

Easwaran Chettiar Vs. K. Subbarayan

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Court : Chennai

Decided On : Apr-03-1970

Reported in : AIR1971Mad163

Judge : Ramaprasada Rao and ;Ramanujam, JJ.

Acts : Madras Buildings (Lease and Rent Control) Act, 1960 - Sections 7(3) and 10(3); Madras Buildings (Lease and Rent Control) Act, 1949; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act 1960

Appeal No. : Civil Revn. Petn. No. 1928 of 1968

Appellant : Easwaran Chettiar

Respondent : K. Subbarayan

Advocate for Def. : Mr. Ratnam

Judgement :

1. In this civil revision petition the tenant who is the aggrieved party is the petitioner. The landlord filed an application for eviction of the petitioner on the ground that he bona fide required the non-residential building in the occupation of the petitioner for purposes of his own business, and the petition was filed under Section 10(3)(a)(iii) of the Madras Buildings (Lease and Rent Control) Act, 1960. The petitioner resisted the same on the ground that the respondent was occupying a non-residential building of his own for purposes of his oil business, and there was no bona fides in the application either. The landlord (respondent) succeeded

before the Rent Controller, but failed before the appellate authority. On a further revision petition to the District Judge, West Thanjavur, the Court allowed the revision petition by agreeing with the Rent Controller, and directed eviction. The matter came before Kailasam, J., and the learned Judge, after hearing the parties made the following order:

"The question that arises in this civil revision petition is whether the landlord who is carrying on his business both manufacture and retain sale of oil, in a building of his own is entitled to another non-residential building for carrying on his retail business. The learned District Judge found that the main business that is being carried on by the landlord in his own premises is that of manufacture of oil and that the retain sale which being carried on in the premises is only a secondary one, and therefore he is entitled to get possession for his own use for retail business another premises which is in the occupation of the petitioned. The provision which enables the landlord to obtain possession is Section 10(3)(a)(iii) of Madras Act 18 of 1960 which provides that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of the building, if the landlord or his son is not occupying for purposes of a business which he or his son is carrying on, a non-residential building in the city town or village which is his own. It is not disputed that the landlord is occupying a premises in which he is carrying on the business of manufacture of oil as well as retain sale. The provision prima facie therefore will not apply.

Mr. Ratnam, learned Counsel for the respondent, strongly relied on a decision of this Court in Abdul Khader v. Hussain Ali by the 1962-2 Mad LJ 446. The facts as found by the Court of Small causes and accepted by the learned Judge are that the respondent in the case was carrying on both retail and wholesale business at No. 50 Bunder Street. The case of the landlord-respondent was that he wanted to carryon retail business in China Bazar, that the wholesale business carried on by him at Bunder Street is different from the retail business, that he is now carrying on the retail business as he has made all the necessary preparations therefor, and that the requirements of Section 7(3)(a)(iii)are fulfilled. The learned Judge referring to the contention of the learned counsel for the petitioner that the landlord was carrying on both the wholesale and retail business in Bunder Street cannot claim

the benefit of Section 7(3)(a)(iii), rejected the same. With respect, I am unable to agree with the reasoning or the conclusion arrived at by the learned Judge. On the finding that the landlord was carrying on retail business at No. 50 Bunder Street, he will be disentitled to the benefits under Section 7(3)(a)(iii) of the Act (corresponding to Section 10(3)(a)(iii) of Act 18 of 1960), as he is not a person not occupying for purposes of a business a non-residential building. The learned counsel for the petitioner part from submitting that the decision in 1962-2 Mad LJ 446 required reconsideration, contended that when once the Court finds that the landlord is in possession of a premises for any business, he would not be entitled to the benefit of the provision for getting possession of any other premises, even through it is for some other business. The learned counsel relied recent decision of this Court in Glamour Saree Museum v. Tamil Nadu Handloom Weavers Co-operative Society Ltd., 1969-2 Mad LJ 493. The learned Judge expressed his view that the language of the section would indicate that if a landlord is carrying on business in a non-residential premises of his own, that will be a bar to his obtaining an order of eviction in respect of any other premises. The learned Judge was of the view that the phrase 'a business' in the provision has reference to any business and not to each of the businesses. The sub-section provides that the landlord or his son who is not occupying for purposes of a business is entitled to apply to the Controller for an order directing the tenant to put the landlord in possession of the premises which is his own. With respect, I am unable to agree with the view taken by the learned Judge that when once the landlord is in occupation of a non-residential building for any business, he will not be entitled to ask for possession of any other non-residential building of his own for any other business. As I am unable to agree with the two decisions cited supra, the matter is referred to a Bench for disposal. The papers will be placed before the Honourable the Chief Justice for orders."

The papers having been set before us by my Lord the Chief Justice the matter has come up for final disposal by us.

2. The relevant section which has to be considered in the instant case is Section 10(3)(a)(iii) of the Madras Buildings (Lease and Rent Control) Act, 1960. That section reads as follows:--

"A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i) in case it is a residential building, if the landlord required it for his own occupation or his son and if he or his son is not occupying a residential building of his own in the City, town or village concerned;

(ii)-----

(iii) in case it is any other non-residential building, if the landlord or his son is not occupying for purposes of a business which the or his son is carrying on, a nonresidential building in the city, town or village concerned which is his own."

3. The provisos therein are not relevant for purposes of this case. The relevant provision in the Madras Buildings (Lease and Rent Control) Act, 1949, which has been repealed by Act 18 of 1960 ran as follows:--

"7(3)(a). A landlord may, subject to the provisions of clause (d), apply to the Controller, for an order directing the tenant to put the landlord in possession of the building-

(i) in case it is a residential building, if the landlord requires it for his own occupation and if he is not occupying a residential building of his own in the city, town or village concerned;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and if he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise;

(iii) in case it is any other non-residential building, if the landlord is not occupying for purposes of a business which he is carrying on, a non-residential buildings in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise."

4. The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act 1960, (XV of 1960), in so far as the relevant statutory provision under discussion is concerned, retained in substance the earlier provisions in Section 7(3)(a)(iii) of the Madras Act in the case of non-residential buildings. The salient feature in the earlier Madras Act was that a landlord who was occupying a non-residential building of his own or to the possession of which he was entitled, cannot ask for a non-residential building of his in the occupation of a tenant. This is continue in the Andhra Act. In the new Madras Act, however, a landlord can apply for such possession of a non-residential buildings with tenant provided he is not occupying, for purposes of a business, a non-residential building in the city, town or village concerned, which has his own. These are the relevant sections which are to be interpreted by us. As Lord Blackburn in *River Wear Commr. v. Adamson*, 1877-2 AC 743 at p. 764, said-

"the office of the Judge is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious".

The Court, therefore, is not expected to play the role of a Legislator and interpret law in such a way so as to expand its scope of activity no purely equitable considerations, for it would be transgressing the limits of its function, which is only to declare law and not to make it. Closely allied with this fundamental concept of interpretation is the doctrine explained in the maxim *a verbia legis non recedendum est* (from the words of the law there should not be any departure). It is well accepted as a golden rule of interpretation that the ordinary meaning of the words used by the statue and the grammatical sense thereof should be adhered to. It is therefore necessary to look into the words employed by the Legislature in Section 10(3)(a)(iii) to find out what its grammatical and plain meaning is. This sub-section says that all other prescriptions of the statute being satisfied, a landlord or his son who is not occupying, for purposes of a business which he or his son is carrying on, a non-residential building in the city, town or village concerned which is his own, can apply to the Controller for an order directing the tenant to put the landlord in possession of the said of the said building.

A more or less similar provision is made in Section 10(3)(a)(i) in the case of residential buildings. In section 10(3)(c) a provision which is in the nature of an exception to the above rule is drawn up. Under Section 10(3)(c), a landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he required additional accommodation for residential purposes or for purposes of a business which he is carrying on as the case may be. Thus, Section 10(3)(c) would apply to a case where the landlord is in his own building, but occupying only a portion thereof, and wants the rest of the building for purposes of his residence or business as additional accommodation.

It is therefore seen that that Section 10(3)(c), independently acts and has no bearing or impact on Section 10(3)(a). The non obstante clause in Section 10(3)(c), namely notwithstanding anything contained in Clause (a) makes it so operative. It therefore follows that Section 10(3)(a) has to be interpreted and the law therein contained declared as such without reference to Section 10(3)(c) and introducing considerations which do not strictly arise while noticing Section 10(3)(a) of the Act. The object of the Act is to avoid unreasonable eviction. Consistent with this object, the Legislature in its wisdom has provided that in case a landlord requires a non-residential building within the meaning of Section 10(3)(a)(iii) of the Act, which is in the occupation of his tenant, then he or his son should not be in occupation of non-residential building of his own, for purposes of a business which he or his son is carrying on. The meaning of this section is clear and there is no grammatical impropriety if such meaning is given effect to.

If a person, therefore, is occupying a non-residential premises of his own and is carrying on a business in it, then he has no right to disturb a tenant of his in another building and ask for his eviction. The niceties and artificialities of a problem where the non-residential building owned by the landlord is sufficient for the business which he is carrying on does not enter the field of discussion, because they are alien. The primordial requisite the condition precedent which would enable a landlord to seek an order under Section 10(3)(a)(iii) is that he

should not be in occupation of a non-residential building of his own in which he is carrying on a business. The letter 'a' in Section 10(3)(a)(iii) would mean "any". That would be its plain meaning. The fact that the premises owned and occupied by him does not subserve his business interests and that it is not convenient for him to occupy the same for purposes of a business which he is carrying on is an irrelevant factor and if that is taken into consideration, we are of the view that while interpreting the section we would be making law and not declaring law.

The law as it stands says that the landlord is interdicted from seeking a non-residential building of his in the occupation of his tenant if and when he is already in such a non-residential building of his own in which he is carrying on a business. We have already prefaced that hardship and inconvenience caused in declaring the law as it stands cannot be noticed by Court, for it is the exclusive prerogative of the Legislature to amend such hardships and to avoid the same. In the instant case, the finding of the Court below is that the respondent is carrying on both wholesale and retail oil business in a building of his own and he is seeking for eviction of the tenant in another non-residential building belonging to him on the ground that he wants to expand his business or set up a new business. However bona fide the intention of the Legislature may be, and whatever hardship might result by reason of the application of the prevailing law, we are unable to agree with the contention of the learned Counsel for the respondent that he would be entitled to an order for eviction, for he deserves it.

Desert is one, but law is totally different Merit may be one way and law may be total in a different way. He may merit an order; but if law prevents the grant of such order, Courts are helpless. On the factual situation the petitioner has to succeed, because the respondent himself has admitted that he is carrying on both wholesale and retail business. But as the matter has been placed before this Bench for a final disposal on the question of interpretation of Section 10(3)(a)(iii), we are considering further the various judicial precedents, which are no doubt conflicting, but which have bearing on the aspect arising before us.

5. Mr. Ratnam placed very strong reliance on the decision of the Division Bench in *Balaiah v. Lachaiah*, . There the

learned Judges, after dealing with the object of the Act, and the various legitimate and valid requirements of the landlords, observed at page 438 thus:--

"That is why we find in several provisions that the tenants' and the landlords rights and liabilities are attempted to be balanced. It is evident from Section 10(3)(c) that a landlord can claim a portion of the same building given on rent whatever may be the nature of his requirement, viz., residential or non-residential, subject of course to the satisfaction of other requirements of that provision. When a landlord can thus get a tenant evicted under Section 10(3)(c) in this manner, we fail to see why the landlord in an earlier clause would have been given altogether a different and diametrically opposit treatment. It is, therefore, impossible to construe Section 10(3)(c)(iii) to mean that the landlord cannot in any case evict a tenant from another of his non-residential building if he is in occupation of a non residential building in the same city either for his business which he is carrying on or for a new business. We would, therefore, naturally prefer to so construe this provision which would be consistent with the Legislative intent apartment from the subsequent clause viz., Section 10(3)(c)."

The learned Judges therefore laid considerable stress upon the purport of Section 10(3)(c) and were of the view that such purport and content of Section 10(3)(c) would engulf and govern of provision relating to normal eviction of tenants provided for in Section 10(3)(a)(iii). With utmost respect to the learned Judges, we are unable to agree that Section 10(3)(a)(iii).

Each sub-section works on its own force and vigour. Where as Section 10(3)(c)(iii) is concerned with the whole building in the occupation of a tenant, which is distinct and separate from the non-residential building in the occupation of the landlord, under Section 10(3)(c), both the landlord and the tenant are in the same building and the landlord in this case requests for additional accommodation and thereby seeks eviction. This fundamental difference has to be borne in mind. In the Andhra Pradesh case the learned Judges through that both the Sections are complementary to each other and can be worked up together. We are unable to have this view. The earliest case which supports our view is the one in *Achutaramayya v. Satyanarayana*, 1949-2 Mad 138 = (AIR 1950 Mad 56). There,

Rajanmannar C. J. speaking for the Bench observed that the essential condition laid down in Section 7(3)(a)(iii) of the earlier Act which must be satisfied before a landlord can be denied his right to get back possession of his won building is that he was occupying for the purpose of a business which he is carrying on in a non-residential building which has his own or to the possession of which he is entitled. The fact of that case discloses that the landlord was not occupying a non-residential building for the purpose of the business which he was carrying on and hence it was that ultimately the petition was allowed. But the Division Bench in the excerpt quoted above, categorically laid down that the entitlement of the landlord to get possession of his building for non-residential purposes is that he was not occupying for the purpose of a business which he is carrying on, a non-residential building of his own. Subba Rao, J., (as he then was), in *Thanappa v. Govindaswami*, put the

proposition in a must stronger way thus:--

"In the case of a non-residential building the landlord can evict a tenant only if he is not in possession of a non-residential building of his own..... The tenant under the Act has a right to possession unless and until he is evicted under the provisions of the Act, Under the provisions of the Act, a landlord will not be entitled to the possession of his non-residential building if he is in possession of another non-residential building as a tenant;"

A fortiori this proposition of law will apply if the landlord is in possession of an other non-residential building of his won. Panchapakesa Ayyar, J., in an unreported decision in a batch of Civil Revision Petitions. C. R. Ps. Nos. 1792 of 1954 and 211 to 214 of 1955 (Mad) which was decided by him on 11-10-1956, also expressed a finding that the non-residential building in the possession of the landlord was sufficient for his business, and his application was rejected on that ground by the Courts below. This finding of fact was accepted by the learned Judge. On the legal position also, the learned Judge expressed himself as follows:--

"As he had these two non-residential buildings by the time he filed these petition, it is clear to me that Section 7(3)(a)(iii) will apply, as rightly held by the learned

District Judge, and will totally preclude the petitioner from getting these tenants evicted..... And so long as the Madras Building (Lease and Rent Control) Act or Section 7(3)(a)(iii) thereof has not been held to be ultra vires, this argument cannot have any force. It is admitted that they have not been held to be ultra vires; so effect must be given to the plain working of Section 7(3)(a)(iii), whatever the unpleasant consequences to owners of buildings or other persons' vested rights considered sacrosanct once".

Finally, the learned Judge concluded thus:

"Mr. Ramachandra Ayyar, then urged that, under Section 7(3)(c), there is a provision enabling the landlord to apply for the remaining part of the same building occupied by tenants for his won occupations, residential or non-residential, in case he requires additional accommodation for residential purposes or for purposes of carrying on his expanding business. That is so. But here, the five premises in question are not in the same building. Far from helping the petitioner in these cases, in his contention regarding Section 7 (3)(a)(iii), Section 7(3)(c) will demolish it. Section 7(3)(c) is restricted to the other parts of the same building and contains the tell-tale clause 'notwithstanding anything contained in clause (a)' thereby showing that Section 7(3)(a)(iii) would apply if Section 7(3)(c) would not."

6. We would respectfully adopt the reasoning of the learned Judge. In the Andhra Pradesh case referred to above, reliance was placed upon an observation made by Panchapakesa Ayyar J. in *Nataraja Asari v. Balasubramaniam*, 1957-2 Mad J 492. There the learned Judge was not called upon to discuss the differences between Sec. 7(3)(a)(iii) and Section 7(3)(c). No doubt, he has made the observation that the landlord can have an eviction order for carrying on a different business from the business he is carrying on in other premises. But the wording of the Section does not enable us to make such a general statement. Again, in *Vemana Veerabadrudu v. Kanchorla Ramarao*, 1958-2 Andh WR 575, the Court had occasion to consider the scope of Section 7(3)(a)(iii). The learned Judge said that the terms of Section 7(3)(a)(iii) are clear and mandatory and that a landlord may apply to the Controller for an order directing the tenant to put him in possession of a non-residential building only if he is not occupying for the purpose

of his business a non-residential building in the city, town or village concerned which is his own, or to the possession of which he is entitled to whether under the Act or otherwise. The learned Judge also said that it is not permissible to enlarge the scope of the provisions by importing into them considerations of expediency or convenient which are not warranted by the terms and tenor of the statutory provisions.

In Ramaswami Naidu v. Venkateswarlu, 1961-1 Andh WR 400 the learned Judge who decided the case under similar circumstances was of the view that a landlord is not entitled to an order for eviction in such circumstance. In that case the landlord was occupying a godown under a definite lease. The lease expired, but the landlord was entitled to continue in possession by reason of the statutory immunity guaranteed by the Rent Act. In those circumstances the learned Judge observed that the landlord was not entitled to an order of eviction against his tenant occupying his own non-residential building by reason of Section 7(3)(a)(iii). Clause (a) of Section 7(3) of the Act has no application at all to the present case. Reliance was placed upon the decision of Rao, J., (as he then was), in .

7. In 1969-2 Mad LJ 493, Veeraswami, J., (as he then was), explained the purport of Section 10 (3)(a)(iii) of the new Act clearly as under:

"By the language employed in Sec. 10(3)(a)(iii) it is clear that if a landlord is carrying on a business in a non-residential premises of his own that will be a bar to his obtaining an order of eviction in respect of another premises. It does not appear to be the intention of the provision that the test is every business considered separately. It is not as if that if a landlord is having several businesses and is occupying a non residential premises of his own in which he is carrying on one of the businesses, he is permitted by the provision to get possession of other non-residential premises of his own for carrying on every one of the other businesses."

8. We could illustrate our view thus: A landlord has five non-residential buildings belonging to him and he has let them out differently to independent tenants and he himself occupies a sixth non-residential building and is carrying on amaligai" business there. He wants to expand the same and sets up grain business. If

Section 10(3)(a)(iii) is understood to be not a bar, then he would be entitled to possession of one more residential building for his grain business. After setting up the grain business, he slowly introduces in it patent medicines and he thinks of expanding his trade in medicines and desires to open a chemists and druggists shop. On the same principle, he would be entitled to get a third non-residential premises from his own tenant. After setting up a chemists and druggists shop, as is now common, he sets up an almirah containing picturesque textile goods and intends starting a textile business of his own. Therefore he could get a fourth shop as well. After securing the fourth shop, he would like to expand his retail textile business and set up a wholesale one and for that purpose he could ask the other shop and so on. Thus, a landlord who is occupying a non-residential business premises of his own can by fortuitous circumstances or bona fide intention to expand his business in all ways, successfully throw out 4 or 5 other tenants, who were inducted into his other premises for purposes of trade and can overcome the statutory bar set up in Section 10(3)(a)(iii) and completely demolish the statutory immunity vested in the tenants by virtue of the provisions in the Act. We do not think that there is any scope for common sense, equity and convenience playing any part in the matter of the interpretation of Section 10(3)(a)(iii) of Madras Act 18 of 1960.

9. As against the above decisions, reference was made to two decisions of our Court in *Nagamanicka Chettiar v. Nallakanna Servai*, 1957-1 Mad LJ 182 and 1962-2 Mad LJ 446, In 1957-1 Mad LJ 182, Rajamannar, C. J., extended the principle as was done by the Bench of the Andhra Pradesh High Court. But it is to be noted that on the peculiar facts of that case, he found that the landlord was not in occupation of a building for the purpose of carrying on the business of manufacturing camphor with the help of power driven machinery. In those circumstances, he held that the landlord was entitled to the benefit of Section 7 (3)(a)(iii). But the learned Judge was of the view that the principal underlying S. 7(3)(a)(iii) would apply equally to a case arising under S. 7(3)(a)(iii). With greatest respect to the learned Judge we are unable to agree. In 1962-2 Mad LJ 446, Jagadisan an, J., created a dichotomy as between wholesale business and retail business and held that a wholesale merchant carrying on business in a premises belonging to him can evict his tenant in another premises belonging to him to

enable him to carry on a retail business in respect of the very commodity dealt with by him as a wholesale dealer. Once again we are pained to state that we are notable to gain support for this equitable extension thought of by the learned Judge from the clear and unambiguous language of the present Section 10(3)(a)(iii) or the old Section 7(3)(a)(iii).

10.. The trend of the majority view of the learned Judges of our Court starting from the decision of the Division Bench in appears to be in one way. It is that if a landlord is in possession of a non-residential building of his own and for purposes of carrying on a business, then he cannot ask for another non-residential building of his own in the occupation of a tenant. Similarly, because the purpose for which the application for eviction is made is founded on the fact that intended business proposed to be continued in the non-residential building in the occupation of the tenant, is different from the trade or business engaged in by the landlord in his own premises, that would not matter at all. The Legislature has clearly laid down the same principle even in the case of a residential building. If therefore a landlord residing in a residential building of his own cannot ask for another building of his own cannot ask for another building of his in the occupation of his tenant, merely because he wants a comfortable or a convenient living, then with equal force it can be said that the owner of a non residential building is in any way the better. If the Legislature intended that that owners of non-residential building should be placed in a different way and should be treated differently, it should have said so in so many words. On the other hand, Sec 7(3)(a)(iii) which cannot be invoked for interpreting Section 7(3)(a)(iii), provides a guide-line and an answer to the problem before us. It is only in cases where additional accommodation is asked for, a landlord can seek for another residential building in the occupation of the tenant. That is not the case here. Where the landlord is occupying an independent non-residential building of his own and the tenant is in occupation of a portion of such a building, then only Section 7(3)(c) would operate on its force and might help the landlord; but in case the tenant is in occupation of a completely different premises then the landlord cannot take advantage of either Section 7(3)(a)(iii) or the said section read with Section 7(3)(c).

11.. We have already observed that on the facts of this case, the landlord is not entitled even to an equitable order because he admits that he is carrying on both wholesale and retail business in oil in the premises occupied by him.

12.. Taking all the circumstances into consideration, while agreeing with the view expressed by Veeraswami, J., (as he then was), in 1969-2 Mad LJ 493, which view is supported by earlier decisions of this Court, we find that the order of the learned District Judge is wrong and without jurisdiction. No other question of law of fact has been argued before us. The Civil revision petition is therefore allowed., There will be no order as to costs.

13. Revision allowed.

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