

**A. Abdul Rahim Vs. State of Madras by Accommodation Deputy Tahsildar**

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**Court :** Chennai

**Decided On :** Mar-14-1961

**Reported in :** (1962)1MLJ272

**Appellant :** A. Abdul Rahim

**Respondent :** State of Madras by Accommodation Deputy Tahsildar

**Judgement :**

**Veeraswami, J.**

1. This Revision is directed against a conviction under Section 16(1) read with Section 6(2)(a) of the Madras Buildings (Lease and Rent Control) Act, 1949, and imposition of a fine of Rs. 200 with a provision for simple imprisonment for three weeks in case of default. The petitioner who was the landlord, by a lease deed, dated 1st January, 1958, let out to one Dr. M.P. Ganesh Rao the front side of premises No. 129-A in Arcot Road, Kodambakkam, on a monthly rent of Rs. 45. Clauses (4) and (5) of the lease deed provided for the payment by the tenant to the petitioner of a sum of Rs. 500 as advance, the receipt of which was acknowledged by the petitioner, and for return of the advance without interest on the tenant vacating the premises in his occupation. The question is whether this provision for payment of the amount and refund of the same on the contingency contemplated is within the mischief of Section 6(2)(a) of the Act. The learned Chief Presidency Magistrate thought that it was, and in that view convicted and

sentenced the petitioner as aforesaid.

2. There was some argument in the light of the evidence adduced before the learned Chief Presidency Magistrate as to the precise nature of the payment of Rs. 500. Clause (4) of the lease deed states that the tenant of his own accord paid the sum to the petitioner as advance but it was sought to be made out in the evidence that this amount was paid by the tenant with a view for the petitioner to provide for certain amenities asked for by the tenant. But this case of the petitioner has not been accepted by the learned Chief Presidency Magistrate and I can find no reason to differ from him. The actual payment of the sum of Rs. 500 and the refund thereof at the termination of the tenancy are not disputed. Though Clause (4) of the lease deed mentions that this amount of Rs. 500 was paid as advance, it is clear from the lease deed that the so called advance did not represent additional rent or rent paid in advance. Nor does the payment appear to be of the nature of a loan because it was not repayable on demand. It is more like a deposit repayable only on the happening of a certain stipulated event.

3. Sub-section (2), Clause (a) of Section 6 of the Act reads:

(2) Where the fair rent of a building has not been so determined -

(a) the landlord shall not, after the commencement of the Madras Buildings (Lease and Rent Control)(Amendment) Act, 1951, claim, receive or stipulate for the payment of, any premium or other like sum in addition to the agreed rent,

In view of the argument in this Court it may also be necessary to set out the Proviso to the Section which is:

Provided that the landlord may receive, or stipulate for the payment, of, an amount not exceeding two months' rent, by way of advance.

Whether such a deposit as mentioned above is within the scope of 'any premium or other like sum' is the question. The word 'premium' is a well-understood expression used in contra-distinction to rent normally payable either periodically or on specific occasions. Section 105 of the Transfer of Property Act defines 'that the price paid or promised in consideration of a lease is called the premium and. that

the money, share of crops, service or other thing paid periodically or on specific occasions or to be rendered at such times by the tenant is called the rent. Sometimes a premium paid in certain circumstances may almost resemble a loan, when, of course, the amount is repayable. But in this case I have already said that the amount paid in the circumstances was, having regard, to the terms, not a loan. Where the deposit repayable as in this case was in consideration of the grant of the lease, can it be said that it is premium paid for the lease? If the amount paid is not refundable, it will present no difficulty for that will undoubtedly be premium. But the payment being on condition that the amount is refundable on the happening of a certain event, it is; necessary to determine whether the amount can be said to be 'premium.'

4. No direct decided case on the point has been brought to my notice. The cases, cited at the Bar relate to the English Rent Control Acts using different phraseology on particular contexts. In *King v. Cadogan (Earl)* L.R. (1915) 3 K.B. 485 , Warrington, L.J., while discussing the relative provisions in the English Finance Act, stated:

Now the Legislature in expressing its intention has chosen to use two words - 'rent' and 'premium' - both of which in connection with leases have perfectly well known legal meanings. I need not say anything about the meaning of the word rent, but 'premium', as I understand it, used as it frequently is in legal documents, means a cash payment made to the lessor, and representing, or supposed to represent, the capital value of the difference between the actual rent and the best rent that might otherwise be obtained. It is a very familiar expression to everybody who knows the forms and powers of granting leases. It is in fact the purchase money which the tenant pays for the benefit which he gets under the lease.

Actually in that case the Lord Justice was concerned with an item of expenditure on the house and he held that such an expenditure was not in any sense a premium. But it is equally obvious that a deposit such as in this case, which is repayable on the happening of the specific contingency, is not premium as the expression was understood by Warrington, L.J. It certainly does not represent the capital value of the difference between the actual rent and the best rent. W.H.

*Brakspear & Sons, Ltd. v. Barton* L.R. (1924) K.B. 88 is a case under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The lease deed in that case contained what is familiarly known as the tied clause namely that the tenant should make purchases from the landlord who would give a discount on a certain percentage on the turnover. In an action by the landlord to recover rent and price due for the goods sold and delivered, the tenant made a counter-claim alleging that the discount of 10 per cent, was due to him on the price of goods paid. McCardie, J., disallowed the counter-claim and held that the tied covenant in the lease and the discount for goods supplied under the tie must be disregarded for the purposes of the Rent Restrictions Acts. The learned Judge, with reference to the words 'fine or premium or other like sum for the grant, renewal or continuance of a tenancy' occurring in Section 2(3) of the Rent Restrictions Act, 1920, observed that the tie and discount in question did not fall within the scope of those words. Reference was next made to *Regor Estates Ltd. v. Wright* (1951) 1 All. E.R. 219. That case was concerned with Section 2(1) of the Landlord and Tenant (Rent Control) Act, 1949, which made it illegal to require the payment of a premium 'as a condition of the grant, renewal or continuance of a tenancy' of a dwelling house to which the Rent Restrictions Act applied. The tenancy, therefore, was entered, into price to the Act coming into force and provided for the payment of 300 as-premium in respect of the lease, the payment to be in instalments. The tenant having defaulted, to pay the instalments of the premium, in an action to recover the same, the tenant contended that the premium was not recoverable inasmuch as the same was within the prohibition enjoined by Section 2(1) of the 1949 Act. It was held by the Court of Appeal that prior to the 1949 Act coming into force, a stipulation for and. payment of a premium like that was not illegal and that, therefore, the landlord was entitled to recover the arrears of instalments of the premium. The Court of Appeal had to do with the same Section in *Woods v. Wise* (1955) 1 All. E.R. 767 That was again a case in which prior to the coming into force of the Landlord and Tenant (Rent Control) Act, 1949, a lease agreement had been entered into for which part of the consideration was a lump sum of 850 paid by the tenant to the landlord in addition to the payment of rent stipulated and other covenants. Actually the Court of Appeal did not decide what constituted 'premium' within the meaning of that Act but it negatived the tenant's defence that the

payment of 850 was hit by Section 2 of the Landlord and Tenant (Rent Control) Act, 1949. Evershed, M.R. in the course of the judgment observed:

the conception of requiring some money payment as a 'condition' of the grant of a tenancy is well-understood. To my mind, there is a real distinction between such a requirement as a condition precedent to the grant of a tenancy (on any terms) on the one hand, and, on the other hand the provision in the lease or contract of tenancy for payment of some lump sum by way (as in the present case) of compounding of rent and in addition to the periodic rent. It is the former, and' the former only, which is prohibited, and made the subject of criminal proceedings.

It may be seen that none of the above cases cited is of much assistance in deciding the scope of the words 'any premium or other like sum' in Sub-section (2)(a) of Section 6 of the Madras Buildings (Lease and Rent Control) Act, 1949. But the last mentioned case was cited by the learned Public Prosecutor in support of his contention that in this case the deposit received by the petitioner was a condition for the grant of the lease and that, therefore, the receipt was within the prohibition of Sub-section (2)(a) of Section 6. It may be that the deposit was received as a condition for the grant of the lease and in that sense the receipt formed part of the consideration of the lease. But that does not necessarily mean that ipso facto the deposit was in the nature of a premium or a like sum. That question was not decided by the Court of Appeal in *Woods v. Wise* (1955) 1 All. E.R. 767.

5. An amount which is received but not as a price but as money refundable on the happening of a stipulated event cannot in my opinion be held to be premium. Premium as ordinarily understood is a lump sum payment made outright as price for a lease. In the context of the words 'in addition to the agreed rent' in Clause (a) of Sub-section (2) of Section 6, it appears clear that what is contemplated by 'premium' is something other than the agreed rent. The premium in the context of the words used, it seems to me, involves the idea that what is paid should be in the nature of a price for the lease and a payment of money which is refundable is, in this case, therefore not within the scope of premium.

6. The question then is whether such an amount is within the scope of 'other like sum'. The scope of those words has to be understood in the light of the doctrine of ejusdem generis. Only a sum which has some resemblance to what is comprehended by the word ' premium ' that will come within the scope of the words ' other like sum.'. It seems to me, therefore, that the deposit in this case is not comprehended by the words 'other like sum' either.

7. But the learned Public Prosecutor contended that inasmuch as the deposit was free of interest, the petitioner had the advantage of it and that fact would comprehend the receipt of the deposit within the scope of ' other like sum '. I am unable to accept this argument. When the amount paid on the terms mentioned is held to be not within the scope of 'premium' or 'other like sum', I do not see how the fact that it is to be free of interest will nevertheless bring the amount within the scope of those words.

8. The learned Public Prosecutor then relied on the Proviso to Section 6(2)(a). But obviously that Proviso is concerned with advance rent. Moreover, the Proviso does not have the effect of enlarging the scope of the body of the Section.

9. In the result I hold that the petitioner is not guilty of the offence he has been charged with. The Revision Case is allowed and the petitioner is acquitted. The fine, if any, paid will be refunded.