

R. R. Thulasiram Vs. the Secretary, Govt. of Tamil Nadu, Housing and Urban Development (T.i.) Department, Fort St. George, Madras-9 and Others

R. R. Thulasiram Vs. the Secretary, Govt. of Tamil Nadu, Housing and Urban Development (T.i.) Department, Fort St. George, Madras-9 and Others

SooperKanoon Citation : sooperkanoon.com/779216

Court : Chennai

Decided On : Feb-17-1998

Reported in : 1998(1)CTC340

Judge : Y. Venkatachalam, J.

Acts : Constitution of India, Article 226; Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Sections 29

Appeal No. : W.P.Nos. 15405 of 1989 and 2760 of 1990

Appellant : R. R. Thulasiram

Respondent : The Secretary, Govt. of Tamil Nadu, Housing and Urban Development (T.i.) Department, Fort St. George

Advocate for Def. : Mr. R. Gothandaraman, Govt., Adv. and;Mr. G. S. Thamby

Advocate for Pet/Ap. : Mr. T. Martin and;Mr. S. Subbiah Advocates

Disposition : Petition dismissed

Judgement :

ORDER

1. Since the subject matter in question and the respondents herein are one and same, both the writ petitions were taken up together and are disposed of by this common order with the consent of the concerned parties herein.

2. In support of their writ petitions, the petitioners herein have filed separate affidavits wherein they have narrated all the facts and circumstances that forced them to file the present writ petitions seeking for writ of Certiorari to call for the records in G.O.Ms.No.954 Housing and Urban Development (T.I.) Department, dated 25.9.1989 of the Government of Tamil Nadu rep. by its Commissioner and Secretary, Housing and Urban Development (T.I.) Department, Madras-9 the 1st respondent herein and to quash the same insofar as the petitioners herein are concerned.

3. In support of their case the 1st respondent has filed separate counter affidavits in these writ petitions adopting the counter affidavits filed by the 2nd respondent herein. In the counter affidavits filed by the 2nd respondent he has rebutted all the material allegations levelled against the respondents one after the other and ultimately requested that the writ petitions may be dismissed for want of merits.

4. Heard the arguments advanced by the learned counsel appearing for the respective parties. I have gone through the contents of the affidavits counter affidavits together with the relevant material documents that are available on record in the form of typed set of papers.

5. The only point that arises for consideration in both these writ petitions are as to whether there are any valid grounds to allow these writ petitions or not.

6. In these writ petitions, all these writ petitioners are tenants of the 2nd respondent herein. It is admitted that there are a number of RCOPs pending between the petitioners herein and the respondent-2 in these writ petitions. That being so, the 2nd respondent applied for exemption from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as the Act) on the ground that there had been a private trust for their family and for the purpose of the said trust they are in immediate need of accommodation to run their office and that he requires the vacant possession of the premises bearing

D.No.6 and 8A, Kamarajar Road and 16 to 18 of Mahar Vadambokki Street, Madurai which in the property in question in these writ petitions. It is also admitted by the petitioners that they have received notices from the Revenue Divisional Officer, Madurai in this regard, and all of them have submitted their written explanations stating that there is no necessity to grant exemption to the petitioner under sec- 29 of the said Act. It is their grievance that they were not given opportunity to participate in the enquiry and attack the order passed by the 1st respondent in favour of the 2nd respondent. These writ petitions have been filed against the said order passed by the 1st respondent.

7. The impugned order is being challenged by the petitioners on the ground that the first respondent cannot grant any exemption from the application of the provision of the said Act to the said premises and the exemption as granted is totally illegal and without jurisdiction and non-application of mind. According to the petitioners, the second respondent has not approached the Government with any good intention and also that the said approach is totally mala fide to get rid of the application of the provision of the Act, in detrimental to the interests of the petitioners. It is also stated by the petitioners that the Government has very lightly taken up the matter in detrimental to the interest of the petitioners, that the said Dharma Trust of the 2nd respondent is only a private trust and so granting of exemption is illegal void and also that G.O.Ms.No.2000 Home dated 16.8.1976 exempt the buildings belonging to the public, religious and charitable trusts only. Therefore, the petitioners pray that the order impugned is liable to be quashed.

8. Per contra, it is the contention of the respondent-2 that one K.N. Krishnaswamy Bhagavadar Private Dharma Trust was formed in 1981, that he was appointed as the Managing Trustee of the Trust for life, that the trust deed provides that the income from the properties of the trust should be utilised for performing social welfare activities, that with the object of the Trust in mind, the Managing trustee has been rendering many other charitable services to the poor, needy and down trodden people, that in 1988, there were many representations from the public to start an Industrial Training Institute and a Maternity Home. In 1988, the Managing Trustee, on the advice of the interested persons in the Trust and of the local public, decided to start an Industrial Training Institute and a Maternity Home for

the poor and needy, that since no other suitable buildings were available to run the office of the I.T.I. and the Maternity Home and Child Care Center, the 2nd respondent decided to give his own buildings for the same purpose and that applications were sent to the Competent Authorities to get permission to start the I.T.I. It is also stated by the 2nd respondent that the Director of Employment and Training in his letter No.C2/141672/82 dated 5.2.89 granted provisional permission to start the institute (computer cum programming Assistant - 2 units) on certain conditions and they commenced the functioning of the UTL temporarily in the only building belonging to the Trust. The 2nd respondent stated that the officials were fully satisfied that they required the buildings for the functioning of the office of the ITI and the Maternity Home for the poor and also that at the time of enquiry, it was categorically established that the 2nd respondent required all the buildings exempted in the G.O. for running the office of the ITI and the Maternity Home for the public interest. Hence according to the 2nd respondent the impugned G.O. is perfectly legal and within its powers.

9. As could be seen from the relevant documents available on record, it is clear that it is true that there is a trust deed dated 27.03.1981 in which the 2nd respondent has been appointed as Managing Trustee of the same and under condition No.5 of the said deed the second respondent has been given all powers to lease out the properties according to his will and pleasure and the income so derived from the properties should be for the purpose of charitable purposes mentioned in the trust deed. It is the categoric stand of the 2nd respondent that the trustees have been decided to start I.T.I. in the spacious premises and measuring about an acre belonging to Trust in Tirupparunkundram and a college at Uthengudi in the lands belonging to the 2nd respondent and that the trustees are in immediate need of accommodation to run their offices. In such circumstances the 2nd respondent is in need of vacant possession of the premises in question in these writ petitions since all the petition premises are now being used for non residential purposes. Such a stand taken by the 2nd respondent has been substantiated by him by producing the concerned documents. A perusal of those documents confirms the said stand of the 2nd respondent. Only on these grounds, the 2nd respondent approached the Government for obtaining exemption from the Act and accordingly the Government also after due enquiry and on considering the

needs of the 2nd respondent as well as the objections raised by the petitioners has passed the G.O., which is impugned in these writ petitions. Though the petitioners allege so many grounds against the 2nd respondent, they could not able to make out a case in their favour.

10. It is clear from the above discussions that the 2nd respondent herein required the premises in question in these petitions for the purpose of running offices of the colleges to be started by his Trust which is being carried on for charitable purposes and social welfare activities. In support of their case the petitioners in these writ petitions have cited two decisions as follows in their favour:-

(1) K.C. Devassay v. State of Madras 1970 (1) MLJ 533 and (2) P.J. Irani v. The State of Madras 1962 (1) M.L.J. SC 92

Comparing to the facts and circumstances of this case, the above two decisions are factually different and that therefore they are not helpful to the petitioners in any way.

11. Whereas, in support of his case, the 2nd respondent relied on the following decisions:

1. P.N. Raju Chettiar v. The State of Tamil Nadu 1970 (1) MLJ 249 - wherein it has been held by the Court that in exercising the powers under Section 29, it was open for the authority to go into the question of bona fide and according to them there is nothing unreasonable or perverse about the finding on the question of bona fide. The next decision relied on by the 2nd respondent is the one reported in S.A. Appal Raja v. The Common Fund of Senguntha Mudaliar Community of Poopalrajapatti, Rajapalayam 1982 (1) MLJ 318 wherein it has been held that for a charity to be public, it is not necessary that its objects should encompass the universe or all mankind. It is enough that it refers to a section of the public as a determinate class of the society. The next decision relied on by the 2nd respondent is the one reported in P.C. Cherian v. State of Tamil Nadu 1991 (1) L.W. 202 wherein it has been held as follows:

'The premises in question had been letout for non-residential purpose. The landlords required the premises for residential purposes. It is well settled that the remedy of exemption under Se. 29 of the Act is not a substitute for remedies available to a landlord for eviction under the Act itself. But on the otherhand, if the remedy under the Act is not available to him, there will be a justification for according exemption under S. 29 of the Act if a case therefor is made out'.

In the facts and circumstances of the case on hand, all the above decisions relied on by the 2nd respondent squarely apply to the present writ petitions and also they render help to justify not only the stand of the 2nd respondent but also the G.O. impugned in these writ petitions.

12. Therefore, for all the aforesaid reasons, and in view of my above discussions with regard to the several aspects of this case, I am of the clear view that the petitioners in both these writ petitions have miserably failed to make out a case in their favour and that there is nothing wrong in the impugned G.O. and they are legal and in order and consequently there is no need for any interference with the said G.O., and that therefore both these writ petitions are liable to be dismissed.

13. In the result, both the writ petitions are dismissed. No costs. The order of stay already granted is hereby vacated in both the W.Ps.