

R. Parimala Vs. the Accommodation Controller (Collector of Madras) and ors.

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Court : Chennai

Decided On : May-03-1990

Reported in : (1990)2MLJ51

Appellant : R. Parimala

Respondent : The Accommodation Controller (Collector of Madras) and ors.

Judgement :

ORDER

K.S. Bakthawatsalam, J.

1. The petitioner challenges an order of the first respondent herein dated 28.10.1987 by which she has been asked to vacate and handover the premises to the third respondent herein.

2. The short facts leading to the writ petition are : The third respondent herein is the owner of the premises at No. 11, Sydoji Lane, Triplicane, Madras-5. The said premises was taken over by the first respondent herein and allotted to the petitioner herein on a monthly rent of Rs. 75/- per month. The owner of the building, the third respondent herein filed a petition on 1.11.1972 for the release of the building and the Government referred the matter to the Accommodation Controller, the first respondent herein. The purpose for which the said building was

asked for is for his own occupation. On 15.9.1984, an application was filed by the third respondent herein for the release of the ground floor portion occupied by the petitioner herein. The petitioner sent her objections on 25.2.1985. On 31.7.1985, the first respondent herein passed an order directing the petitioner to surrender possession of the building. The petitioner preferred an appeal to the second respondent herein on 3.9.1985. On 16.4.1986, an order was passed by the Deputy Secretary to Government, Home Department stating that the appeal preferred by the petitioner was not maintainable and as such, the Accommodation Controller, the first respondent herein, was instructed to pass final orders on the request of the third respondent herein for release. On 19.6.1986, the Accommodation Controller rejected the request of the third respondent herein on the ground that he is in occupation of the vacant portion at the first floor of the said building. The third respondent herein preferred an appeal to the second respondent herein under Section 3(A) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Act 18 of 1960) (hereinafter referred to as Act 18 of 1960), stating that he has been appealing to the Government for the last fourteen years, that the request for the release of a portion in ground floor of his only residential property is for his personal occupation, and that he has also evicted the private tenant in the first floor of the building for the purpose. It was further stated in the said appeal that the third respondent herein needs the accommodation exclusively for his family. The Government of Tamilnadu, after considering the views expressed by the Accommodation Controller and the objection statement of the petitioner herein by G.O.Ms. No. 1811 Home (A.C.I) Department, dated 27.7.1987 released the portion in ground floor of the said premises from Government tenancy. In the said order, the petitioner herein was granted three months' time for vacating and handing over the vacant possession of the ground floor of the said building. A copy of that order was also marked to the petitioner herein, as seen from the records. Pursuant to this order, the impugned order has been passed by the Accommodation Controller, the first respondent herein, asking the petitioner to vacate and handover the vacant possession of the ground floor of the building otherwise action will be taken under Section 3(9) of the Act, 18 of 1960. At this stage, the petitioner has come before this Court praying for the issue of a writ of mandamus to quash the order of the first respondent herein dated 28.10.1987.

3. Mr. P.S. Raman, the learned Counsel appearing for the petitioner contends that the impugned order is bad in law inasmuch as it has been passed without notice to the petitioner. The learned Counsel further contends that the petitioner herein is not aware of the order passed by the Government in G.O.Ms.No. 1811 Home (A.C.I.) Department, dated 27.7.1987 and that it was not communicated to her. The learned Counsel further contends that, in so far as the petitioner was not aware of the reasons given for the release of the ground floor portion of the said building, she is entitled to question the order as it violates the principles of natural justice. The learned Counsel further contends that even after asking for a copy of the said Government Order, the petitioner was not given and that the only order which has been served on the petitioner is the copy of the order, which is impugned in this writ petition, by which she has been asked to vacate and handover the building to the third respondent herein.

4. Mr. R. Krishnaswami, the learned Counsel appearing for the third respondent states that the third respondent wanted the premises for his own occupation, that the petitioner is only an allottee and that the relationship of landlord and tenant existed between the third respondent and the first respondent. The learned Counsel points out that in para 4 of the affidavit filed by the petitioner, she herself admitted that she had been given an opportunity to make a representation and she had made the representation before the appropriate Authority on 25.2.1985 and contends that once the petitioner had been given an opportunity, it is not necessary for giving another opportunity to her and that the failure, if any, to give a copy of the Government Order in G.O. Ms. No. 1811 dated 27.7.1987 cannot be said to be violative of principles of natural justice. The learned Counsel further argues that the petitioner had given two representations one on 25.2.1985 and another on 27.10.1986 and that the second respondent herein passed the order in G.O. Ms. No. 1811 dated 27.7.1987 after considering the objections of the petitioner and also after calling for the report from the Accommodation Controller.

5. Mr. J.R.K. Bhavanantham, the learned Additional Government Pleader brings to my notice, para 4 of the counter affidavit in which it is stated that the first floor could not be occupied as there is no bath-room and lavatory in the first floor and they are common and they are located in the ground floor, and the entrance to the

premises under Accommodation and the first floor is also common. The learned Additional Government Pleader points out that if the landlord occupies the first floor, Section 3(1)(c) of Act 18 of 1960 will be attracted as there is only a common passage to the ground floor and first floor. The learned Additional Government Pleader further states that a copy of the appeal filed by the third respondent herein has been communicated to the petitioner, that she has filed her objection and that it was forwarded to the Government by the Accommodation Controller for necessary consideration. The learned Counsel further argues that there is no violation of principles of natural justice in this case, since sufficient opportunities have been given to the petitioner before passing the release order.

6. After giving serious consideration to the arguments advanced by Mr. P.S. Raman, the learned Counsel appearing for the petitioner, Mr. R. Krishnaswami, the learned Counsel appearing for the third respondent and Mr. J.R.K. Bhavanantham, the learned Additional Government Pleader, I am of the view that there is no substance in this writ petition. Under Section 3(A) of the Act, a landlord may apply to the authorized officer for the release of a building and under Sub-section 3 of Section 3(A) any person who is aggrieved by an order passed by the authorised officer can file an appeal to the Government and the Government shall pass such order as they deem fit. In the instant case on hand, when the Accommodation Controller, the first respondent rejected the request of the third respondent herein, the third respondent preferred an appeal to the Government and on that appeal the Government the second respondent herein, passed an order in G.O. Ms. No. 1811 Home (A.C.I.) Department dated 27.7.1987. On a perusal of the records, I find that a copy of the said order has been marked to the petitioner herein also. It is also seen that the petitioner herein submitted her objections and that the Government, after carefully considering the objections of the petitioner has passed the said order releasing the portion of the ground floor of the building which was under occupation of the petitioner, from Government tenancy. I am not able to see how the principles of natural justice have been violated on the facts and circumstances of this case. It is well-settled in law that the Government is only the statutory tenant for the building requisitioned under Section 3 of the Act and the allottee is only a licensee for the building. In an unreported decision in *Viswanathan V. The Collector of Madras* (Writ Petition No.

9559 of 1982) Sathiadev, J. (as he then was) has held that the writ petitioner therein was only a licensee under the Government which is legally the tenant of the premises, that he cannot claim the status of a tenant under the Act, that he cannot challenge an order passed by the Government directing the release of the building that the petitioner therein, as an allottee, is bound by the action of the Government and that he cannot claim any independent right apart from his position as an allottee. The same view was taken by Mohan, J. (as he then was) in *Durai v. Government of Tamil Nadu* (1976) 89 LW 558. In the above mentioned decision, the learned Judge has held that an order directing the release of the building amounts to a revocation of the licence granted in favour of the allottee, the petitioner in that case, and as such the petitioner therein is not entitled to any notice. The learned Judge in the said decision has further held that it is the Government which is the statutory tenant and the allottee is only a licensee from the Government and he has no independent right to agitate as against the Government. Ramanujam, J. has considered the above mentioned decisions in a case in *Swaminathan v. State of Tamilnadu* (1985) (1) M.L.J. 318. But the learned Judge did not differ from these two decisions of the two learned judges, mentioned above. The learned Judge proceeded on the footing that under Section 3(A)(3) of the Act, the allottee can be said to be an 'aggrieved person' by an order of release and that he has a right of representation before the Accommodation Controller while deciding the question as to whether the building is to be released or not. All the aforesaid decisions have been considered by a Division Bench of this Court in *Ganesan v. Commissioner and Secretary and Ors.* : (1987)1MLJ128 and speaking for the Bench, M.N. Chandurkar, Chief Justice observed as follows : (at p. 130). It is not necessary for us to go into the correctness of this view of Ramanujam, J. or the correctness of the view in the other two decisions, because it appears to us that assuming that the allottee had a right of representation before the appropriate authority he had in fact made that representation. We have already referred to the contents of that representation which was in the form of a copy of the representation made to the Minister for Housing. But apart from that, what is more substantial is that when the matter was pending in appeal before the State Government the State Government heard the appellant is clear from the statement of the appellant recorded on 20th November, 1982. This statement is signed by

the appellant. The State Government had, therefore, before it, a statement of the appellant himself. If the Authorised Officer had declined to give an opportunity to the allottee, then the State Government who also have the same powers as those of the appellate authority is also competent, to make the necessary enquiry. The statement was before the appellate authority. The statement of the landlady was also before the appellate authority and if on a consideration of the respective statements, the State Government has reached a conclusion that the order of the appropriate authority was proper, it is difficult to see how this Court under Article 226 of the Constitution of India could re-appreciate the evidence taken into account by the Subordinate authorities....

A careful reading of the aforesaid decisions clearly show that it is enough if an opportunity is given to the petitioner before me. Undoubtedly, an opportunity has been given to the petitioner herein and she has also filed her objections. On a perusal of the Government Order in G.O. Ms. No. 1811 Home (AC.I.) Department, dated 27.7.1987, it is seen that the objections of the petitioner herein have been considered by the Government, and it is also seen that the State Government was satisfied with the need of the landlord as bona fide. I am of the view that on the materials on record, the Government came to the conclusion that the need of the landlord is bona fide and released the building from Government tenancy. In my view it is not open to this Court to sit on appeal over that decision as an appellate forum in a petition under Article 226 of the Constitution of India. A reading of the above mentioned order in G.O. Ms. No. 1811 dated 27.7.1987 clearly shows that the Government has gone into all the aspects and passed the order. As such, it cannot be said that the petitioner herein has not been given an opportunity and the contention of the petitioner that there is violation of principles of natural justice is wholly unsustainable.

7. It is well settled that principles of natural justice depends upon facts and circumstances of each individual case. In *K.L. Tripathy v. State Bank of India* : (1984)ILLJ2SC it has been held as follows : (at p.284).it is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the

question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula....

If the facts of the case on hand are examined in the light of the principles stated supra, I am of the view that the petitioner herein had been given sufficient opportunity to put forth her objections and they have been duly considered by the Government and she cannot ask anything more than that. In my view, it is also not necessary to give any further opportunity to the petitioner. The only complaint of the petitioner is that a copy of the order in G.O. Ms. No. 1811 dated 27.7.1987 has not been given to her. The records are before me and I have gone through them. As I have already stated, it cannot be said that the order in G.O. Ms. No. 1811 dated 27.7.1987 has got any infirmity. Taking into consideration that an opportunity has been given to the petitioner herein and her objections have been considered, I am in entire agreement with the views taken by Sathiadev, J. (as he then was) in an unreported decision in *Viswanathan v. The Collector of Madras* (Writ Petition No. 9559 of 1982) and by Mohan, J. (as he then was) in *Durai v. Government of Tamil Nadu* 1976) 80 LW 558. It has been clearly held by Sathiadev, J. (as he then was) in the above mentioned case, that where an order of release was passed by the State Government, the allottee was not entitled to challenge that order and he is bound by the action of the Government and he cannot claim any independent right apart from his position as an allottee. In such circumstances, I am of the view that there are no merits in the writ petition. Accordingly it is dismissed.

8. Mr. P.S. Raman, the learned Counsel appearing for the petitioner, in passing submitted that the time given for vacating the building is too short. Now the position is different. The Writ Petition is pending since 1987. The petitioner had nearly three years time. Had she attempted promptly, she could have procured some other accommodation and vacated the building. As such, I do not think the contention of the petitioner that she has no sufficient time to vacate the building

has any importance at this point of time.

9. Before parting with the case, I would like to observe as follows ; Here is a case, where the landlord wants the building premises for his own occupation and he has been kept out by the allottee since 1972. It is seen that the landlord, living in a rented premises is not able to get his own building for his own occupation for over 15 years. A licensee, in spite, of the statutory tenant's order releasing the building, put all hurdles from keeping away the landlord to get his own building for his own occupation, which, in my view, is wholly unjustifiable. If the petitioner needs another building she could very well get an allotment from the Government, as a Government servant. Where will the landlord go? In my view, this Court should not extend its arms under Article 226 of the Constitution to help such attitude of licensees/allottees. It is very unfortunate that such situation arises in spite of the orders of release of the building, the allottee tries to cling on the building and prevent the landlord occupying his own building for his own use.

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