

Menghraj thekurdas Vs. the Accommodation Controller, Madras

Menghraj thekurdas Vs. the Accommodation Controller, Madras

SooperKanoon Citation : sooperkanoon.com/791222

Court : Chennai

Decided On : Jun-21-1965

Reported in : AIR1966Mad172; (1965)2MLJ545

Judge : Srinivasan, J.

Acts : Madras Buildings (Lease and Rent Control) Act - Sections 3

Appeal No. : Writ Petn. No. 120 of 1964

Appellant : Menghraj thekurdas

Respondent : The Accommodation Controller, Madras

Advocate for Pet/Ap. : Mr. S. K. L. Ratan

Judgement :

ORDER

(1) Premises No. 16, New Avadi Road, Kilpauk, appears to have been taken over by the Government and allotted to a Government servant in the year 1952. In 1963, the petitioner purchase this premises from the previous owner. At that time, the first floor was occupied by one C. K. Nair and the ground floor by one Mrs. Sumati. The petitioner sought the release of the premises for the occupation of his son. He was informed that C. K. Nair was Government servant and the first floor had been allotted to him by the Government. On a notice issued by him to the other tenant, she vacated the premises and handed over the key to the

Accommodation Controller. Thereafter, the petitioner sought the release of the entire premises, but he was informed by the Accommodation Controller that the ground floor was being allotted to another Government servant. The petition originally proceeded on the basis that such an order of allotment had been made ten days after the intimation of the vacancy by Mrs. Sumati, but certain facts which came to the notice of the petitioner subsequently have altered the entire complexion of the case and these facts are as below. Mr. Sumati who was originally allotted the ground floor, was an employee of the Central Government. It appears that on 12-12-1959 he was transferred from Madras to Calcutta. Thereafter, his wife, Mrs. Sumati, continued to occupy the premises, though Mr. Sumati was a Government servant who was no longer employed in the City of Madras, was not entitled to any allotment of accommodation. It further appears that this Sumati retired from Government service on 9-2-1961. As stated already, after the petitioner's notice to Sumati, Mrs. Sumati vacated the premises on the 26th December 1963.

(2) In the course of the arguments Mr. S. K. L. Ratan, learned counsel for the petitioner, has pointed out that when Sumati ceased to be employed in Madras, the Government were not entitled to retain possession of the premises unless it was needed for any Government purpose or for the purpose of any Government servant. Mrs. Sumati, who was actually in occupation of the premises from 12-12-1959 onwards, was certainly not so entitled to occupy it. The fact that from that date till the present day a non-Government servant was permitted to be in occupation of the premises, it is urged, should deprive the Government of any further right to allot the premises to a Government servant in 1964, and it is on this short ground that the order of allotment is sought to be quashed and a further order for restoration of possession of this part of the premises to the owner is also sought.

(3) In the counter-affidavit filed by the Accommodation Controller, some of the facts have not been clearly disclosed. It is state herein that K. Sumati, who had been in occupation since 1952, intimated on 20-12-1963, the intention to vacate the ground floor with effect from 25-12-1963. The counter affidavit reads as if this Sumati was entitled to be in occupation of the premises till the latter date. But,

during the course of the arguments, learned counsel appearing for the respondent does not deny the fact that Sumati ceased to be entitled to occupation of the premises from 12-12-1959 onwards.

(4) It is however further contended that the premises continued to be in occupation of the Government all along and that the allotment made on 24-1-1964 is within the scope of the powers of the Government.

(5) It seems to me that the undisputed facts disclose a somewhat unfortunate state of affairs. It is now conceded on behalf of the Accommodation Controller that from and after 12-12-1959 no Government servant was in occupation of the premises. The Government's power to requisition the premises and allot it to a Government servant stems from S. 3 of the Madras Buildings (Lease and Rent Control) Act. It is obvious from the provisions of this Act that if the Government has no use for the building either for the purposes of the State or for the purposes of an employee of the State or of the Central Government then the Government have no further right to retain control of the premises. That a non-Government servant was in such occupation for this lengthy period of five years is not denied, and no defence is put forward except the vague statement of the learned counsel that the Accommodation Controller has no machinery with which he could check such occupation. It seems a singularly weak plea as far as I can see. Where a right has been conferred upon the Government to exercise certain powers in certain eventualities, that that power should be exercised only within such limits set by the statute cannot be gainsaid. It may be that on the vacating of the premises by a Government servant who was in occupation, there may be an interval of time before the premises could be allotted to another Government servant. The Government is the statutory tenant, but that they can hold the premises only for the purposes mentioned in the provisions of the Act is beyond dispute. If within a reasonable time after the vacating of the premises by a Government servant, may be a month or two, the Government allot it to another government servant or utilise the premises for their own purposes, they would be acting within the statute. But to say they were ignorant that the Government servant who had been allotted the premises had ceased to be a Government servant and they allowed the premises to be occupied by members of that ex-Government servant's family, and claim

that they acted bona fide, passes my comprehension. It is clear therefore that in the present case the retention of the premises during the last five years by the Government was not for any purpose envisaged by the statute.

(6) In the circumstances of the case, I have no hesitation in holding that not only the order of allotment made by the Accommodation Controller should be quashed but there should be a further writ of Mandamus directing delivery of possession of the premises (ground floor) to the owner, the petitioner. Though the facts are such as would merit an order awarding costs, in the somewhat peculiar circumstances of the case, I refrain from making such an order.

KI/D.R.R.

(7) Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com