

**Govinda Menon Vs. House Rent Controller, Coimbatore**

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**SooperKanoon Citation :** [sooperkanoon.com/796342](http://sooperkanoon.com/796342)

**Court :** Chennai

**Decided On :** Feb-19-1957

**Reported in :** AIR1957Mad608

**Judge :** Rajagopala Ayyangar, J.

**Acts :** Madras Buildings (Lease and Rent Control) Act, 1949 - Sections 3(1) and 7(3)

**Appeal No. :** Writ Petn. No. 575 of 1956

**Appellant :** Govinda Menon

**Respondent :** House Rent Controller, Coimbatore

**Advocate for Def. :** Special Govt. Pleader

**Advocate for Pet/Ap. :** M.K. Nambiar, Adv. for ;V.P. Raman, Adv.

**Judgement :**

ORDER

**Rajagopala Ayyangar, J.**

1. The legality of the Order of that House Rent Controller, Coimbatore, directing' the petitioner to vacate the, premises of which he has been in occupation as a usufructuary mortgagee is the subject matter of this writ petition.

2. These proceedings relate to a house bearing door No. 4/2-B Desaba Colony, Race Course, Coimbatore. The petitioner is a retired Assistant Conservator of Forests who was originally residing at Salem His mother who was at Coimbatore fell ill and the petitioner decided to move to Coimbatore to stay with his mother. Consequently the petitioner obtained a usufructuary mortgage of the premises now in dispute from the owner on 3-2-1956. At that time, the house was in the occupation as a tenant of one V. Chenthamaral Kannan, an advocate of Coimbatore.

3. After obtaining the mortgage the petitioner filed a petition under Section 7 of the Madras Buildings (Lease and Rent Control) Act, 1949, for the eviction of the tenant from the house on the ground that it was bona fide needed for his residence. This petition was filed on 15-2-1956. The tenant appeared in response to the notice and agreed to vacate the house in two months' time.

4. On this the Rent Controller on 23-2-1956, passed an order in these terms:

'Both (sides) agree that the respondent will vacate the premises in two months' time. It is ordered accordingly.'

The tenant kept his promise and vacated the house. Thereupon the petitioner entered into possession. He reported this fact to the House Rent Controller on 23-4-1956. Thereupon the House Rent Controller passed an order on 26-4-1956, which is one of the orders complained of in this writ petition reading thus :

'The action of Sri P. Gorinda Menon in having occupied the house .. .. without obtaining the order of the House Rent Controller, Coimbatore, is illegal. He should therefore vacate the house immediately and intimate the fact of having done so within 24 hours on receipt of this memo.'

This was replied to by the petitioner through his lawyer drawing the attention of the Rent Controller to the fact that the petitioner's letter dated 23-4-1956 was not really required and that the direction to vacate the house was illegal. In reply the House Rent Controller reiterated the position that he had taken in the earlier communication in an order passed by him on 12-5-1956. In this letter or

memorandum the Officer stated referring to the rent control proceeding which had been ordered on 23-2-1956 :

'No orders were passed to deliver possession of the house to the petitioner .. ,. .. If he wants the building for his own occupation, he must come up with a petition and satisfy that it is required for his personal occupation.'

This is the second order whose legality is challenged in this petition.

5. I am clearly of the opinion that the Rent Controller, had no Jurisdiction to pass the orders directing the petitioner to vacate his house. Section 3 (1) (a) requires every landlord to notify a vacancy within seven days of the occurrence thereof. But this is subject to a proviso which enacts: 'Provided that this sub-section shall not apply to a building in respect of which the landlord has obtained an order for possession on any of the grounds specified in Section 7 Sub-section (3)' and sub-section (3) of Section 7 relates to an application by a landlord for eviction of tenants on the ground that the building is required for his own occupation. There cannot be any doubt that in the Present case the original application by the petitioner-landlord was under Section. 7(3). There had been no contest to that application and the Rent Controller had allowed the petition. But merely because it was by consent it did not cease to be an order under Section 7 (3). So long as that order stood, no notice of vacancy was required under Section 3(1) (a). No reasons were assigned by the Rent Controller for refusing to treat the order dated 23-2-1956 as one under Section 7(3) in his first order dated 28-4-1956. In his second order, however, that dated 12-5-56, the Rent Controller assigned as the reason that the order dated 23-2-56 did not. in terms direct the tenant to deliver possession to the landlord.

This is entirely a quibbling with words which could have been avoided The relief which was asked for in the petition R.C.P. No. 59 of 1956 was that the Rent Controller might evict the tenant and order the Jatter to surrender and hand over vacant possession to the petitioner. It was this that was agreed to by the tenant and was ordered by the Rent Controller. There is therefore, no substance in this construction of the eviction order.

6. The counter-affidavit to the writ petition has been sworn to by the Rent Controller himself and in this he has stated that he was Justified In ignoring the order passed under Section 7(3) because the petition for eviction was filed within three months of the registration of the usufructuary mortgage. This is based upon the proviso to Section 7(3) which runs'

'Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered.'

It is obvious that this provision has been intended for the benefit of tenants and has nothing to do with disposing of a petition under Section 7 (3). If the tenant does with the Jurisdiction of the Court in the matter, he would be entitled to succeed. But he is not bound to do so and if he waives the benefit of it, the petition is not rendered incompetent and the jurisdiction of the tribunal is not ousted; In any event, it cannot be a ground by reason of which the proceedings could be treated as null. Even if a tenant were entitled to impeach that adjudication it would certainly not be open to the court which passed it to treat that proceeding as, null and that order as non est.

The Rent Controller -- Tribunal is certainly not a party to the proceeding. which can impeach its propriety. Further to hold that a tribunal can suo motu and without notice to any party treat a proceeding between parties before it as null is so repugnant to commonsense as well as to every principle of law that I do not consider it necessary to go more fully into it. In my judgment, the Rent Controller usurped for himself a Jurisdiction not conferred by law. and purported to treat himself as some quasi owner of all residential houses in the locality. I have only to add that it is not the first occasion when I have to deal with similar orders of this officer.

7. The rule is accordingly made absolute and the orders of the Rent Controller dated 26-4-1950 and 12-5-1956 are set aside. At one time I considered whether it was not a proper case in which the Rent Controller should be directed to pay the costs of the petitioner personally but on further consideration I refrain from doing so

and direct that each party do bear his own costs.

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