

**In Re: Mrs. B. Gervase**

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**SooperKanoon Citation :** [sooperkanoon.com/797433](http://sooperkanoon.com/797433)

**Court :** Chennai

**Decided On :** Nov-17-1949

**Reported in :** AIR1950Mad599

**Judge :** Panchapakesa Ayyar, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 1, 2, 40, 41 and 188; Madras Buildings (Lease and Rent Control) Act, 1946 - Sections 3(2)

**Appeal No. :** Criminal Revn. No. 852 and Cri. Revn. Petn. No. 788 of 1949

**Appellant :** In Re: Mrs. B. Gervase

**Advocate for Def. :** For the Crown: Crown Prosecutor

**Advocate for Pet/Ap. :** K. Narayanaswami Mudaliar, Adv.

**Judgement :**

ORDER

**Panchapakesa Ayyar, J.**

1. The petitioner, in this case, Mrs. Gervase, has been convicted by the Fifth Presidency Magistrate, Madras under Section 188, Penal Code, for disobeying the orders of the Collector of Madras dated 16th April 1948 and 22nd April 1918 (EXS. P-I and P-4), under Section 3 (2), Madras Buildings (Lease and Rent Control) Act, 1946, and has been sentenced to pay a fine of Rs. 100/-, or, in default, to undergo

simple imprisonment for a week. She is the landlady of 'Satya Bhavan,' premises No. 29 Sir Mohamed Usman Road, Thyagarayanagar. These premises fell vacant on 31st March 1948, and the petitioner did not notify the said vacancy as required by Section 3 (1), Madras Buildings (Lease and Rent Control) Act, XV [15] of 1946. On 9th April 1948, the vacancy was noticed by P. W. 1, the Accommodation Inspector for Thyagarayanagar area, and the Accommodation Tahsildar, and the fact was brought to the notice of the Collector of Madras who, thereupon, sent a memo, dated 9th April 1948, to the petitioner calling upon her to explain why she should not be prosecuted for not notifying the vacancy. The petitioner replied by her letter dated 12th April 1948 that she had already intimated the vacancy on 6th April 1948 and added that if that letter was lost in transit her present letter might be treated as such intimation. On 12th April 1948 itself the Collector of Madras got from her an official notification of the vacancy of the said premises. On 16th April 1948, the Collector, by an order, Ex. P-1, took over the said premises for allotment to a Government office or official, for non-residential purposes, under Section 3 (2) of Act XV [15] of 1946, and a copy of the order was duly served on the petitioner. The Collector, by his subsequent order, dated 22nd April 1948, Ex. P-4, allotted the premises to the Commissioner of Police for locating the Thyagarayanagar police station. This order was duly served on the petitioner, who admitted personal knowledge of it. She wrote a letter on 21st April 1948 to the Collector stating that she required the premises for her own occupation, and for her relatives, and requesting the Collector's permission to allow her to do so. By his letter dated 5th May 1948, the Collector refused her request and directed her to hand over possession of the premises to the Commissioner of Police, as per his previous order, on pain of proceedings being taken against her. This too was served on her. On 6th May 1948, she informed the Collector that she and her people had occupied the said premises, and that it could not be given to the police. She also appealed to the Government against the Collector's orders, but the Government, by their memo, dated 24th May 1948, intimated to her that she should comply with the Collector's orders and that she would be prosecuted if she refused to do so. The Collector also wrote to her to the same effect on 4th June 1948 drawing her attention to the Government's order. The petitioner acknowledged the receipt of these orders. The Collector heard, later on, from the Commissioner of Police, that

the petitioner had refused to hand over possession of the premises to P. W. 2, the Sub-Inspector of Police deputed by him, for taking over the premises and locating the Police station. The petitioner wrote to the Collector that she objected to the premises being used for the purpose of a Police station but added, that, if she was assured that it would not be used for that purpose, she had no objection to deliver possession of it to the Police Department. She, later on, flatly refused to hand over the premises. She had previously intimated to the Collector that the premises were fit only for non-residential purposes, like an office, as it had been made fit for such purposes, though it had been used for residential purposes, before, and that Dhiran & Co., Film Producers had once occupied the premises for non-residential purposes. But of course, she did not like the Police station to be located there. Finally, she obstinately refused to hand over the premises at all. The net result of the petitioner's conduct was that the Collector had to find some other premises for locating the Thyagarayanagar Police station owing to the petitioner's obstinate refusal to hand over the premises and the Collector's lack of powers to get her evicted summarily from the premises, under this or any other Act now in force. He, later on, instituted these proceedings under Rs. 186 and 188, Penal Code. The lower Court acquitted the petitioner of the offence under Section 186, Penal Code as the petitioner had not actively obstructed but only assumed an attitude of non-violent passive resistance. It convicted her under Section 188, Penal Code.

2. The learned counsel for the petitioner has raised four main contentions before me. The first was that the Madras Buildings (Lease and Rent Control) Act, 1946 was a complete and self-contained Act, and that the Penal Code could not be applied to any offence alleged to have been committed by a person against any officers engaged in the administration of that Act, and similar self-contained Acts. The argument is wholly unsustainable. The Income-tax Act and the Estates Land Act are even more complete Acts, and yet it is obvious that they will not exclude the operation of the Indian Penal Code wherever such operation is not expressly excluded, or excluded by necessary implication as by a provision for a separate punishment for such offences. If these were not so, even murders can be committed of persons carrying out the provisions of Madras Buildings (Lease and Rent Control) Act, 1946, and similar Acts, and nothing can be done as the Penal Code will be excluded. The simple rule of interpretation in such cases, like this, is

that) the Indian Penal Code will apply wherever its application is not expressly, or by necessary implication, excluded, and where the requirements prescribed under the Indian Penal Code for the offence charged are satisfied.

3. The next contention of Mr. Narayanaswami Mudaliar, for the petitioner was that Section 16 of this Act has provided penalties for breaches of Section 3 (1), and has provided no penalty for breaches under Section 3 (2), and that the present case, being one under Section 3 (2), no punishment should be inflicted for disobedience. This argument too is clearly untenable. The usual rule of law is that where there is a specific punishment provided in a special Act it takes precedence of the general punishment under the Penal Code, and that where there is no specific punishment provided the general law of the land, under the Penal Code, comes into operation if the requirements under any section thereof are satisfied.

4. The third contention was that the Act does not specifically confer a power on the Collector under Section 3 (2) to requisition the premises or to allot them to anyone like the Commissioner of Police for locating a Police Station etc. I cannot agree. Section 3 (2) clearly says that if any officer empowered by the Provincial Government, which will include the Collector, does not intimate to the landlord in writing within a week of the receipt of notice under Section 3 (1) by the Controller that the building is required by him or the Government for any Governmental purposes or for use by any public institution under Governmental control or any officer of the Government, the landlord shall be at liberty to lease the building to any tenant. This, of course, shows that the Collector has got, by necessary implication, the power to require the building for a Governmental purpose or for the use of any public institution under Government control or by any officer of the Government. If that were not so, the powers given under Section 3 (2) will be farcical.

5. The last contention of Mr. Narayanaswami Mudaliar was that, in any event, the disobedience of the petitioner did not cause or tend to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, under the second part of Section 188, Penal Code, and that the Collector had no jurisdiction to file a complaint under Section 188. This too is

clearly untenable. The Collector and P. W. 2, lawfully employed in operations under this Act, must certainly have been annoyed beyond measure by the disobedience of the orders by this petitioner, and the police officers, who had looked forward to occupy the premises allotted to them, were prevented from occupying them, and must have been annoyed, and were certainly injured by not being able to occupy the premises for a certain period. This being a case of orders made by the Collector, as a public functionary and for public purposes and all the conditions under Section 188, Penal Code having been satisfied, it is obvious that the Collector had ample jurisdiction to lay the complaint under Section 188, Penal Code.

6. All the contentions on behalf of the petitioner have failed. I am satisfied that the lower Court's conviction of the petitioner was correct and confirm it. But, considering the peculiar circumstances, and especially the fact that this appears to be the first case of this kind to be decided by this Court, the law on the point not being settled before, I modify the sentence imposed on the petitioner into a fine of Rs. 50/- or in default, simple imprisonment for a week. The excess fine, if paid, will be refunded.