
(1984) 07 MAD CK 0033
In the Madras High Court

V.K. Joseph

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Presidency Small Cause Courts Act, 1882 — Section 19

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(1), 12, 13, 14

Citation : (1984) 2 MLJ 494

Hon'ble Judges : S. Natarajan, J

Bench : Single Bench

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 Article 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 Section 2(3) of the Act and a statutory contravention in Section 18(1) 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 Cases, 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, Section

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 persons 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 Court Act, 1882, a Judge of a Small

Causes 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 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. Section 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 in isolation would suggest an inference that any man, woman or child living on

earth may be appointed by Government by notification to exercise the powers of a Controller. Thus, reading the sub-section with blinkers and then

straightaway jumping to the provisions of the Constitution, the petitioner would raise an argument that Section 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 u/s

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 (Section 12) and u/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. Section 4 fixation of

fair rent; Section 5 effecting change in fair rents; Section 10 passing an order of eviction against a tenant/sub-tenant; on grounds of wilful default in

payment of rent; unauthorised sub-letting; 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 Section 10(1) 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 direct the landlord to approach the civil court for a

decree for eviction. Section 14(1)(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 Section 14(1)(b) empowers a Controller to order eviction where the landlord requires the building for the purpose

of demolition and reconstruction. Sections 15 and 16 confer on the Controller power 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. u/s 17, the Controller can pass orders for

restoration of amenities to tenants. Section 18 lays down that orders passed against a tenant under Sections 10 and 14, on the one hand, and

against the landlord under Sections 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 surplus of Josier Alangulam Kanmoi execution, the Controller shall have all the powers of a civil Court. We then

come to an important provision, viz., Section 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 u/s 23 and all orders passed by the appellate Authority are subject to further

scrutiny by the High Court in exercise of revisional powers u/s 25. Section 24 empowers the Rent Controller to award costs and Section 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 Section 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

Controller u/s 2(3) of the Act. Therefore, there is no basis whatever for the petitioner to say that Section 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 grammatic meaning and

held that the Act confers powers on the Government to appoint anyone in 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 short-sighted reading of Section 2(3) alone without taking into consideration the various provisions in 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 upto the Supreme Court and till now, neither the Supreme Court nor this Court has ever found Section 2(3) to suffer from any constitutional law.

9. Another feature worth-mentioning here is that it is not the petitioner's contention that the 2nd respondent does not have the requisite competence to perform the duties of a Controller under the Act. All that he would say is that because of the unbridled powers given u/s 2(3) of the Act, the appointment of even a qualified and competent judicial officer as Controller should be struck down and the 2nd 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 Section 19 of the Presidency Small Causes Courts Act, 1882, lays down inter alia that the Small Causes 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 Causes Court Judge, the 2nd respondent is dealing with the petition u/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 2nd 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.