

T.K.E. Mohammed Yousuff Vs. the Accommodation Controller and the Revenue Divisional Officer and anr.

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Court : Chennai

Decided On : Jan-15-1969

Reported in : (1969)2MLJ75

Appellant : T.K.E. Mohammed Yousuff

Respondent : The Accommodation Controller and the Revenue Divisional Officer and anr.

Judgement :

ORDER

P. Ramakrishnan, J.

1. This Writ Petition raises an important question regarding the scope of the Madras Buildings (Lease and Rent Control) Act, 1960 (Madras Act XVIII of 1960) (hereinafter called the Act) in its application to buildings allotted by the Government for governmental purposes or for occupation of Government Officers under the provisions of Section 3 of the Act.

2. Before reference is made to the law on the subject, it will be useful to put down the facts of the case briefly; The petitioner is the owner of premises bearing door No. 24, Convent Road, Cantonment, Tiruchirapalli. It had been allotted at an anterior period in 1956 after the notification of the vacancy by the landlord under

Section 3 (1) (a) (i) of the Act, to one Narayanaswamy Special Deputy Tahsildar. This Officer subsequently built a house of his own for residence, and was about to vacate the aforesaid building of the petitioner. When the Accommodation Controller, Tiruchirapalli, the first respondent was made aware of this fact by Narayanaswamy, the Controller allotted the building to one C. Venkataswamy, Treasury Officer, Tiruchirapalli, by proceedings dated 1st February, 1966, from the date of vacating by Narayanaswamy. This order of the Accommodation Controller was also communicated to the petitioner.

3. The order states:

The Accommodation Controller, Tiruchy allots the above premises to Sri C. Venkatasami, B.A., Treasury Officer, Tiruchy, with effect from the date of vacating by Sri Narayanaswamy, Special Tahsildar, Betterment Levy, Tiruchy. The rent for the premises is Rs. 35 (Rupees thirty five only) per mensem....The possession of the premises should be handedover only to the re-allottee or to the person authorised by the Accommodation Controller at the time of vacating the premises and it should not be handedover to the landlord or to his agent. The allottee should pay an advance of one month rent to the landlord.

The allottee was required to call at the office of the Accommodation Controller with a non-judicial stamp paper to the value of Rs. 2.50 for executing the necessary agreement in favour of the Government within a week from the date of occupation of the premises. There was also a direction in the foot-note that the allottee should handover possession of the building only to another re-allottee or to the Accommodation Controller and not to the landlord on any account.

4. It would appear that after the issue of the above order there was some dispute of which the main features were that Venkataswamy, the allottee, complained to the Accommodation Controller that when he went to take possession of the premises he found that Narayanaswamy had handedover the key of the building to the landlord. Venkataswamy then sought the help of the Accommodation Controller for recovery of possession from the landlord. When the Accommodation Controller brought this allegation of Venkataswamy to the notice of Narayanaswamy, the latter replied that it was untrue that he had given the key to

the landlord. Narayanaswamy asserted that the key of the premises was with him, and that he never refused to hand over the key to Venkataswamy; but it was the landlord who had put another lock on the outside door of the building along with the lock which Narayanaswamy had put. He suggested that action may be taken against the landlord and the lock returned to him. Apparently Venkataswamy did not occupy the premises thereafter. At this stage, the petitioner came forward stating that on coming to know that Narayanaswamy had vacated the premises on 4th February, 1966, he was intimating the vacancy on 5th February, 1966 to the Accommodation Controller, and wanted the allotment of the house to him for his personal occupation. Subsequently, at the instance of the petitioner, the Government on 9th February, 1966 passed an order of stay, which was vacated on 1st March, 1966. Thereafter, the Accommodation Controller passed a fresh order allotting the premises on 4th March, 1966 to one Thirugnanasambandam, Senior Inspector of the Co-operative Department, the second respondent herein.

5. The stand taken by the petitioner for his relief in this writ petition under Article 226 of the Constitution is that when Narayanaswamy, the outgoing tenant vacated on 4th February, 1966, a situation arose which was tantamount to the arising of a vacancy within the meaning of Section 3 (1) (a) (i) of the Act. Thereupon the landlord could put into operation the machinery of the succeeding provisions of that section, by giving notice of the vacancy to the Accommodation Controller. Thereafter if the Accommodation Controller did not intimate to the landlord that the building was required for governmental purposes within seven days of the receipt of the intimation of vacancy, the landlord has the liberty to let the building to any tenant or to occupy it himself, under the provisions of Section 3 (3) of the Act. As against this, the stand taken by the respondent, Accommodation Controller is that the stage when the provisions of Section 3 (3) had to be applied arose when the building had to be allotted for the first time on the intimation of vacancy in 1956.

6. At this time, the Accommodation Controller had allotted the vacancy to Narayanaswamy a Government servant. Thereafter the Government occupies the position of a statutory tenant vis-a-vis the owner of the house, and the Government Officer who gets into occupation is a licensee under the Government. No doubt the terms of the tenancy may be agreed upon between the allottee-

Government officer and the landlord, but a relationship of landlord and tenant exists only as between the owner and the Government by the force and the statute, and not between the owner and the particular allottee-officer who is in occupation from time to time. Reliance for this position was sought by the respondents from a decision of Srinivasan, J., in Shaik Mohamed v. State of Madras : AIR1966 Mad454 , where the learned Judge observed as follows:

Section 3 of the Act enables the Government to obtain possession of any premises, the vacancy of which has been notified if the Government should require the premises for the occupation of a servant of the Government, or of any local authority, or of any public institution under the control of the Government. Thereafter, the Government becomes the statutory tenant; and when it puts in any one of the above class of persons, i.e., a government servant or a local authority or a public institution, as the occupier of the premises, that occupier does not become the tenant under the owner, but is only a licensee from the Government. The tenancy which is statutory is only as between the owner and the State Government. What the Government do on the occasion of such allotment is to obtain an agreement in writing from the Government servant concerned whereunder he undertakes to vacate the building as and when the Government should require him to do so. A person who has been allotted premises in the above manner is not entitled to continue in occupation when he ceases to be a Government servant, or when he is transferred from the locality.

This view of a statutory tenancy as between the owner and the Government under the special provisions of the Madras Act, is made clear by the other provisions of that Act also. Thus, Section 3 (5) states that the Government when it makes the necessary intimation to the landlord that the building is required for Government purposes, shall be deemed to be the tenant of the landlord, with retrospective effect from the date on which the authorised officer receives notice of vacancy, but the terms of the tenancy will be such as may be agreed upon between the landlord and the tenant and in default of an agreement, as may be determined by the Controller. Thereby, by the force of the statute a relationship which can be described as composite is brought about. Its main features are (1) for statutory purposes the Government stands in the position of a tenant of the owner but not

the particular Government servant who is allotted the premises from time to time; the latter is only a licensee under the Government (2) the terms of the tenancy may be made the result of an agreement between the allottee-officer and the landlord; (3) in the event of their failure to agree, it is open to the Controller to determine the terms of the tenancy, and (4) the terms in respect of the quantum of rent shall be subject to the fixation of fair rent by the Rent Controller.

7. The other provisions of the Act also throw further light in this connection. The two provisos to Section 3 (5) reiterate the possession of the Government as a statutory tenant. Section 3 (6) states that if in the fair rent proceedings, it is found that the rent is below rupees twenty five per month, the officer who has been allotted the house shall be deemed to have become the tenant of the landlord from the date on which such fair rent is fixed on the same terms, except as to rent, as obtained between the landlord and the Government on the said date. Section 12, making provisions for repairs of the building, for which purpose the landlord may get possession of the building from the Accommodation Controller, leads also to the same conclusion. In particular, Section 12 (3) (a) states that when a building is given back to the landlord for repairs, the landlord is required to give an undertaking that the building shall, on completion of the repairs, be offered to the authorised officer before the expiry of three months from the date of recovery of possession by the landlord or before the expiry of such further period as the authorised officer may, for reasons to be recorded in writing, allow, for re-allotment to any person named by the authorised officer. Section 12 (4) also supports the above inference.

8. There is, therefore, reason to hold that under the peculiar provisions of the Madras Act, a composite relationship is created whose main features are the statutory tenancy of the Government under the landlord, and the allottees' possession as a licensee under the Government, subject to certain conditions which give the allottee the liberty to enter into an agreement with the landlord about the quantum of the rent, subject to the power of the Accommodation Controller, to fix the rent where no such agreement is possible, and subject to the statutory fixation of fair rent. But possession during that period is deemed that of the Government; it is the Government who selects the allottee and also arranges

for the subsequent allotments from time to time when one allottee-Government officer has to leave for some reason or other, like retirement, transfer and so on, and another allottee-officer is inducted in his place into the premises. At none of the intermediate stages, the Government's position as a statutory tenant vis-a-vis the owner of the house comes to an end; nor can the owner of the house on the arising of a situation where one allottee officer vacates the building claim that the statutory tenancy of the Government has come to an end, and that, he (the landlord) has a right to proceed under the machinery of the Act as if a vacancy had arisen afresh which gives him the right of giving notice of the vacancy and the obligation of the Accommodation Controller to respond to the notice within seven days and the further right of the landlord to proceed to let out the building or occupy it himself in the event of failure of the Accommodation Controller to give the necessary intimation that the premises are required by the Government.

9. Decisions cited before me and relied upon by Sri Chengalvaroyan, the learned Counsel for the petitioner in *T. K. Rajagopalan, In re* : AIR1951 Mad705 , Rev. Div. Officer, Salem v. Krishnamurthi I.L.R. (1960) Mad. 522 : (1960) 2 M.L.J, 314, and *Mohanarangiah v. Official Assignee* : AIR1965 Mad334 , do not at all deal with this question, but they deal with entirely different matters. It is not, therefore, necessary to canvass either their purport or the principles which the learned Judges had to lay down in those cases. It is also not necessary to refer at any length to the decision in *Mangilal v. State of M.P.* A.I.R. 1955 Nag. 153, which dealt with the provisions of a different regulation, namely C. P. and Berar Regulation of Letting of Accommodation Act (II of 1946) which did not contain terms relating to statutory tenancy of the Government such as those found in the Madras Act.

10. I therefore, find that the petitioner is not entitled to hold that a vacancy arose afresh when Narayanaswamy, the previous allottee vacated the premises, and to claim the right to gain possession of the house on the alleged ground that the Accommodation Controller had failed to intimate afresh the intention of the Government, either for itself or for its officers to occupy the building, within seven days, after the petitioner had intimated the arising for vacancy on the occasion when Narayanaswamy vacated the building.

11. The Writ Petition is, therefore, dismissed. No costs.

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