

K.C. Devassay Vs. the State of Madras, Represented by the Secretary, Home Department and anr.

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Court : Chennai

Decided On : Jun-24-1969

Reported in : (1970)1MLJ533

Appellant : K.C. Devassay

Respondent : The State of Madras, Represented by the Secretary, Home Department and anr.

Judgement :

K. Veeraswami, C.J.

1. By an order dated 22nd November, 1967, the State Government, in purported exercise of its powers under Section 29 of the Madras Buildings (Lease and Rent Control) Act, 1960, exempted the ground floor of premises No. 13, Muthukrishna Mudali Street, Mylapore, from the provisions of Section 10 of the Act. The tenant sought to quash this order, but unsuccessfully. The appellant contends that the order proceeded on a wrong assumption that the landlord had no remedy under the Act, and, therefore, the powers under Section 29 were available in this case:

2. This is what the Government stated in its order:

The Government have come to the conclusion that the request of the landlord is reasonable and bona fide and that the landlord has no remedy under the Act as he

cannot evict the tenant through Court under Section 10 (3) of the Madras Buildings (Lease and Rent Control) Act, 1960 on the ground of occupation of his daughter and her family.

3. It seems to us that this view, which forms the basis for the exercise of the powers under Section 29, cannot be supported. It is clear from the impugned order itself that the State Government was well aware that, if a landlord had a remedy under the Act, it could not invoke, in his favour, its powers under Section 29. If authority is needed, reference may be made to *Globe Theatres Ltd. v. State of Madras* (1961) 1 M.L.J. 85, and *Pannalal Jagannath Prasad Gupta v. State of Madras* : (1962)1MLJ426 . The first of these decisions, to which one of us was a party, held that, if the desired eviction could be secured under the terms of the Act itself, there should be no occasion at all to grant any exemption from the operation of the Act and that the exemption was not a substitute for a relief permissible under the Act itself. One of us, sitting singly followed and reiterated that view in the second case cited. We consider that it is still the position.

4. But, it is pressed upon us that, having regard to the language of Section 10 (3) (a) (i) of the Madras Buildings (Lease and Rent Control) Act, 1960, we should hold that the bona fide requirement of a daughter is not within its scope. That clause says that a landlord may apply for eviction of a tenant in case it is a residential building, if he requires it for his own occupation or for the occupation of his son'. The rest of the requirement for the application of the sub-section is not material in the present context. It is suggested that a liberal meaning should be given to the words 'for his own occupation or for the occupation of his son' and a daughter should be held to be not within the phraseology. In our view, in delimiting the scope of this provision, regard must be had to the social set up and the family life with its surroundings. An undivided son who is married naturally may desire to live apart and the father may possibly regard that as a requirement of the premises for his own occupation. But, since the Legislature has also used the language 'for the occupation of his son ' it is urged that this is an indication that, at least, a daughter is not taken into account. The rationale behind the inclusion of the son is that the ground of eviction should be available to a landlord for the occupation of his nearest kith and kin. Where to draw the line may be left to particular cases. But the

case of a daughter is to our mind a fortiori and, we can see no reasonable justification for differentiating a son from a daughter in the matter of requirement of the landlord for purposes of his own occupation. It should not be lost sight of that the statutory protection of tenancy is a departure from the normal provision controlling the relationship of landlord and tenant under the Transfer of Property Act, and, we should think that, for that reason, it should receive a liberal interpretation so as to mitigate, where necessary, the rigour on the landlord; That is not to say that, on a matter like that, one is expected to lean in favour of a landlord. We suggest no such thing at all, but, in balancing the facts, a reasonable view should be taken as to who is the nearest kith and kin the necessity of whose occupation in the premises may be viewed as the necessity of the landlord's own occupation.

5. *Saraswathi v. Vadivelu Chettiar* : (1967)2MLJ81 , was prepared to exempt the provision to the benefit of the husband of the landlady. Whether we go to that extent or not, we are clear that, if a son is within the phraseology of Section 10 (3) (a) (i), as he is, the daughter can reasonably be read into it.

6. On that view, it would follow that the landlord, in the instant case, could well have resorted to the remedies available under the Act. Since that remedy is available, the result is that the power under Section 29 cannot be invoked.

7. On that view, the appeal is allowed and the impugned order is quashed, but, in the circumstances, there will be no order as to costs. The disposal of this writ appeal will not, however, bar the landlord from resorting to the remedy available to him under the Act.