

R. Chellammal and ors. Vs. Accommodation Controller

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Court : Chennai

Decided On : Feb-07-1967

Reported in : (1967)2MLJ453

Appellant : R. Chellammal and ors.

Respondent : Accommodation Controller

Judgement :

ORDER

P. Ramakrishnan, J.

1. This writ petition under Article 226 of the Constitution is filed for the issue of a writ of certiorari quashing the proceedings of the respondent: Accommodation Controller, Coimbatore, dated 4th July, 1964 and 8th July, 1964. The prior facts necessary for the consideration of this writ petition are briefly the following: The premises bearing No. 9/48, Cross Cut Road, Coimbatore belonged to Chellammal, the 1st petitioner. Subsequently she sold it to petitioner 2 who has been impleaded as her legal representative pending the writ petition. The 1st petitioner occupied a portion of the above building for her residence, and in the other portion, she was carrying on a business which is said to be the manufacture of Kesavardani Hair Oil products. Finding that the remaining portion of the building was not sufficient for the aforesaid business, she took another building on rent sometime ago, and let out the portion in or about 1961, by private arrangement, for the use of the Village

Industries Office. As the landlord of the premises which she had taken on rent for running her Kesavardani Products business, was pressing her to vacate, she was able to persuade the Village Industries Officer to vacate the other part of her own building on 1st May, 1964, and she proposed to shift her Kesavardani Products business to the remaining portion in the aforesaid premises. She partly removed the stock of her business to her premises No. 9/48, Cross Cut Road. However on 16th June, 1964 she wrote to the Accommodation Controller giving him notice of the vacancy and stating the above facts. But it was not a formal notice of the vacancy. The Accommodation Controller insisted by a communication sent on 21st June, 1964, that a formal notice of vacancy should be given, and that she should await the statutory period of seven days, for the Accommodation Controller to make an allotment of the remaining portion. The petitioner however informed the Accommodation Controller that she was not legally bound to give the statutory notice of vacancy under Section 3(1)(a)(i) of the Madras (Lease and Rent Control) Act, 1960. But the Accommodation Controller did not agree and sent the communications which is now impugned on 4th July, 1964, telling her that the premises in question were required for Government purposes, that orders regarding allotment would be issued shortly, and that in the meantime the premises should not be let out to any other person but should be handed over to the allottee or the person authorised by the Accommodation Controller. On 8th July, 1964, the Accommodation Controller gave notice that she would not be given permission to occupy the premises, and should hand over the key of the premises to the Accommodation Controller, within 48 hours under penalty of prosecution.

2. The petitioner urges in the affidavit to the present petition that the order of the Accommodation Controller does not take into account the fact that the petitioner is also in possession of a part of the premises for her own residence, that the building itself satisfies the requirements of a residential building, and that in such circumstances, the petitioner is entitled to rely upon Section 3, Sub-section (10) Clause (c) of the aforesaid Act, as exempting her from giving notice under Section 3(1)(a) of the Act. The respondent-Accommodation Controller in the counter-affidavit states that the portion of the building let out to the Village Industries Office is an independent portion, with a separate entrance from the main road, separate amenities like flush-out, overhead tank and water supply, etc., that there are a

number of Government servants who have applied for accommodation in the town of Coimbatore, and who are in the waiting list, and that the premises could not be released to the petitioner and should be allotted under the provisions of the Madras Building (Lease and Rent Control) Act, 1960 for Government purposes.

3. It has first to be taken into account that the petitioner's specific case is that the premises in question 9/48, Gross Cut Road, Coimbatore, is a residential building of which a portion has been in her occupation throughout for the purpose of her residence. In the other portion she was carrying on for sometime a business in Kesavardhani Hair Oil Products, and then she let out that portion to the Village Industries Office, presumably for a non-residential purpose. During the pendency of the writ petition, the 1st petitioner filed a further affidavit, in which she stated that the Village Industries Officer was living in an adjacent building, and used the portion let out to him for his office, but that as that portion was also suited for residential purposes, other Government Officers used to come and stay in that portion. She has further alleged that the entire building is situated in one compound, and is provided with all residential amenities like flush-out and that there is one common overhead tank for the supply of water for the use of the entire building. The statement in the counter-affidavit of the respondent is that the building let out is an independent portion but he concedes the main statement of the petitioner that the premises let out is only a portion of a main building, though it might be an independent portion. One is quite familiar with the owner of residential building who proposes to let out a part of it, making suitable arrangements so that the tenant is occupation of the portion let out to him, may not have close contact with the owner who is in the occupation of the remaining portion. After such arrangements the portions may be fit for independent enjoyment, but that will not constitute the two portions into two independent buildings. So in the present case, it must be assumed that the petitioner was occupying a portion of a single building for residential purposes while the remaining portion used for non-residential purposes still remained part of the same building. But we have no exact information as to the relative areas occupied by the two portions, and we cannot say which was the more important portion with a larger area, whether it was the portion used by the owner for her residence or the portion let out on tenancy.

4. The argument of the learned Counsel for the petitioner (Sri Ramamurthy Ayyar) is based upon the specific provisions in Section 3(10)(c) of the Act which is as follows:

(10) Nothing contained in this Section (section 3) shall apply-

(c) to a residential building, a part only of which is occupied by the full owner and the whole or any portion of the remaining part of Such building is let to any tenant.

According to the learned Counsel, notwithstanding the fact that a portion of the building was used or let out for non-residential purposes, the structural character of the building in this case, has remained unaltered at all times; it continues to be a residential building, and therefore the petitioner is entitled, to the exemption enunciated in Section 3(10)(c) of the Act. The learned Counsel also lays stress on the fact that the second part of the clause in Section 3(10)(c), 'or any portion of the remaining part of such building is let to any tenant' does not make any distinction between letting out for residential purpose and. letting out for non-residential purposes. The crucial requirement of Section 3(10)(c) is therefore that a portion of the building should be occupied by the owner of the building for his residence, and if this requirement is satisfied, the owner would be exempt from giving notice of vacancy under Section 3 of the Act, irrespective of the fact whether the remaining portion not in the occupation of the owner is let out for residential or non-residential purposes.

5. There is no clear definition in the Act for finding out the meaning of residential or non-residential purposes. In the definition of a 'building' contained in Section 2(2) of the Act, a 'building' is defined as any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes. This definition no doubt lays emphasis on the user of the building from the point of view of the purpose behind the letting, whether it is for residential or non-residential purpose. A Full Bench of this Court in a decision reported in *Dakshinamurthi v. Thulja Bai* : AIR1952 Mad413 , had to consider the definition of a building in the context of Section 7(3) of the Act as it stood before the amendment in 1960, relating to recovery of possession by a owner of a building who has no other building of his own, from a tenant. The requirement for obtaining relief under Section 7(3) is that

if it is a residential building, the landlord will have the right to recover possession if he has got no other residential building of his own; and in a similar way, if it is a non-residential building the landlord will have the right to recover possession if he has no other residential building of his own; and in a similar way, if it is a non-residential building the landlord will have the right to recover possession if he has no other non-residential building of his own. For the purpose of determining whether a building is residential or non-residential in the context of the aforesaid provision of the old Act, the Full Bench laid own certain tests. The first test lays stress upon the instrument of tenancy which expresses the purpose of the letting; the second test deals with a situation where there is no such instrument of tenancy and in that case evidence would have to be adduced concerning the purpose of the letting; the third test permits the Court to look at the evidence concerning the user of the premises by the tenant down to the date of the application for eviction as acquiesced in by the landlord; the fourth test deals with a situation where there is evidence of such user but no evidence of acquiescence by the landlord, in such a case, the structural design, the antecedent user of the building by the landlord and other surrounding circumstances will have to be taken into considerations. In regard to the fifth test, the Full Bench says that difficulty may still arise in cases where a building is let out both for residential and non-residential purposes; in that case the decision will depend upon the question as to the real, main and substantial purpose of the letting. The difficulty in the present case has however arisen because part of the building is in the owner's occupation, and the remaining part has been let out for a non-residential purpose. Further, in this case, we are not dealing with a situation where the landlord seeks for the recovery of the portion in the occupation of a tenant by resort to the specific statutory provision contained in Section 7(3) of 1949 Act or the analogous provision of 1960 Act. What is relied upon is a different provision altogether which gives a certain statutory protection to owners who are occupying for purpose of residence a part of a residential building. It is permissible to assume that in the context of such a case, different considerations will have to be applied for the purpose of formulating the tests to decide whether the building in question can claim the benefit of the exemption under Section 3(10)(c) by reason of its being residential in character.

6. The Full Bench at page 416 in the above report, also refers to a situation where the words 'residential building' used in one and the same provision of the statute can be construed to have different meanings according to the context. The Full Bench observed in interpreting Section 7(3)(a)(i) of the 1946 Act:

'Residential building' in the first place where it is used may well mean 'a building let or to be let for the residential purposes'; where it is next used, it may as well mean simpliciter 'a building of a residential character.' After all, the definition of 'building' given in Section 2 of the Act, only operates where there is nothing repugnant in the subject or context as is made clear by the opening words of the section. If the definition cannot be applied for the ascertainment of the meaning of the expression 'a residential building' in the second place, in which it is used in Section 7(3)(a)(i) but can be applied for such a purpose with reference to the first place in which the expression 'residential building' occurs there is no reason why the clue afforded by the definition of 'building' may not be pressed into service for the ascertainment of the meaning of the expression 'residential building' as it occurs in the first place though not as used in the second. The purpose of residence involved and implied in the expression 'residential building' in both the places is of course there; only the idea of letting is there in the first context, while it is not there in the second.

The two places where the words 'residential building' are thus stated to be used and for which different meanings can be given, are to be found in Section 7(3)(i) of the old Act. The Full Bench held that for interpreting the meaning of the words 'residential building' found in the second part of the section, which refers to 'the owner not occupying a residential building of his own,' one can rely upon the structural design of the building for finding out whether it conforms to the requirements of a residential building. But for interpreting the same term 'residential building' used in the first part of the provision the test referred to earlier about the purpose of letting can be relied upon. Similarly, where we have to interpret as in this case, a provision which uses the words 'residential building' in the first part, and the words and 'said building' in the second part, one will have to consider whether this is a proper case to adopt the test of the purpose of the letting or the user of the premises, for the purposes of giving a just and

harmonious interpretation to the section, or to resort to some other test like the structural design of the building being suitable for residential occupation.'

7. Before consideration of this question, I will deal with the argument of the learned Government Pleader based upon the definition of 'building' in Section 2(2) of the Act, namely 'building' will include 'part of a building'. If that extended meaning of the term is to be applied, to Section 3(10)(c), it would appear as if the portion occupied by the owner though apart, can be viewed as a building independent of the portion let out, which has to be viewed as a building by itself. If this extended meaning is to be given, Section 3(10)(c) will itself become meaningless, as the section is intended to deal with a building viewed as in two parts, one part in the occupation of the owner and the other let out to a tenant, and in such a case, immunity is given to the owner, from the requirement of reporting the vacancy of the portion let out. The extended meaning of the definition of 'building' as applicable to a part, should therefore be ruled out in this case. A similar view is held by a Bench of this Court reported in Mohammed Jaffer v. Palaniappa Chettiar : (1964)1MLJ112 , in the context of Section 7(3)(c) of the Madras Buildings (Lease and Rent Control) Act, 1949 (corresponding to Section 10(3)(c) of Act (XVIII of 1960).) In fact Section 2(2) itself contains a necessary limitation to its application, namely that it would not apply, if the context otherwise indicates to the contrary.

8. It appears to me that for finding out the meaning of the words 'residential building' used in Section 3(10)(c) of the Act, one will have to go into the history of the legislation which led to the amendment. It was found that if on the arising of a vacancy in a portion of the building, of which the remaining portion was in the occupation of the landlord, it is made obligatory that the landlord should report the vacancy to the Accommodation Controller, it might very well lead to a situation where an owner who is a strict vegetarian may have to face the inconvenience of staying under the same roof with a tenant who is a non-vegetarian, or the owner with one set of religious observances, will have to put up with a tenant with a different set of religious observances. This will lead to a great deal of inconvenience and hardship to owners in occupation of part of residential buildings, and letting out the other part. The Legislature appears to have enacted Section 3(10)(c) by way of amendment to meet such difficulties. This is pointed out

in *Rukmani Ammal v. Accommodation Controller, Madras* (1965) 1 M.L.J. 324, where at page 325 the following observations are found:

This provision is a new one which did not find place in the old Act. If one can imagine the reasons which led to the introduction of this clause, it may well be that the Legislature intended that when the owner is himself in occupation of a part of the building, the choice of a tenant in respect of the other part of the building should be left to him. Cases have not infrequently arisen under the old Act where the Accommodation Controller has thrust upon a landlord a tenant of a religious persuasion and practices different from that of the owner, who was also occupying the building. This undoubtedly led to considerable hardship on the part of the landlords and it is presumably to avoid such situations that a provision of this kind has been enacted.

The question that now arises is whether different considerations will apply if the portion not in the occupation of the owner is let out for a non-residential purpose, and whether the protection given in Section 3(10)(c) will apply only if the portion not in the occupation of the owner, has been let out only for a residential purpose. From the point of view of the object sought to be achieved and the mischief sought to be avoided by an amendment of the kind, namely to save avoidable hardship to the owner in the occupation of a part of residential building, there is no justification in drawing a distinction between a case of a letting out of the portion of the building for non-residential purpose and the case of letting out for residential purposes. The learned Judge in *Rukmani Ammal v. Accommodation Controller* (1965) 1 M.L.J. 324, has visualised the difficulties which will arise in the case of letting out of the remaining portion for a residential purpose and if the Accommodation Controller on the report of the vacancy, of that portion has a right to let it out to say tenant of his choice, equally, if a similar obligation to report the vacancy to the Accommodation Controller is insisted upon in the case of letting out the remaining portion for non-residential purpose, it may well happen that the Accommodation Controller, will let out the portion to an office which may be used, at odd times and hours, or by persons and members of public, in such a manner that the owner in occupation will suffer great hardship. It is not necessary to catalogue the situations which may arise in such a contingency. But the principle in either case, whether the portion is

let out for residential purpose or non-residential purpose, is the same, namely when the building is a residential one and the owner is in possession of a portion of the building, he is entitled to the statutory protection giving him the liberty to exercise his discretion in the choice of the tenant for the occupation of the remaining portion which is not in his occupation. The statute has deliberately given him this benefit, and in my opinion, that benefit cannot be withheld, where the letting out of the remaining portion not in the owner's occupation is for a non-residential purpose. Bearing in mind this principle, which in my opinion is necessary for the purpose of giving a just and harmonious interpretation to the meaning of the term 'residential building' used in Section 3(10)(c) of the Act-it appears to me that it will not be proper to adopt the test of user formulated by the Full Bench in such cases. That test was validly applied to the circumstances dealt with in the case which came up before the Full Bench, which was a case of eviction under Section 7(3) of the old Act. But here where a statutory protection is given to the landlord in his own interest, it appears to me that a different test-which the Full Bench itself recognised as capable of application in a proper case. The test based upon the structural aspect of the building or to use the wording of the Full Bench 'a building suitable for residence by its structural design and not a building let or to be let for residential purposes', must be applied. Applying the aforesaid test there is no room for entertaining any doubt in this case that the building is suitable for residence by reason of its structural design. In the counter affidavit of the respondent he has clearly stated that after the report of the vacancy which was compulsorily obtained from the petitioner, the Accommodation Controller had the idea of allotting the building to one of the Government Officers who needed the building for residential purposes. This itself is clearly indicative, that the building in question satisfies the requirements of a residential building if we apply the test of suitability for residence, by its structural design.

9. In view of all the above foregoing considerations, I allow the writ petition and quash the orders of the respondent by a writ of certiorari. There will be no order as to costs.