

**A Elliah Devar Vs. D Ramakrishnan**

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**SooperKanoon Citation :** [sooperkanoon.com/821642](http://sooperkanoon.com/821642)

**Court :** Chennai

**Decided On :** Feb-15-1979

**Reported in :** (1979)2MLJ31

**Appellant :** A Elliah Devar

**Respondent :** D Ramakrishnan

**Judgement :**

T. Ramaprasada Rao, C.J.

1. In an application filed by the respondent-landlord under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, both the Rent Controller and the appellate authority found, as a fact, that the application was bona fide, that the hardship which might result to the tenant would not outweigh the advantage which the landlord might gain by reason of the order of eviction and that, in the circumstances of the case, it was just and proper that an order of eviction should be made. It is as against this, the present civil revision petition has been filed.

2. Three contentions are raised before me, namely:

(1) that, on an earlier occasion, a similar application was filed for eviction of the tenant under Section 10(3)(2) of the Act for additional accommodation of the portion in the occupation of the petitioner-tenant and that having been dismissed at the High Court level, no further application is maintainable, since it was found in that case that the request of the landlord cannot be accepted as a bona fide one,

and that, therefore, the present application is barred under Section 19 of the Act; (2) that the exemption which the landlord obtained from the State Government under Section 29 of the Act permitting him to file the present application, even though the petitioner-tenant is in the essential services, cannot enable the landlord to circumvent the earlier order of the High Court in C.R.P. No 349 of 1973; and (3) that on merits the inconvenience that the tenant might suffer is quantitatively larger than the benefit which the landlord might gain by reason of the eviction.

3. In so far as the first two points are concerned, I am of the view that the grant of the exemption by the Government which enabled the landlord to present this petition for eviction of the petitioner, even though he was in the essential service, clinches the issue. In the earlier petition which went up to the High Court resulting in an order in C.R.P. No. 349 of 1973 the main contention was that the Rent Control Petition for eviction was not maintainable because the tenant-petitioner was in the essential service. While dealing with this, no doubt, certain findings were rendered by the Rent Controller and the appellate authority and certain observations were also made by the High Court touching on this issue. But the main petition for eviction filed in the earlier proceedings was dismissed on the ground that it was not maintainable because of the ban contained in Section 10(4)(1) of the Act. Therefore, any finding rendered on the merits in the earlier proceedings cannot be still made available to the petitioner-tenant in a stage where the landlord has, through the agency of the Government, secured an exemption and gained a privilege to file an application against the tenant-petitioner notwithstanding the statutory ban under Section 10(4)(1) of the Act. It is not in dispute that the Government gave a concession to the respondent to file the petition by taking the building away from the operation of Section 10(4)(1) of the Act. Therefore, a different environment has cropped, which has enabled the landlord to file the present application. This is because of the order passed by the Government under Section 29 of the Act. In those circumstances, the petitioner cannot once again plead that the earlier findings on merits, which cannot project itself due to the dismissal of the main application as not being maintainable, cannot be operative as findings which would in turn invoke the principle of res judicata. They were findings rendered in a case in which it was not necessary to do so. The main application was dismissed as not maintainable. Therefore, any

ancillary finding given therein cannot be relied upon later for any purpose, for, it cannot be said to have been adjudicated finally as between the parties in a lawfully instituted action. I am unable, therefore, to agree with the contention that the earlier disposal in C.R.P. No. 349 of 1973 would prevent the landlord from re-urging his case on merits after he obtained an order under Section 29 from the State Government.

4. As regards the third contention it revolves on merits. The finding of both the Courts below is that the landlord needed additional accommodation and that the said need was bona fide. The landlord was in the same premises and the tenant Was occupying a portion of the downstairs of an extent of 88 sq. ft. The landlord Wanted it in order to provide for his expanding family and also incidentally make it convenient for him to do business therein if it is possible. These circumstances were weighed by both the Rent Controller and the appellate authority who came to the conclusion that the hardship which the tenant Would be put to in the event of an eviction order being passed will not outweigh the advantage to the landlord. They also found that the tenant could secure easily accommodation for himself and it was also noted that the petitioner's Wife, who was an employee in the Corporation, would secure quarters, and that it Would conveniently house both the petitioner and his wife. All these circumstances lead to a sure inference that the application was not only bona fide but that comparative hardship which the tenant might suffer is so little and that the benefit of the landlord Would secure as a result of the eviction will certainly not outweigh the disadvantage to the tenant. All such circumstances were borne in mind by the statutory authorities. The order does not suffer from any error of jurisdiction or any error of law or any material irregularity

5. The petition is dismissed. The petitioner iS granted three months' time to vacate.