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**Court : Chennai**

**Decided On : Aug-07-1952**

**Reported in : AIR1953Mad257; (1952)2MLJ767**

**Judge : Subba Rao, J.**

**Acts : Madras Buildings (Lease and Rent Control) Act, 1949 - Sections 3, 3(1) and 3(8); Madras Buildings (Lease and Rent Control) (Amendment) Act, 1951; [Constitution of India](#) - Articles 19, 19(1), 20, 31 and 31(2)**

**Appeal No. : Writ Petn. No. 280 of 1951**

**Appellant : Fathima Bi**

**Respondent : The State of Madras Represented by the Accommodation Controller, Madras**

**Advocate for Def. : V.P. Sarathi, Adv. for Govt. Pleader**

**Advocate for Pet/Ap. : R. Mathrubhutham, Adv.**

**Judgement :**

ORDER

**Subba Rao, J.**

1. This is an application for issuing a writ of certiorari to quash the order of the Accommodation Controller dated 17-7-1951 and 4-8-1951. The petitioner is the owner of the house and premises No. 1/3 Jones Street, G.T. Madras. On 15-1-1951 one Fernando wrote a letter to the Accommodation Controller stating that he was a tenant of the said premises and that he was vacating the same on 15-1-1951. After making some enquiries, on 7-2-1951, the Accommodation Controller issued a notice to the petitioner under Section 3(1), Madras Buildings (Lease and Rent Control) Act, 1949, (hereinafter called the Act) calling for particulars and intimating her that the premises have to be kept vacant for seven days from the date of the furnishing of the particulars. The petitioner did not reply, to that notice. On 25-4-1951 a complaint was filed in the court of the Chief Presidency Magistrate and the petitioner was fined a sum of Rs. 75.

2. The Accommodation Controller allotted the house to one Waters. As the petitioner did not give peaceful possession, on 4-8-1951 the respondent issued a notice under Section 3 (8) of the Act directing the petitioner to deliver possession and also stating that if no vacant possession was given necessary steps would be taken to obtain the same. The petitioner states that the said premises is a non-residential house and that she has let the same to one Abdulla Sait in or about the end of 1950 and since that time he has been carrying on business in the said premises. She further alleges that the monthly rent of the building is less than Rs. 50 and therefore she is not bound in law to give the notice to the Accommodation Controller.

3. Learned counsel appearing for the petitioner raised before me various legal contentions questioning the validity of the requisition. I shall proceed to deal with them 'in seriatim'.

4. The first argument is that the tenant has not occupied the building in contravention of the provisions of Section 3 (4) prohibiting the letting of the building, which would come into play only if the statutory notice was given and that in the instant case such notice was not given, This argument appears to be plausible, but, in my view, not sound. To appreciate this contention the following provisions of the Act may be read:

' Section 3(1)(a): Every landlord shall, within seven days after the building becomes vacant by his ceasing to occupy it, or by the termination of a tenancy, or by release from requisition give notice of the vacancy in writing to the Officer authorised in that behalf by the State Government (hereinafter in the section referred to as the 'authorised officer').

Section 3 (3): If, within ten days of the receipt by the authorised officer of a notice under Sub-section (1) or Sub-section (2), the State Government or the authorised officer does not intimate to the landlord in writing that the building is required for the purposes of the State or Central Government or of any local authority or of any public institution under the control of any such Government or for the occupation of any officer of such Government, the landlord shall be at liberty to let the building to any tenant or to occupy it himself.

Section 3 (4): The landlord shall not let the building to a tenant or occupy it himself, before the expiry of the period of ten days specified in Sub-section (3), unless in the meantime he has received intimation that the building is not required for the purposes or for occupation by any of the officers, specified in that sub-section.

Section 3 (8) (a): Any officer empowered by the State Government in this behalf may summarily dispossess:

(i) any landlord, tenant or other person occupying any building in contravention of the provisions of this section or any landlord who fails to deliver to the State Government possession of any building in respect of which they are deemed to be the tenants by virtue of this section..... and take possession of the building including any portion thereof which may have been sub-let;

Explanation: The provisions of this clause shall apply also to cases which arose before the commencement of the Madras Buildings (Lease and Rent Control) Act) 1951.

5. Sections 3 (1), (3) and (4) are component parts of the scheme of requisition. The scheme comprises five stages:

1. The landlord gives notice of the vacancy to the authorised officer within seven days of the vacancy:
2. Within ten days of the receipt of the notice the State Government or authorised officer intimates to the landlord in writing that the building is required for the purpose of the State;
3. During the prescribed period the landlord is prohibited from letting the house;
4. If no intimation is given within the prescribed period the landlord is at liberty to let the same to whomsoever he likes;
5. If the landlord or any person occupying the building fails to deliver possession in contravention of the provisions of the Act, an officer appointed by the State may summarily dispossess him.

It will be seen from the other provisions of Section 3 (8) that an officer appointed by the State can dispossess a person occupying a house in contravention of the provisions of the section, be it noted not in contravention of Section 3 (3) or Section 3 (4) alone. Occupation of the building by a landlord or his tenant without issuing notice under Section 3 (1) (a), which, as I already stated, is a part of the general scheme of requisition, is certainly a contravention of the provisions of the section. As the tenant is now in possession in contravention of that sub-section, he is liable to be summarily evicted under Section 3 (8).

6. Learned counsel then questioned the constitutional validity of Section 3(8) read with its explanation giving it retrospective operation. He argued that the said section is bad as being an unreasonable restriction on the exercise of the fundamental rights guaranteed under Article 19(1)(f), [Constitution of India](#). It is not necessary to consider this argument as I held in --'Nataraja Mudaliar v. Madras State', C.M.P. No. 6628 of 1951 (Mad), that the requisition of a house under the Act does not offend the fundamental right under Article 19, as the subject-matter directly comes under Article 31 of the Constitution. In that judgment I observed:

'The subject-matter directly comes under Article 31. Article 31 being a special Article, excludes the operation of a general Article, Article 19. As the building was

taken possession under a law validly made, the petnr. is not protected by the provisions of Article 19 for Article 19(1)(f) can be invoked only if the petitioner is legally entitled to use his property. I therefore hold that no right under Article 19 has been infringed by the order of the Accommodation Controller.'

Following that judgment I negative this contention.

7. Even so it was contended that the provisions of that section in so far as they authorise an officer to take possession of the property from the tenant without paying or providing for the payment of the compensation contravene the provisions of Article 31(2), [Constitution of India](#), and, therefore, 'ultra vires', the Constitution. Article 31(2) reads:

'No property, movable or immovable, including any interest in, or in any company, owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.'

This article therefore prohibits taking possession, of any property without compensation. The contention is that the tenant has a legal interest in the leasehold property and the State cannot dispossess him without paying compensation. There would be considerable force in this argument if a person was in legal possession as a tenant and he was dispossessed; but if the tenancy was void, the possession of the tenant 'would only be permissive possession not in his own right, but for and on behalf of the landlord, in which case it would be the dispossession of the landlord who would be compensated under the provisions of the Act. The question therefore turns upon the subsidiary question whether the lease in contravention of the provisions of Section 3 was void.

In my view, the object of the agreement of lease in the present case was not only forbidden by law, but if permitted; it would defeat the provisions of the Act within the meaning of Section 23, Contract Act. The landlord was prohibited from letting

the building before the expiry of ten days from the receipt of notice by the authorised officer. She was liable to be prosecuted for contravention of Sub-sections (1), (2) and (4) of Section 3 of the Act and indeed she was prosecuted and fined. She therefore let her building by committing an offence and also in the teeth of an express prohibition not to let till certain conditions were complied with. The lease was therefore void. In the circumstances the possession of the tenant must be deemed to be the possession of the landlord. The tenant has no separate and distinct right to be compensated for within the meaning of Article 31 of the Constitution.

8. The constitutional competence of the impugned provision was also based on the provisions of Article 20, [Constitution of India](#). Under Article 20

'No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time or the commission of the offence.'

Under this Article) a subsequent enactment cannot impose a greater penalty on an individual man that which could have been inflicted at the time he committed the offence. It was said that under Madras Act 1 of 1931 the provisions of Section 3(8) of the Act were given retrospective operation and the effect of the amendment was that for an offence committed prior to the passing of that Act, a person could not only be convicted but could summarily be evicted, and therefore the penalty was greater than that could have been inflicted on him at the time when he committed the offence. There would be force in this argument if the power of summary eviction conferred on an officer empowered by the State under Section 3(a) of the Act could be equated to the infliction of penalty for the commission of an offence. Under Section 16 of the Act) if any person contravenes any of the provisions of Sub-sections (1), (2), (4), (5) and (7) of Section 3 he shall be punishable with simple imprisonment for a term which may extend to three months or with the fine which may extend to two thousand rupees or with both.

That section was not amended by Act 8 of 1951. The punishment for the offence remains the same as it was before the amendment. The Amending Act only

conferred the necessary executive power on the officer concerned to carry out the intention of the Legislature. Before the Amendment, the authorised officer can allot a house to an officer but cannot put him in possession if a recalcitrant landlord refused to comply with the order. The landlord might be punished in a criminal court; but there was no procedure to expel him summarily. That power of summary eviction is now given under Section 3 (8). An existing lacuna was filled up for the smooth working of the provisions of the Act. I cannot therefore hold that the impugned provision offends Article 20, [Constitution of India](#),

9. It was then argued that Section 3(8)(a) should not be given retrospective operation. This contention is obviously untenable in view of the clear provisions of the explanation which says

'the provisions of this clause shall apply also to cases which arose before the commencement of the Madras Buildings (Lease and Rent Control) Amendment Act, 1951.'

10. The last argument was that the house was a non-residential house and that the rent for the same was below Rs. 30 and therefore the Accommodation Controller had no jurisdiction to requisition the same.

11. Section 3 (9) says:

'Nothing contained in this section shall apply--

(a) to a residential building the monthly rent of which does not exceed twenty-five rupees; or

(b) to a non-residential building the monthly rent of which does not exceed fifty rupees.'

In the affidavit filed in support of the petition, it was specifically stated that the building is a non-residential building. In the counter though there is an allegation that the house has always been used for residential purposes, the Accommodation Controller does not say definitely that he has decided the question having regard to the materials placed before him. In this case the Accommodation Controller's

jurisdiction to" requisition the building mainly depends upon the question whether the building is a residential building; for it is not disputed that if it is a non-residential building, there is no power to requisition the same as the rent is below Rs. 50. His order, therefore, is set aside and he is directed to decide on the material that may be placed before him by the petitioner whether the building is a residential or non-residential building. As the petitioner failed on her main contentions, this is a fit case for directing the parties to bear their costs.

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