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Court : Chennai

Decided On : Mar-03-1972

Reported in : AIR1973Mad292

Judge : Palaniswamy, J.

Acts : Madras Buildings (Lease and Rent Control) Act, 1960 - Sections 3(9) and 3(10)

Appeal No. : Writ Petn. No. 2258 of 1970 and Crl. R.C. No. 1104 of 1970 (Crl. R.P. No. 1100 of 1970)

Appellant : P. Narayana Rao

Respondent : The Accommodation Controller, Madras

Advocate for Pet/Ap. : Mr. Vasudevan

Judgement :

ORDER

1. The petitioner is the owner of premises No. 6 Peddu Naicken St. Kondithope, Madras. A part of it was in the occupation of the petitioner for non-residential purposes and the remaining portion had been let out to one Parthasarathi Chetti. Though the tenant vacated the building in January, 1966, the petitioner did not give notice of vacancy and thereupon action was taken against him by the Accommodation Controller. The petitioner contended that, inasmuch as he was in

occupation of a portion of the building, he was not bound to give notice and that the building did not come within the purview of the Madras Buildings (Lease and Rent Control) Act 1960 (hereinafter referred to as the Act), by reason of Section 3(10)(c) of the Act. The Accommodation Controller rejected this contention and issued a notice to the petitioner on 3-7-1970 stating that, if he failed to surrender possession, possession would be taken under Section 3(9) of the Act. It is to quash that order, W. P. No. 2258 of 1970 has been filed. For failure to intimate the vacancy the petitioner was prosecuted before the Chief Presidency Magistrate, Egmore, Madras, in C. C., No. 5842 of 1970 and has been sentenced to pay a fine of Rs. 50/- in default to suffer simple imprisonment for two weeks. It is against that conviction, Crl. R. C. No. 1104 of 1970 has been filed.

2. Mr. Vasudevan appearing for the petitioner contended that Section 3(10)(c) does not require that the full owner should occupy a part of the building only for residential purposes and that even if a part of the building is in the occupation of the owner for non-residential purposes, the building would stand out of the purview of the Act. To understand the scope of the argument, it is necessary to set out the relevant provision. Section 3(10)(c) reads:

'Nothing contained in this section shall apply--(c) to a residential building, a part only of which is occupied by the full owner and the whole or any portion of the remaining part of such building is let to any tenant.'

This section refers to a residential building, a part of which is in the occupation of the owner and the whole or any portion of the remaining part of the building is let out to any tenant. The question is whether the occupation contemplated in the section is occupation for residential purposes only or occupation for non-residential purposes also. In my view, the occupation contemplated therein is only for residential purposes and not for non-residential purposes. Mr. Vasudevan drew my attention to the decision of Srinivisan, J., in *Rukmani Ammal v. Accommodation Controller*, 1965 1 MLJ 324, as supporting his contention that the owner need not occupy the building for residential purposes. That decision does not support that position. There the question was whether the owner should permanently reside in the building in question, or whether temporary

accommodation for residential purposes was sufficient. The learned Judge held that if the owner occupies the building even for a few days in the month, it would be occupation within the meaning of the section. The question did not arise whether occupation for non-residential purposes would entitle the owner to invoke Section 3(10)(c).

3. The decision of Ramakrishnan, J. in Chellammal v. Accommodation Controller, : (1967)2MLJ453 on which Mr. Vasudevan next placed reliance is also not to the point. There, the owner was in occupation of a portion for her own residence. The other part of the building had been let out to a tenant for non-residential purposes. The learned Judge has pointed out that the principle in either case, whether the portion is let out for residential purpose or non-residential purpose, is the same, namely, where the building is a residential one and the owner is in possession of a portion of the building, he is entitled to the statutory protection, giving him liberty to exercise his discretion in the choice of the tenant for the occupation of the remaining portion which is not in his occupation. That also is not relevant for our present purpose. As I have already pointed out the language of Section 3(10)(c) is clear to indicate that the occupation of a part of the building contemplated is only occupation for residential purposes. If the intention of the Legislature was that irrespective of the purpose of occupation, the building shall stand exempted merely for the reason that a part of the building is in the occupation of the owner, the Legislature would certainly have used the general expression 'a building' without categorizing the building as 'residential building'. The very fact that the Legislature has used the expression 'residential building' clearly indicates that the exemption can be availed of only in respect of a building, part of which is in the owner's occupation for residential purposes and not part of which is in the owner's occupation for non-residential purposes.

This provision was introduced newly in the present Act. The object of the Legislature in making this provision is not far to seek. Instances were not uncommon under the old Act where the owners occupying a portion of a building were, on grounds of religious practices and food habits complaining of induction of disagreeable tenants into other portions. Vegetarian landlords had occasion to complain that allotting another portion of the same building to non-vegetarians

caused considerable hardship to them. Presumably the Legislature intended that where the owner is occupying one portion of a building for his residence, he should have the right to choose the tenant for the remaining portion. Section 10(3)(c) gives effect to this intention. The petitioner admittedly did not intimate the vacancy. The action taken by the Accommodation Controller is therefore not liable to be interfered with as it is in accordance with law.

5. The writ petition fails and is dismissed. There will be no order as to costs. The conviction and sentence are confirmed and the criminal revision is dismissed.

6. Petition dismissed.

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