

S.M.D. Fizuddin Vs. Accommodation Controller, Collector of Madras

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Court : Chennai

Decided On : Feb-02-1987

Reported in : AIR1988Mad364; (1987)IIMLJ329

Judge : M.N. Chandurkar, C.J. and ;Srinivasan, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 3

Appeal No. : W.A. No. 1226 of 1986

Appellant : S.M.D. Fizuddin

Respondent : Accommodation Controller, Collector of Madras

Advocate for Def. : C. Selvaraju, Govt. Adv. for ;Govt. Pleader and ;S. Rakkappan, Adv.

Advocate for Pet/Ap. : T.S. Subramanian, Adv. for J.R.K. Bhavanantham, ;N. Blaskaran and ;V. Ramaswami, Advs.

Judgement :

Chandurkar, C.J.

1. The facts in this case are not in dispute. Originally, the allotment of the premises in question was made under S. 3 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Rent Control Act) in favour of one Abdul Samad. Admittedly, the appellant's father Md. Basheeruddin, who was in

Government employment came to occupy these premises as a result of the allotment being transferred to his name on 7-7-1979 (sic). Mr. Basheeruddin died on 1-3-1972. The appellant is the son of Md. Basheeruddin.

Admittedly, he was not in Government employment on the date on which his father died. Even otherwise, automatically he would not be entitled to occupy the premises unless there is an order of allotment in his favour. It is stated before us that on a humanitarian ground, being the son of a Government servant, who died in harness, the appellant was given Government employment on 12-4-1973. The appellant has, however, been in continuous occupation of the premises in question without any allotment in his favour. The premises belongs to a trust and, though at one stage on a cursory reading of a part of the Makf deed which referred to the trust being a trust for educational and charitable purposes, it was canvassed, on behalf of the appellant that the trust was a public trust, on a careful reading of the whole of the document, it is obvious that the Makf is a private trust; for the benefit of certain individuals and their descendants till the line of descendants of the beneficiaries under the Makf deed become extinct.

2. A notice was issued by the Collector of Madras, who is also the Accommodation, Controller, requiring the appellant to vacate and hand over possession of the premises in question to the Accommodation Inspector, No. 111, failing which possession of the premises was to be recovered forcibly under S. 3(9) of the Rent Control Act. The appellant; was also given notice that, if free access to the premises is not afforded, entry to the premises would be gained by breaking open the lock, door and lock or by taking such, action as may be necessary and persons if any, residing in the premises would be physically dispossessed.

3. This notice was challenged by the appellant by a writ petition in this court. The case of the appellant was :

1. that the appellant was not an allottee from the Government and since he had paid the rent direct to the landlord, a right of tenancy was created in his favour;

2. "Since no notice as contemplated by the decision of this Court in Balakrishna Reddi v. Accommodation Controller, Madras, : AIR1975 Mad235 (FB) was served, the notice was bad; and

3. The Accommodation Controller has no jurisdiction to ask for possession because public trusts were exempted from the operation of the Rent Control Act, by G.O. Ms. No. 2000 dated, 16-8-1976. An additional contention raised was that in as much as the Accommodation Controller had not taken action from 1972 to 1981, it must be deemed that he has waived the right to ask for possession.

4. The learned Judge took the view that the appellant had no right at all because the allotment was in favour of one Md. Bashiruddin which had come to an end on his death on 1-3-1972. The appellant was, therefore, a trespasser or in any case he was other person occupying any building in contravention of the provisions of S. 3(9) of the Rent Control Act.' Therefore, according to the learned Judge, it would not be open to him to claim any rights by virtue of payment of rent to the landlord. The learned Judge further took the view that the payment of rent was made in lieu of occupation and did not create any right in favour of the appellant, because the property was still under requisition by the Government. The learned Judge seems to have proceeded on the footing that the Government order Ms. No. 2000 dated 16th August, 1976 could be invoked by the appellant, but he took the view that since the appellant did not have a semblance of a legal right, he could not claim the benefit of the said Government Order. The petition having been dismissed, this appeal has been 'filed by the appellant.

5. At the very outset, the learned counsel, for the appellant invited our attention to a , Part of the trust deed which refers to the income of the trust, property being utilised for explaining expounding and preaching the doctrines of Islam to the Muslims and which provided that one part of the income should spent on the Ulema or Ulemas who obtained the diploma from the Madras-Maurnmadi, Royapettah, Madras and the another part on the Ulema or Ulemas who obtained the diploma from-any other recognised and approved Madras in the province of Madras. It was, therefore, argued that since by virtue of the notification dated' 16th August, 1976 religious- public trusts and public charitable trusts were exempted

from all the provisions of the said Act, the Accommodation Controller could not have, invoked the powers under S. 3 of the Act, and the notice must, therefore, be held to be without jurisdiction. Indeed, if the matter stood as contended by the learned counsel for the appellant, there was no doubt that apparently the Accommodation Controller could not have been entitled to invoke the provisions of the Rent Control Act. However, the learned counsel appearing on behalf of the respondent 2, has invited our attention to sub-cls. (a) (b), and (c) of clause (3) of the Makf Deed, and certain other clauses which only indicate that the Makf is essentially a private trust and it was only when the descendants of the Parts of the Second and Third Parts become extinct the entire Makf estate and the investments accumulations and all assets relating thereto, were to vest in the Executive Committee of the Mohamedan Educational Association and to be utilised for the educational purposes. There is nothing to show that the persons named as the second part and third part and their descendants have become extinct with the result that that part of the Makf which provided for educational and charitable purposes has not come into operation at all. The trust must, therefore, be treated as a private trust with the result that it is not, covered by the exemption contemplated by G. O. Ms. No. 2000 dated 16th August, 1976.

6. The learned counsel, however, then contended that the appellant is paying the rent to the landlord trust and he becomes the tenant of the landlord. Now it is obvious that when an allottee of the premises requisitioned by the Government pays rent, that payment must be treated as being made on behalf of the Government, which is the requisitioning authority and which becomes under the provisions of the Rent Control Act, the tenant of the premises. The learned counsel appearing on behalf of the appellant has produced before us certain reports which undoubtedly prima facie show that moneys have been accepted by the Muthavalli. But it is significant to note that the receipts are not issued in the name of the present appellant at all but are issued in the name of the deceased father of the appellant. This conduct itself shows that the trust was not willing to recognise the appellant as a tenant. This is apart from the fact that there cannot be two separate tenants of the same premises under law. The premises being requisitioned by the State Government under S. 3(9) of the Rent Control Act, the Gov criurient becomes the tenant of the premises, and while such a tenancy is

subsisting merely by virtue of any payment made on behalf of the Government no independent right can accrue in favour of the appellant by such payment. It is, therefore difficult to accept the argument that any independent rights of tenancy have accrued in favour of the appellant.

7. Our attention has been invited to two decisions in Merigharaj Thakurdas v. Accommodation Controller, Madras, (1965) 2 MU 545 : AIR 1960 Mad 172 and Balakrishna Reddy v. Accommodation Controller, : AIR1975 Mad235 . Having gone through these decisions, we find that these decisions have no relevance to the nature of the question which arises in these cases. In view of this the appellant has no manner of right to be on the premises. There is, therefore, no infirmity in the notice served upon the appellant.

8. Accordingly, the appeal fails and it is dismissed with costs one set in favour of the Government alone. Counsels fee Rs. 500. On the appellant filing an affidavit in this court by tomorrow 3-2-1987 undertaking to this Court that he will voluntarily deliver vacant possession on or before 28th February 1987 it is directed that the appellant shall not be evicted before 28th February, 1987.

9. Appeal dismissed.