

(1956) 12 MAD CK 0018
In the Madras High Court

V.T. Ramaswami Aiyar

APPELLANT

Vs

Veerakodi Vellala Charity and Others

RESPONDENT

Date of Decision : 04-12-1956

Acts Referred:

Citation : (1957) 2 MLJ 123

Judgement

1. This Petition is against the order of the learned District Judge of Chingleput reversing the order of the two Courts below in revision. The tenant is

the Petitioner.

2. The tenant has been in occupation of a property belonging to the respondent for over a period of 10 years by virtue of a lease granted by the

previous trustees in his favour for 10 years. The lease expired in 1954, and since then the tenant has been holding over claiming to be the statutory

tenant in respect of the premises. His right as a statutory tenant occupying the premises is not now in dispute in this Civil Revision Petition.

3. He being a statutory tenant can be evicted only under the provisions of the Madras Buildings (Lease and Rent Control) Act. So, it was that the

respondents filed an application before the Rent Controller on two grounds. The first ground was that he had not paid rent for one month, i.e., the

month commencing from, 20th September, 1954. On this point all the Courts were agreed that the landlord did not succeed in proving that there

was actual default much less wilful default on the part of the tenant in the payment of the rent. The next point raised by the landlord was that the

premises in the occupation of the tenant was required, by the respondents bona fide for the purpose of providing shelter for the members of

Veerakodi Vellala community on the occasion of the festivals at Kancheepuram

and also for the purpose of running a pandal for water during the 10 days during the Garudothsvam festival in Kancheepuram. On this latter point the trial Court and also the appellate Court concurred in the view that the landlord had not proved his bona fides and therefore they rejected his application for eviction against the tenant on that ground. A revision petition was filed before the learned District Judge against the decision of those two Courts, and the learned District Judge disagreeing with the view held by the two Courts below came to the conclusion that the petition of the landlord respondent was bona fide and that the respondent was entitled to an eviction against the tenant. Against this order of the learned District Judge the present revision petition has been preferred.

4. The main contention taken by Mr. Radhakrishnan appearing on behalf of the petitioner is that the learned District Judge had no jurisdiction to entertain the revision petition against the order of the learned appellate authority, which had concurred with the order of the Rent Controller on a matter which was purely a question of fact. Whether the landlord respondent required the building for a bona fide purpose or not is no doubt a question of fact, and unless it be that the Courts below have taken a perverse and an erroneous view of the matter and their decision is palpably wrong, there is no scope for the revising authority like the District Judge to entertain an application. Mr. Radhakrishnan has invited my attention in this connection to two decisions, viz., *Raju v. Ramaswami* (1954) 2 M.L.J. 511 and *Gnanasabapathi Mudaliar v. Sivagnanam Pillai* (1955) 1 M.L.J. 286 and has taken me through them. But I do not think that these two decisions are of any great help to him on the facts of the present case. In order to find out whether there has been any material injustice or failure of justice by reason of the decision of the two Courts below and whether there was justification on the part of the District Court to interfere with that decision, though it was a concurrent decision of the Courts below, we have to look into the actual facts that emerge in this case. It is beyond dispute that under the scheme decree in O.S. No. 51 of 1946 the premises in question have been set apart to provide free shelter for the members of the Veerakodi Vellala community for the festivals at Kancheepuram. In addition to that it is also directed under Clause 2 of the scheme decree that that they should put up a shed and run a water pandal for 10 days

during the Garudotsavam festival at Kancheepuram. It is true that the previous trustees had in violation of these two terms of the scheme decree

leased the premises to the present petitioner for running a hotel and that too for a period of 10 years. It is also true that the previous trustees or the

present trustees did not think of questioning the lease for such a long period as 10 years in favour of the tenant and did not take any steps to get it

set aside as being void in law. They seemed to have allowed things to lapse for the period of the lease, and then after the lease had expired and the

present petitioner had become a tenant holding over, they thought of enforcing the conditions of the scheme decree in respect of the property. The

question is whether seeking to enforce the conditions of the scheme decree so that the property could be made available for providing shelter for

the members of the Veerakodi Vellala community for the festival at, Kancheepuram and for putting up a shed and running a water pandal for 10

days during the Garudotsavam festival at Kancheepuram and for that purpose seeking to evict the tenant from the premises after he had become a

statutory tenant, is bona fide or otherwise. The mere fact that the previous trustees have not taken into their heads to ask for the cancellation of the

lease or the eviction of the tenant after such cancellation could not be set up against the present trustees, who since became alive to a sense of

duty, which was cast upon them as trustees of Veerakodi Vellala Charity at Kancheepuram, and because a certain state of things was allowed to

persist for a period of 10 years and more, it cannot be argued on that ground that the present action resorted to by the present trustees was not

bona fide, and that it was not called for. If the properties were reserved for a certain purpose and if that purpose has not been achieved but had

actually been defeated by reason of the negligence or misfeasance of the previous trustees, it does not preclude or prevent the present trustees

from discharging their duties and responsibilities in pursuance of the decree with a view to provide shelter for members of the Veerakodi Vellala

community for the festival at Kancheepuram and put up a shed and run a water pandal for 10 days during the Garudotsavam festival. If the

trustees want the premises, it cannot be said that their purpose is not supported by a bona fide object. The bona fides of the trustees have to be

tested in relation to the purpose for which the property had been reserved and the purpose for which they now want the property to be evicted

and given possession of by the tenant. There can be nothing by way of want of bona fides in the action taken by the trustees, and the two Courts

below, who came to the contrary conclusion that the application of the trustees was not bona fide, could not be said to have taken the correct view

of the matter. If the bona fides have to be judged from the object for which the trustees wanted the premises to be evicted, surely the findings of

the two Courts below, which have concurred in their opinion, cannot be supported. They have entirely ignored the very purpose and the object for

which the eviction proceedings have been resorted to by the trustees, and if, by reason of a wrong approach and wrong appreciation of the real

object with which the trustees approached the Rent Controller and the appellate authority, there is failure of justice, then certainly there is sufficient

warrant for the revising authority to interfere with the decision of the Courts below, even if it be a concurrent decision and a question of fact as

well. In order to correct the wrong exercise of jurisdiction by the Courts below and in order to tell the Courts below what their bounds are, when

they decide even questions of fact, certainly the revising authority has jurisdiction to interfere with the decision of the Courts below, though it may

be a concurrent one.

5. In the circumstances of this case I am clearly of the opinion that both the Rent Controller and the Appellate Authority have not considered the

question in its proper perspective and have entirely ignored the real test that had to be applied in order to find out whether the application of the

trustees was bona fide or not. Such failure on their part certainly results in injustice to the parties, and such injustice, when it is so palpable, has to

be set right by intervention in the course of a revision and the learned District Judge has done nothing except setting right the even course of justice.

I am therefore inclined to agree with the order passed by the learned District Judge that the trustees of the Kancheepuram Veerakodi Vellala

Community Charity are entitled to evict the petitioner from the premises in his occupation.

6. An offer, however, has been made by the learned Counsel for the petitioner that the petitioner would be ready and willing to close down his

hotel on all festival occasions in order to make the premises available to the members of the Veerakodi Vellala community for shelter and for

putting up a shed and running a water pandal for 10 days during the Garudotsavam festival, and if this offer were to be accepted by the trustees

there need be no order of eviction against the tenant. I do not think it is for the Court to accept and enforce such an offer. This offer ought to have

been made voluntarily by the petitioner before the actual proceedings were started by the trustees, and possibly the trustees would have

considered this offer with a view not to unsettle an old business such as the one that the petitioner had been running in the premises. It is not for this

Court now to say anything on this offer excepting to call the attention of the trustees to see whether any adjustment could be made as between

themselves and the petitioner so as not to cause great prejudice and hardship to the petitioner. But so far as the eviction proceedings are

concerned, it is pretty clear that the trustees are entitled to an order of eviction and that order will issue.

7. Learned Counsel further urged that in view of his having been in occupation of the premises for quite a long time some indulgence might be

shown in the matter of time to be given to him to vacate the premises so as to enable him to make other arrangement for carrying on the business of

a hotel in that locality. I think this request is reasonable and I am inclined to give him time for a period of six months.

The petitioner will, therefore, vacate and deliver vacant possession of the business premises to the trustees on or before 1st of May, 1957. If he

commits default in doing so, the order will be enforced by means of execution.

8. The respondents will be entitled to their costs from the petitioner.