V. Radhakrishnan vs S.N. Loganatha Mudaliar on 5 August, 1998

Bench: B.N. Kirpal, V.N. Khare

PETITIONER:
V. RADHAKRISHNAN

Vs.

RESPONDENT:
S.N. LOGANATHA MUDALIAR

DATE OF JUDGMENT: 05/08/1998

BENCH:
A.S. ANAND, B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

O R D E R The appellant is the tenant of a non-residential building of which the respondent is the landlord. The respondent filed an eviction petition in the court of the Rent controller, chengalpattu on two grounds, i.e. (1) wilful default in payment of rent by the appellant and (2) bonafide personal requirement of the landlord for the purpose of setting up his son's business.

On a perusal of the evidence, the learned Rent controller held that there was no wilful default in payment of rent and also that the landlord had not established his bonafide personal requirement. Vide order dated 22.11.1990, the eviction petition was, therefore, dismissed. The respondent challenged the order of the Rent controller before the appellate authority. The appellate authority agreed with the Rent controller that there was no wilful default in payment of rent on the part of the tenant but held that the ground of bonafide personal requirement had been established by the landlord and passed an order of eviction, setting aside the order of the Rent controller vide judgment dated 31.1.1992. The order of the appellate authority was put in issue by the tenant through civil revision petition No. 863/92 before the High Court of Madras. A learned Single Judge of the High Court agreed with the findings recorded by the appellate authority and held that the landlord had established bonafide personal requirement and vide judgment and order dated 24.12.1996, upheld the order of the appellate authority and ordered eviction of the tenant.

Aggrieved, the tenant is before us by special leave. The short question, that requires our consideration is with regard to the scope and interpretation of Section 10 (3)(a) (iii) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter the Act.) That Section reads thus :

> "10 (3) (a) - A landlord, may, subject to the provisions of clause (d), apply to the controller for an order directing the tenant to put the landlord in possession of the building-
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> (iii) In case any other non-

residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concern which is his own;

Before examining the scope and interpretation of the Section, we would like to advert to the findings of fact as recorded by the appellate authority and upheld by the High Court.

It has been found as a fact that the landlord had filed the eviction petition on the ground that the premises in question were bonafide required by him for setting up the business of his son. It has also been found that the son of the landlord was earlier doing his business in a shop belonging to his Uncle (brother of the landlord) on payment of a monthly rent of Rs. 300/-. It has further been found, as a fact, that the son of the landlord had to leave that shop and he started to do business along with his father in a non-residential premises owned by the father. The courts below have also found that the son did not occupy or own any non-residential building of his own.

According to Mr. Sundaravardan, learned senior counsel appearing for the appellant, the landlord had failed to establish any bonafide personal requirement of himself inasmuch as he was in occupation of a non-residential building from where he was carrying on his business and, therefore, he was not entitled to seek eviction of the tenant for the purpose of setting up the business of his son. It si submitted that so long as the landlord owned and occupied a non-residential building, he could not seek eviction of the tenant only for setting up the business of his son. reliance in this behalf is placed by the learned counsel on a judgment of a learned Single Judge of the Madras High Court in R. Jagannatha Chettiar Vs. Swarnambal (97 L.W. 182) wherein the learned Single Judge took the view that occupation by the Landlord of a non-residential building of his own was sufficient to disqualify him from claiming any other residential building in the occupation of a tenant even, if the same was required for the benefit of any other member of his family.

Mr. Bhat, Learned counsel appearing for the respondent, on the other hand, submitted that the bonafide requirement, as contemplated by Sub-Clause (iii) has to be read so as to mean that the person for whose benefit the premised are sought for, should not be occupying or owning any building of his or her own and not hat the landlord should not be owning or occupying a building of his own. Learned counsel in support of his submission relies upon the judgments of Madras High Court in A.S. Kannan Vs. S.C.M. Zackeriya (100 L.W. 213) and Messrs. Indian Plywood Manufacturing Co. Vs. Balaramiah Chetty (99 L.W. 49). Reliance is also placed by him on

Kolandaivelu Chettiar Vs. Koolayana Chettiar (1961 (1) MLJ 184) and on M/s. Annamalai and Co. by its partner S.S. Sundaram Chettiar Vs. Sital Achi (1975 (1) MLJ 337), wherein while interpretating Section 10(3) (a) (iii) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, as amended in 1973, the learned Single Judge held:

> "Thus here also in the case of eviction of a tenant from a non-
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> residential building the condition to be satisfied is that the person for whose business the building is required shall not be in occupation of a non-residential building of his own. In other words, the landlord though he may be in occupation of a non-residential building for purpose of his business, could apply for eviction of a tenant in respect of another non-residential building if required for the purpose of a business which any member of his family is carrying on provided the person for whose benefit the non-
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> residential building was required by the landlord is not already in occupation of non-residential building of his own. Any other construction in my opinion would nullify the amendment of the section by introduction of the words 'any member of his family'." In A.S. Kannan's case (supra), it has been laid down that when a premises is sought for by the landlord for the benefit of any member of his family, it is only that member of the family for whose benefit the premises are required who should not be occupying the premises of his or her own and the fact that the landlord occupies premises of his own, can not disentitle him from claiming eviction for the benefit of a member of his family, who does not occupy any premises of his own.
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> In M/s. Indian Plywood Manufacturing Co. (supra), it was held that under Section 10 (3) (a) (iii) of the Act, the landlord can apply for eviction of the tenant if the person for whose benefit the non-residential building is required, is not already in occupation of a non-residential building of his own.
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> In chettiar's case (supra), it has been laid down that a father can certainly file an application for eviction when he requires the premises to set up a separate family for his second son when his son is not occupying a residential building of his own in the place concerned. This was case under Section 10 (3) (a) (i) of the Act and those provisions are in pari-materia with the provisions of Section 10 (3)
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> (a) (iii) of the Act.

On a plain reading of Section 10(3) (a) (iii) of the Act, it appears to us that the legislature intended that a landlord seeking eviction of the tenant could be disentitled from claiming possession of the non-residential premises where he requires those premises for his own use, if he is occupying a non-residential building of his own. similarly, the landlord would also be disentitled from claiming possession of non-residential premises for the benefit of a member of his family, if that member of the family was in occupation of non-residential building of his own. Any other interpretation of this

Section would not only be doing violence to the plain language of the Section but would result in absurdity inasmuch as the benefit of the provision would stand denied to the family members of the landlord, who do not occupy any premises of their own and for whose benefit eviction is sought, if the landlord himself is in occupation of a non-residential premises of his own. The fact that the landlord, who seeks eviction for the benefit of a member of his family is himself occupying a building of his own, cannot operate as a bar to the landlord seeking eviction for the benefit of a member of his family, who does not occupy any premises of his own. Thus, it follows and we hold that the laid down in Jagannatha Chettiar's case (supra) is not the correct law. The learned Single Judge in Chettiar's case did not notice, let alone consider the three earlier judgments in 99 L.W. 49; 1961 (1) M.L.J. 184 and 1975 (1) M.L.J. 337. In our opinion, the judgments in Kannan's case, Indian Plywood Manufacturing Company's case, K. Chettiar's case and Annamalai and Company's case (supra) lay down the correct law, which we hereby approve.

In view of the above discussion, no fault can be found with the judgments delivered by the appellate authority and the High Court holding that the landlord was entitled to seek eviction of the tenant to set up the business of his son who was not in occupation of any other non-residential premises of his own in the area. This appeal, therefore, fails and is dismissed but without any order as to costs.

Mr. Sundaravardan, learned senior counsel submits that the appellant and his father have been in occupation of the demised premises for more than fifty years. He submits that sufficient time may be granted to the appellant to vacate and hand over the vacant possession of the premises to the respondent. Mr. Bhat, learned counsel appearing for the respondent does not oppose the prayer for grant of time but submits that only reasonable time and not sufficient time may be granted to the tenant for the purpose. In the established facts and circumstances of the case, it appears appropriate to us to grant time to the appellant to vacate and hand over the vacant possession of the premises to the landlord on or before 30.6.1999 (Thirteeth June Ninteen Hundred and Ninty Nine) subject to his filing the usual undertaking in this court within four weeks.