
(1990) 06 MAD CK 0013
In the Madras High Court

V.X. Joseph and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(3)

Citation : (1991) 1 LW 283 : (1991) 185 MLJ 1

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—Except one writ appeal, W.A. No. 842 of 1984, the other cases are writ petitions. The appellant in the writ appeal

was the petitioner in W.P. No. 6674 of 1984. The petitioners in all the writ petitions including W.P. No. 6674 of 1984 out of which W.A. No.

842 of 1984 arises, are tenants within the meaning of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, hereinafter referred to

as the Act. The tenants are facing proceedings under the Act, instituted against them by their landlords. They have come to this Court impeaching

the prosecution of the proceedings before the Controllers under the Act, who are seized of them, and who in the instant cases, are the respective

Judges of the Court of Small Causes, Madras.

2. The decision in W.P. No. 6674 of 1984 has gone against the tenant/the petitioner therein. In W.P. No. 6674 of 1984 two contentions were

raised before the learned Single Judge, who heard and disposed of the same and they are as follows:

(1) 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 person to be appointed as Controller amounts to conferment of arbitrary and unguided powers on the government.

(2) Under the Presidency Small Causes Courts Act, Central Act 15 of 1882 a Judge of Small Causes Court has no jurisdiction to entertain a suit

for recovery of immovable property and yet in violation of this provision, the Judge of Small Causes Court has been conferred powers of eviction

under the Act. These points have been repelled by the learned single Judge.

3. Before us, the first point raised by Mr. K.V. Padmanabha Rao, learned Counsel for the tenants, is as follows:

The words "any person" occurring in Section 2(3) of the Act when read and understood in the context of the provisions of the entire statute do not

contemplate the appointment of a few Judges of the Court of Small Causes Ex-Officio or otherwise to perform the functions of the Controllers.

Section 2(3) of the Act 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.

A plain reading of the wordings of the above provision gives the unambiguous impression that the power conferred on the Government to appoint

"any person" could not and should not be controlled by bringing in a concept that Judges of a Court be it so, a Court of Small Causes cannot fall

within the expressions "any person" and hence they cannot be appointed to exercise the powers of the Controller under the Act. The expressions

any person" are plainly and generously couched and there is no warrant for limiting the scope and meaning of the said expressions. The common

Dictionary meaning of the word "person" is "a human being". The Judge of a Court of Small Causes, is certainly a human being and hence a person

coming within the expressions "any person" found in Section 2(3) of the Act. Balakrishna Ayyar, J., in *The Coonoor Mosque Vs. M.G. Abdul*

Hamid Sahib and Another, observed as follows:

Under the Madras Buildings (Lease and Rent Control) Act, Government can appoint any person to perform the functions of a controller under the

Act. The person so appointed may be a Tahsildar, he may be a District Munsif or he may be a Revenue Divisional Officer. In fact he may be

anybody.

It must be noted that there is no express embargo in Section 2(3) of the Act with regard to appointing a Judge or Judges of the Court of Small

Causes to exercise the powers of the Controller under the Act. When such being the position, we have not been persuaded to spell out such an

embargo by implications by reference to any other provision of the Act. We cannot also find fault with choice of the Judges. Depending on the

workload for the Controllers, and other factors relating to administration of Justice, the choice has been made. Hence, we are not in a position to

sustain the first point urged by the learned Counsel for the tenants.

4. The second point put forth by the learned Counsel for the tenants is as follows:

The Notifications under which the Judges of Court of Small Causes are appointed as Controllers under the Act are invalid as they do not have any

authority under the Act or any other law for enabling the State Government to extend the jurisdiction, power and authority of the Court of Small

Causes or of any of the Judges thereof thereby bringing about a contrariety between the Act and the Central Act 15 of 1882 and transgress the

various provisions of the Constitution of India." With regard to the learned Counsel appearing for the tenants, we must state that this point omits to

take note of the fact that there is no extension or enlargement of the jurisdiction of the Judge or Judges of the Court of Small Causes as such and

the Judge or Judges of Court of Small Causes as persons are being only conferred and vested with the powers of the Controller. With regard to

their powers as Judges of the Court of Small Causes, they shall always stand settled governed and circumscribed by the provisions of the Central

Act 15 of 1882 and the rules, if any framed thereunder. By Official designation, the Judges of the Court of Small Causes are conferred the powers

of the Controller and nothing more. We could not conceive of this conferment of the powers of the-Controller on them as extension or enlargement

of their powers as Judges of the Court of Small Causes. Hence, the second point is eschewed.

5. The third point urged by the learned Counsel for the tenants is as follows:

Inasmuch as the State Legislature of the Tamil Nadu has merely defined the word "Controller" without prescribing any qualification or any other

guidelines whatsoever to enable the State Government to appoint a Controller

the said provision, namely, Section 2(3) of the Act is invalid for the reason that it confers unbridled and arbitrary powers on the State Government to appoint any person as a Controller. The provision does not by its terms contemplate the Controller to be appointed to possess any particular qualification. In such a contingency if the Government pursuant to that power appoints any person to exercise the powers of the Controller, such exercise of power need not necessarily be frowned upon on the ground that there is lack of guidelines for such exercise. It could not be a case of lack of guidelines for the very exercise of powers. It is a case of a plain conferment of a straight and simple power of appointment. The substance of the grievance, seems to be lack of prescription of qualifications for the person to be appointed as Controller and the guidelines therefor. The legislation having conferred such a straight and simple power on the Government, we cannot insist for a rider to the provision so as to say that there has got to be delineation or prescription of particular qualification or qualification for the person to be appointed to exercise the powers of a Controller. Further-I more, the Government is expected to exercise the power of appointment properly keeping in mind the functions of the Controller and nature of his duties, and the proceedings to be prosecuted before him. There are inbuilt guidelines in this behalf in the Act itself. It would be a different matter if any individual appointment is tainted with arbitrariness or other vitiating factors. As a result, we reject the third point raised by the learned Counsel for the tenants.

6. The fourth point raised by the learned Counsel for the tenants runs as follows:

The power to constitute a Court or to extend or to add to the powers, authority or the jurisdiction of an existing Court or the Judges thereof being

an essential legislative function, in the instant case, assuming that by the words any person the State Legislature intended to mean the Presiding

Officer of the Court already constituted, it has abdicated such an essential legislative function in favour of the State Government, and hence Section

2(3) of the Act is invalid." The above point though makes an interesting reading, does not appeal to us at all. Our reasons are as follows: The Act

delineates the powers to be exercised by the Controller. The Act, by Section 2(3) had delegated the power of appointment of the Controller to the

Government. It is well settled proposition that delegated legislation if we can use

it in the popular sense, has become a necessity the present day. It is an inevitable and indispensable feature with regard to making of laws. The legislature can frame the main statute and with regard to working of the details of the statute, it is always competent for the legislature to delegate the powers to the appropriate authority, set out in the statute. We are not impressed that with regard to the Act, the delegation of the power of appointment of Controller, it has got to be frowned upon by any acceptable ground. Apart from making a statement with regard to the point raised, learned Counsel for the tenants has not enlightened us by any expectative argument as to why the power of delegation has got to be eschewed as suffering from any infirmity. As a result, we are not able to appreciate and sustain the fourth point urged by the learned Counsel for the tenants. No other point is urged before us.

7. The writ appeal as well as the writ petitions lack merits and they deserve dismissal and accordingly we dismiss them with costs.