

Dr. K. Ramanujam Vs. the Accommodation Controller and anr.

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Court : Chennai

Decided On : Mar-04-1975

Reported in : (1975)2MLJ302

Appellant : Dr. K. Ramanujam

Respondent : The Accommodation Controller and anr.

Judgement :

ORDER

G. Ramanujam, J.

1. The petitioner is the owner of premises, Old No. 9 and new No. 10, Doraiswami Road, T. Nagar, Madras-17. The above premises comprises of two portions, one in front side and one in back side, each having a first floor. The front portion was originally allotted by the Accommodation Controller to one K. Sivarajan. The back portion was occupied by a private tenant. The petitioner filed an eviction petition against the said tenant on the ground of owner's occupation and ultimately got possession. This portion was subsequently occupied by the petitioner's son and daughter after notifying the vacancy to the Accommodation Controller.

2. On 21st July, 1970, the petitioner applied to the first respondent to release the front portion to enable him to effect certain substantial repairs. The first respondent, by his order dated 20th August, 1971, released the front portion under Section 12 (1) (a) of the Madras Buildings (Lease and Rent Control) Act. After

such a release, the petitioner effected certain repairs and structural alterations and thereafter applied to the Government the second respondent, for release of the front portion for his personal occupation. The second respondent, however, rejected that request by its order dated 22nd June, 1972. The petitioner challenges the validity of the said order rejecting his request for release of the building for his own occupation .

3. The impugned order rejecting the petitioner's request for release of the building for owner's occupation sets out two grounds; (1) the landlord's unemployed son, and his daughter are occupying the rear portion of the premises and the accommodation available in the above portion is sufficient for their needs, and (2) the landlord owns another house at No. 8, Neelakanta Mehta Street and if he is keen in providing better accommodation, to his son and daughter, he could have taken action to vacate the tenant in the above premises and accommodate his-son and daughter therein.

4. According to the learned Counsel for the petitioner, the two reasons set out in the impugned order for rejecting the petitioner's request for release of the building; are not tenable in law, and, therefore, the impugned order should be quashed. He contends that the basis on which the impugned order proceeds is that the petitioner's son and daughter alone are living in the back portion and that the accommodation therein is quite sufficient for them. It is pointed out that basis is erroneous. It is said that the limited, accommodation in the back portion is not sufficient for the petitioner's son and his daughter, who is living with her husband,, mother-in-law, and her children, and that, therefore, the reasoning given in the impugned order that the accommodation in the back portion is sufficient for the petitioner's son and daughter is vitiated. It is also pointed out that the other reason given in the impugned order that if the petitioner wants, he could evict the tenant in another house to accommodate the petitioner's son and daughter is equally untenable, for it is not for the respondents to say in which house the petitioner or his son and daughter-should live. The learned Counsel in this connection, refers to the decision of Ramaprasada Rao, J., in *Mullaikdiammal v. Government of Tamil Nadu* : AIR1972 Mad132 . In that case, the Government proceeded on the basis of the report of the Accommodation Controller that the accommodation available for

the landlady in that case was sufficient and that she may not require additional accommodation. Dealing with the question as to whether the Government could judge as to what accommodation is sufficient for the landlady, the Court expressed the view that it is for the landlord to judge for himself as to what portion is suitable for his residence and for the residence of the members of his family and that it is not for the department or any one to dictate, and that the requirement of the landlord or landlady has to be judged from their standpoint and it is not for the Accommodation Controller to say as to what is the accommodation required for the family of the landlord or the landlady.

5. In this case, the petitioner, at the time of filing the application for release, has pointed out to the Government that along with his son, who is living in the premises, his daughter also has to live with her husband, and that the downstairs portion is required for the accommodation of his son, while the upstairs portion is required for accommodation of his daughter and her husband. Though the report of the Accommodation Controller on which the Government order is based says that the landlord's son and daughter are now residing in the rear portion of the premises, which is spacious enough for their use and occupation, the report of the Accommodation Deputy Tahsildar, who made a local inspection of the premises in question, says that the petitioner's unmarried son is residing in the rear portion of the premises and along with him, the petitioner's daughter, her husband, their young children and her mother-in-law, are residing. It is also stated that the petitioner's other sons, who are studying in the Christian College are frequent visitors to the premises. This report shows that there are more than six members living in the rear portion and the statement of the Accommodation Controller that the landlord's son and daughter alone are residing in the rear portion is not correct. Apart from referring to the Accommodation Controller's report, it does not appear that the second respondent considered independently the question of petitioner's requirement of the premises for his own occupation.

6. In my view the two reasons given for the rejection of the petitioner's request for release of the building for his occupation are not tenable and, therefore, the order of the first respondent stands vitiated. As pointed out in the above judgment of Ramaprasada Rao, J., it is for the petitioner to decide as to what accommodation

or what house he should have for purposes of his residence or for the residence of the members of his family, and he or the members of his family cannot be forced to live in a portion of the premises against their will.

7. Besides, there is one more circumstance which makes the request of the petitioner for release of the building still more genuine and pressing. The petitioner has now filed an affidavit before this Court to the effect that he is about to retire in March, 1975 as the Deputy Director of the Central Leprosy Research Institute, Thirumani, Chingleput District and that he has come over to Madras and is living in the same premises, preparatory to retirement from 2nd December, 1974. This is an additional reason as to why the petitioner's request for release of the building should be considered favourably. The result is, the Writ Petition is allowed and the Rule nisi is made absolute. There will be no order as to costs.

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