

In Re: T.K. Rajagopalan

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Court : Chennai

Decided On : Dec-07-1950

Reported in : AIR1951Mad705; (1951)IMLJ92

Judge : Somasundaram, J.

Acts : Madras Buildings (Lease and Rent Control) Act, 1949 - Sections 3(1)

Appeal No. : Criminal Appeal No. 750 of 1950

Appellant : In Re: T.K. Rajagopalan

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : T.M. Kasturi and ;A.K. Sreeraman, Advs.

Judgement :

Somasundaram, J.

1. The applt. in this case has been convicted by the Chief Presidency Mag. for an offence under Section 3 (1) of Madras Act XXV [25] of 1949 & sentenced to a fine of Rs. 300. The facts of the case are not in dispute. The house concerned was leased out to P.W 1 an advocate. He wrote to the petnr. (who for the purposes of this case 13 treated as landlord) on 23-10-1948 that be had assigned the tenancy to one Mani & that as he has paid rent upto 31st October, the said Mani will pay the rent subsequently, &, asking the petnr. to accept the rent from the said Mani.

Subsequently the petnr. was accepting the rent from Mani.

2. On these facts, the question is whether there was a vacancy by the termination of a tenancy, so that the landlord i.e., the petnr. should give notice to the Controller. It is vigorously contended by Mr. Kasturi appearing for the petnr. that the vacancy contemplated in the section is actual vacancy and as Mani has occupied the house even before the 31st October, there was in fact no vacancy & in any event, if one tenant assigns his interest in the leasehold to another who comes into the possession of the leased premises by virtue of the sub-lease, a vacancy cannot be said to have arisen for the landlord to give notice.

3. There is no evidence in the case, that the lease of the premises was for any fixed period, so that the lessee may assign his un-expired portion to another person. It was the usual monthly lease of a house, & it is terminated by the letter of P.w. 1 who has expressed himself clearly that he will not be a tenant after 31st October. He had, therefore, no further interest in the property after 31st October which he can assign. As for the actual vacancy, it occurs when the tenant vacates the house after giving notice to quit. In this case, P. W. 1 has given notice to quit & has vacated it. The occupation of Mani, though it may be lawful till 31st October is unlawful after 31st October unless a fresh tenancy is created between him & the petnr. & this is what is prevented by the Act, unless it be with the consent of the Controller. On the facts, therefore, a vacancy arose by the termination of the tenancy by P. W. 1 & under the section, notice should have been given. Failure to do so is an offence for which the petnr. is liable. But in this case, I think the petnr. was bona fide under the impression that in the circumstances, he need not give notice, obviously under some mistaken advice. In the circumstances, I think a sentence of fine of Rs. 100, in default two weeks simple imprisonment will meet the ends of justice. The excess, if paid, will be refunded.

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