P. Balakrishna Reddy Vs. the Accommodation Controller

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Court : Chennai

Decided On : Oct-29-1974

Reported in : (1977)2MLJ125

Appellant : P. Balakrishna Reddy

Respondent : The Accommodation Controller

Judgement :

K. Veeraswami, C.J.

1. These are two connected appeals referred for disposal by a Full Bench as the correctness of the decision in Stale of Madras v. Amar Singh (1964) 77 L.W. 504, was doubted.

2. W.A. No. 3 of 1970 is capable of a summary disposal. All the same, we will set out the facts therein. On 12th April, 1963 the appellant purchased the premises in question. Apparently coming to know of this, the Accommodation Controller on 28th February, 1964 directed him to give a vacancy report. The appellant gave certain particulars regarding his purchase. That was on 7th March, 1964. On 20th March, 1964 further particulars were called for, but by his reply dated 29th March, 1964 the appellant said that it was unnecessary for him to give a vacancy report. He wrote on 1st April, 1964 to the Controller that he would let out the premises. On 7th April, 1964 an order of requisition and allotment was made under Section 3(3) and (5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. This

order of allotment was successfully contested. Ramakrishnan, J., quashed that order on the ground that treating the intimation by the appellant on 7th March, 1964, as one of vacancy, the order of requisition made so late as 7th April, 1964, long after the prescribed time allowed for the purpose was without jurisdiction. That order dated 23rd February, 1966 has become final. Thereafter, on 2nd December, 1966, the Controller wrote to the appellant to hand over possession which the appellant refused by his reply dated 6th December, 1966. Then followed on 2nd August, 1967 from the Controller a notice to the appellant to show cause why he should not be prosecuted for conversion of the building from a residential to a non-residential purpose. The conversion was denied by the appellant and then on 17th February, 1968 a notice (evidently under Section 3(9) of the Act) was sent to the appellant by the Controller asking him to hand over possession. It was this notice that was sought to be quashed.

3. In the other case, the vacancy arose on 31st January, 1963. Since the owner did not notify the vacancy as required by Section 5, but occupied the same he was prosecuted on 22nd May, 1963 convicted and fined. On 11th August, 1964, a notice was issued under Section 3(9) of the Act for summary dispossession. The petition was to quash this order but it was dismissed on the ground that it was belated.

4. In the first of these appeals, we are of opinion that, in view of the fact that the order of allotment had been quashed and the order of Ramakrishnan, J., has become final the notice of the Controller dated, 17th February, 1968 for summary dispossession under Section 3(9) cannot be held to be valid. That appeal has, therefore, to be allowed but with no costs.

5. In W.A. No. 197 of 1972 the question arises, whether, where a landlord , without notifying the vacancy occupied the premises himself, he could be summarily evicted in exercise of the power under Section 3(9) of the Act. This precise point was considered and held in favour of the landlord in some of the decided cases, as for instance, in Srinivasalu Chetti v. State of Madras (1962) 75 L.W. 438, Amar Singh v. State of Madras (1962) 75 L.W. 608, which was by one of us, and in Viswanatha v. Revenue Divisional Officer, Coimbatore W.P. No. 860 of 1968, by

Balakrishna Iyer, J. In similar circumstances, Rajagopala Ayyangar, J. took a different view in Ramachandra v. Accommodation Controller, Madras W.P. No. 402 of 1958. However State of Madras v. Amar Singh (1964) 77 L.W. 504, reversed Amar Singh v. State of Madras (1962) 75 L.W. 608. We may also mention that in so doing, it placed reliance on Fathima Bi v. State of Madras : AIR1953 Mad257 , which was a decision of Subba Rao, J., as he then was.

6. In considering the question, we would rather first direct our attention to the provisions of the Act themselves, particularly of Section 3. The Tamil Nadu Buildings (Lease and Rent Control) Act was meant to be a temporary statute, which was extended from time to time. Act XVIII of 1960 amended and consolidated the law relating to the regulation of the letting of residential and non-residential buildings and the, control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu. Section 2 is the definition. Section 3 deals with notice of vacancy and requisitioning and the consequence of default in giving notice. Other matters dealt with are fixation of fair rent, change in fair rent in certain cases, increase over rent in certain cases, eviction of tenants, requisition and allotment,, and so on. Having regard to the limited scope of the question we are considering, it is not necessary for us to advert to the rest of the provisions. We think it will suffice to confine our attention to Section 3 itself. The scheme of the section is this: When a building falls vacant in different stated circumstances, notice of vacancy is required to be given within a specified period. When such intimation is received, within seven days from receipt thereof (now, ten days), the Government or the authorised officer has to intimate the landlord in writing whether the building is required for the purposes of the State or the Central Government or any other authority or any public institution under the control of the Government, or for the occupation of any officer of the Government. But, if there is no intimation from such an authority, within the stipulated time, the landlord shall be at liberty to let the building to any tenant, or to occupy it himself. During the period allowed for the authority to consider whether the property is required for its own occupation as aforementioned, there is an inhibition against letting or occupation by the landlord or his tenant. Where intimation is given, the landlord shall not of course let the building to a tenant, or occupy it himself, or use or permit the use of the building in any manner by any other person before the

expiry of the period of ten days specified in Sub-section (3). If in the meantime intimation has been received that it is not required, the landlord will be at liberty to occupy it himself or to let it out. But, if the building is required for any of the purposes mentioned above by the Government, the landlord should deliver possession of the building with its fixtures and the Government shall be deemed to be the-tenant of the landlord with retrospective effect from the date on which the authorised officer received notice of vacancy.

7. Sub-sections (9)(a)(i) and (ii) on which the answer to the question arising in this case will turn, are as follows:

9 (a) (i) Any officer empowered by the Government in this behalf may summarily dispossess any landlord, tenant or other person occupying any building in contravention of the provisions of the section or any landlord who fails to deliver to the Government possession of any building in accordance with the provisions of Sub-Section (5) and may take possession of the building including any portion thereof which may have been sublet. The Government shall be deemed to be the tenant of such building with effect from the date of taking such possession.

(ii) Any such officer as is referred to in Sub-clause (i) may summarily dispossess any officer, local authority or public institution continuing to occupy or failing to deliver possession of any building in respect of which the Government shall be deemed to be the tenant by virtue of this section, after the termination of his or its licence to occupy such building and take possession of the building including any portion thereof which may have been sublet.

8. In this scheme of the section it seems to us that the whole purpose of it is that as soon as a vacancy arises intimation thereof should be given within a specified time so that the Government may have an opportunity of considering whether) it will require the premises for its occupation for any of the purposes and that it should intimate its decision within the specified time so that as a result the Government becomes a statutory tenant with effect from the date of the receipt of the notice of vacancy. Section 3(1)(a) has two explanations, the first of which we are not concerned with in this case. The second says that a buyer who, having obtained vacant possession of a building in pursuance of a sale of such building,

lets the whole of it to a tenant or allows the whole or part of it to be occupied by any person, or who without obtaining such vacant possession allows the seller to occupy the whole or part of the building, he shall be deemed to have failed to give notice under Section 3.

9. Now, there are two views in respect of the scope of Sub-section (9)(a)(i). It consists of two parts, the first relating to occupation of any building in contravention of the provisions of this section, and the other relating to a landlord who fails to deliver to the Government possession of any building in accordance with the provisions of Sub-section (5), that is to say, pursuant to a requisition order made under that Sub-section. In either of these cases, Sub-section (9)(a)(i) provides power to the appropriate authority to take possession of the building including any portion thereof which may have been sublet and the Government shall be deemed to be a tenant of such building with effect from the date of taking such possession. This power can be exercised by the appropriate authority for summary dispossession of the landlord or tenant or any other person in such occupation.

10. So far as the second limb is concerned, there is no difference of opinion as to its scope. That limb definitely relates to a case where the vacancy has been intimated and a requisition order has been made but delivery was not given. In that case the appropriate authority can summarily dispossess a person in occupation whether he is a landlord, or tenant or any other person. But the question is whether such power can be exercised under the first limb in cases where no notice of vacancy has been given by a purchaser, but he is occupying the premises himself. In order to determine the scope of the first limb of Sub-section (9)(a)(i) we have to bear in mind the scheme of the entire section, which we have already outlined. The purpose of the section being to give an opportunity to the Government to exercise its mind as to whether it will require the building and in such a case it will become a statutory tenant, the power that is reserved under Sub-Section (9)(a)(i), as it appears to us, is to enable it to summarily dispossess a person pursuant to the requisition order instead of resorting to a civil Court which will involve a prolonged procedure. Whether where there is no intimation of vacancy and no requisition order was made, the first limb can be pressed into

service for summary dispossession will depend upon the effect to be given to the words 'occupying any building in contravention of the provisions of the section' in Sub-section (9)(a)(i). In our opinion, in the context, contravention being related to occupation of the premises, it can only arise if there is a provision in Section 3, interdicting such occupation. It is only in such cases it can be said that any landlord or tenant or any person occupying any building does so in contravention of the provisions of the section. In the absence of such a provision interdicting occupation without giving notice, we are inclined to think the first limb, of Sub-section (9)(a)(i) cannot be pressed into service. It is not intended, especially where a summary power like that is contemplated, that the Government, even though it has not made up its mind to requisition the premises, could still resort to the exercise of that power. As a matter of fact, the last sentence in Sub-section (9)(a)(i) makes this point clear when it says that the Government shall be deemed to be the tenant of such building with effect from the date of taking such possession. This means that the Government before taking such possession has no right of tenancy and is not a statutory tenant. Unless as in the case of the second limb of the Sub-section, there is a right in the Government to possession as a statutory tenant, the summary power to eviction is not available under Sub-section (9)(a)(i). It is true that, by virtue of the second Explanation to Section 3(1)(a)(ii) a buyer shall be deemed to have failed to give notice under the section if no notice of intimation was given by him. In that sense, it will no doubt be a contravention of the section, but it will not be a contravention within the meaning of the first limb of Sub-section (9)(a)(i) because occupation by such a purchaser will not be in contravention of any provision in the section which interdicts him from occupation.

11. That was the view that was taken by one of us in Srinivasalu Chetti v. State of Madras (1962) 75 L.W. 438 and also in Amar Singh v. State of Madras (1962) 75 L.W. 608, Balakrishna Aiyar, T., also was of the same view in Viswanatha v. Revenue Divisional Officer, Coimbatore W.P. No. 860 of 1968. We are inclined to think that this is the correct view to take. So far as the decision of Rajagopala Ayyangar, J., in Ramachandra v. Accommodation Controller, Madras W.P. No. 402 of 1968, is concerned the learned Judge in a cryptic order did not have occasion to consider the effect of the various provisions of Section 3. State of

Madras v. Amar Singh (1964) 77 L.W. 504, took a different view merely on the ground:

The Act was intended to relieve congestions in busy cities, and to enable the Accommodation Controller to allot vacant buildings in an equitable manner by giving preference to deserving cases. The interpretation of Section 3(8)(a) of the Act in the decision under appeal will certainly set at nought one of the salutary provisions of the Act.

With due respect, we are of opinion that when we are dealing with an Act like the Tamil Nadu Buildings (Lease and Rent Control) Act, which is restrictive of the rights of owners of properties, we have to strike a balance between public convenience and enforcement of individual rights by making proper interpretation in the light of the specific language used in the Act. We agree that the view that we are inclined to take creates a lacuna in Section 3. But on that ground we cannot fill it up by ourselves by supplying a provision interdicting occupation in circumstances which will bring the mischief within first limb of Sub-section (9)(a)(i) of Section 3.

12. The learned Government Pleader contended that the Court should not interpret a statutory provision in such a way as to find a lacuna and in support of his contention he relied on Maxwell on 'The Interpretation of Statutes', 12th Edition, page 212. There, it is observed:

On the general principle of avoiding injustice and absurdity, any construction will, if possible, be rejected...if it would enable a person by his own act to impair an obligation which he has undertaken or otherwise to profit by his own wrong. A man may not take advantage of his own wrong.

We agree with this observation. But, our answer is that inasmuch as failure of a purchaser of a residential premises to give vacancy notice shall be deemed to be a failure within the scope of Section 3(1) and, therefore, it will be a contravention of the Act, he will be exposed to prosecution for the offence under Section 33. Such a purchaser is note let scot-free. The earned Government Pleader has further relied on the following observation at page 213:

For similar reasons, the Vaccination Act, 1867, which authorised a justice to summon a parent 'to appear with (his) child' before him, and 'upon the appearance' to order that the child be vaccinated if it had not already been vaccinated, was held to authorise such an order without the appearance of the child when the parent refused to produce it. A literal construction making the production of the child a condition precedent to the making of the order, would have involved the supposition that the Legislature had intended to allow the parent to defeat its object by disobeying the summons which it had ordered.

This observation was based on Button v. Atkins 6 L.R.Q.B. 373. The decision there is quite understandable, because, for vaccination the appearance of the child is necessary, and that was the reason why it was held that the requirement upon the appearance was not a condition precedent for the enforcement of the provision relating to vaccination. But, that is not the situation so far as Sub-section (9)(a)(i) of Section 3 is concerned.

13. Accordingly, we hold that Srinivasalu Chetti v. State of Madras (1962) 75 L.W. 438 and Amar Singh v. State of Madras (1962) 75 L.W. 608 as well as Viswanatha v. Revenue Divisional Officer, Coimbatore W.P. No. 860 of 1968, were correctly decided. It follows that State of Madras v. Amar Singh (1964) 77 L.W. 504 should be overruled.

14. W.A. No. 197 of 1972 is dismissed. No costs.