the occupiers of, other portions of the building or adjacent buildings; failure of the tenant to

occupy the building for a continuous period of four months without reasonable cause and denial of title of the landlord without bona fide grounds or

claiming a right of permanent tenancy. The proviso to S. 10(I) lays down that if there is a bona fide dispute of title raised by the tenant regarding the

property, the Controller has to record a finding to that effect and then to direct the landlord to approach the civil court for a decree for eviction.

Sec. 14(I)(a) of the Act empowers a Controller to pass an order of eviction, where the landlord bona fide requires the building for effecting repairs

and S. 14(I)(b) empowers a Controller to order eviction where the landlord requires the building for the purpose of demolition and reconstruction.

Ss. 15 and 16 confer right on the Controller to redeliver possession of the leased property to the tenant, if the landlord commits default in effecting

repairs or demolition of the building as the case may be. Under S. 17, the Controller can pass orders for restoration of amenities to tenants. Sec.

18 lays down that orders passed against a tenant under Ss. 10 and 14, on the one hand, and against the landlord under Ss. 15, 16 and 17, on the

other, can be executed by the Rent Controller, as if the order is one passed by a civil court and for the purpose of execution, the Controller shall

have all the powers of a civil court. We then come to an important provision, viz., S. 20, which reads as follows -

Orders of Controller to be pronounced in open court - Every order passed by a Controller under this Act shall be pronounced in open court on

the day on which the case is finally heard, or on some future day of which due notice shall be given to the parties -

All orders passed by the Rent Controller are subject to appeal under S. 23 and all orders passed by the appellate authority are subject to further

scrutiny by the High Court in exercise of revisional powers under S. 25. S. 24 empowers the Rent Controller to award costs and S. 28 grants

power for issuing summons to witnesses.

8. All these provisions will have to be taken note of when the relevant words "any person" occurring in S. 2(3) of the Act have to be construed.

The various powers exercisable by the Controller under the Act are judicial in nature and in particular, the direction that the orders of the Rent

Controller shall be pronounced in open Court make it clear beyond doubt or ambiguity that only a judicial authority can be appointed as a

Controller under S. 2(3) of the Act. Therefore, there is no basis whatever for the petitioner to say that S. 2(3) of the Act does not prescribe the

qualifications required of a Controller and in the absence of such qualifications, the provision should be given its plain and grammatical meaning and

held that the Act confers powers on the Government to appoint any one on the face of the earth to perform the duties of a Controller. The word

"person" has been used to make it clear that in order to exercise the powers of a Controller under the Act, the statutory functionary has to be duly

appointed by the Government and that he is persona designata or designated person. As mentioned at the very outset the mistake committed by

the petitioner is in his shortsighted reading of S. 2(3) alone without taking into consideration the various provisions of the Act and the purpose for

which the Act has been enacted. It would also not be out of place to mention here that during the 24 years gone-by, thousands and thousands of

cases have cropped up under the Act and tenacious tenants have taken their cases right up to the Supreme Court and till now, neither the Supreme

Court nor this Court has ever found S. 2(3) to suffer from any constitutional flaw.

9. Another feature worth mentioning here is that it is not the petitioner's contention that the second respondent does not have the requisite

competence to perform the duties of a Controller under the Act. All that he would say is that he ceases of the unbridled powers given under Sec.

2(3) of the Act (sic) the appointment of even a qualified and competent judicial officer as Controller should be struck down and the second

respondent interdicted from performing duties as a Controller. The first contention therefore necessarily falls to the ground.

10. As regards the second contention, it is no doubt true that Sec. 19 of the Presidency Small Cause Courts Act 1882 lays down inter alia that the

Small Cause Court shall have no jurisdiction to try suits for recovery of immovable property. But the petitioner fails to see that it is not in his

capacity as a Small Cause Court Judge, the second respondent is dealing with the petition under S. 10 of the Act. On the other hand, his

jurisdiction to try the petition under the Act is by virtue of his powers as a Rent Controller pursuant to his appointment as a Rent Controller by the

Government by due notification made in that behalf. Hence the different exercises of powers by the second respondent under the two Acts should

not be confused. The second contention too has therefore to fail.

11. For the aforesaid reasons, the petitioner is not entitled to the issue of a rule, nisi and consequently the petition will stand dismissed.

12. Petition dismissed.