Madras High Court
Ayodhiraman vs Subramaniam, A. Shanmugam And A. ... on 10 April, 2003
Equivalent citations: 2003 (3) CTC 81, (2003) 2 MLJ 316
Author: P Thangavel
Bench: P Thangavel
ORDER P. Thangavel, J.

1. This Civil Revision Petition has been filed by the landlord as revision petitioner against the judgment and decree dated 3.12.1996 and made in R.C.A. No. 8 of 1994 on the file of the learned Rent Control Appellate Authority, Tiruchirapalli reversing the order and decretal order dated 25.11.1993 and made in R.C.O.P. No. 165 of 1987 on the file of the learned Rent Controller, Tiruchirapalli.

2. The facts that are necessary for disposal of this Civil Revision Petition are as follows:- The revision petitioner is the landlord of the demised premises described in the Rent Control Original Petition which is a portion of Door No. 66 in Big Sowrashtra Street, Woraiyur, Tiruchy Town. The respondents herein are the tenants of the demised premises on a monthly rent of Rs. 85/-. The respondents herein have committed wilful default in payment of rent from February, 1987. The son of the revision petitioner, who is a graduate, is doing lottery ticket business and the demised premises is required for own use and occupation. It is on these grounds, the revision petitioner has sought for eviction of the respondents herein from the demised premises.

3. The respondents herein as respondents before the learned Rent Controller have resisted the claim made by the landlord as revision petitioner on the following grounds:- The respondents herein have not committed wilful default in payment of rent from February, 1987. The revision petitioner demanded enhanced rent of Rs. 200/- per month and the respondents herein were not agreeable for the same. The rent tendered by the respondents herein to the revision petitioner was refused and the revision petitioner herein attempted to evict the respondents herein forcibly which lead to the filing of suit in O.S. No. 707 of 1987 for the relief of permanent injunction, except through process of law. The rent sent by money order was also returned as refused. The son of the revision petitioner, who is a graduate, is not doing lottery ticket business and therefore, the requirement of the demised premises for own use and occupation, is not bona fide. Hence, the respondents herein as respondents before the learned Rent Controller sought for dismissal of the petition.

4. After considering the submission made on both sides in the light of the material evidence available on record, the learned Rent Controller ordered for eviction of the respondents herein from the demised premises. Aggrieved at the order and decretal order dated 25.11.1993 and made in R.C.O.P. No. 165 of 1987, the respondents herein, who are tenants, as appellants preferred an appeal in R.C.A. No. 8 of 1994 on the file of the learned Rent Control Appellate Authority, Tiruchirapalli. After considering the submission made on both sides in the light of the material evidence available on record, the learned Rent Control Appellate Authority had found that there was no wilful default in payment of rent and that the requirement of the demised premises for own use and occupation are not bona fide. Accordingly, the appeal filed by the tenants as appellants was allowed. Aggrieved at the judgment and decree dated 3.12.1996 and made in R.C.A. No. 8 of 1994 on the file of the

learned Rent Control Appellate authority, Tiruchirapalli, the landlord as revision petitioner has come forward with this Civil Revision Petition.

5. The point for determination is whether there are grounds to interfere with the judgment delivered by the learned Rent Control appellate Authority.

6. The Revision petitioner Ayodhiraman was examined as P.W.1, while the second respondent A.Shanmugam was examined as R.W.1 before the learned Rent Controller. Exs.A-1 to A-6 and R-1 to R-3 were marked on the side of the revision petitioner and the respondents herein respectively.

7. The fact remains that the revision petitioner is the owner of the building bearing door No. 66, Big Sowrashtra Street, Woraiyur in Tiruchi Town. The demised premises is a portion of the above said door number. Admittedly, the respondents herein are in occupation of the demised premises on a monthly rent of Rs. 85/- and they have paid the rent without any default for which acknowledgment was made in the pocket note book upto January, 1987.

8. Admittedly, the respondents herein had not paid the rent for the months of February and March, 1987 and that therefore, according to the revision petitioner, the respondents have committed wilful default in payment of rent. The non-payment of rent for the months of February and March, 1987 by the respondents herein to the revision petitioner was not disputed, but according to the respondents herein, the revision petitioner has refused to receive the rent at the rate of Rs. 85/- per month demanding enhanced rent at Rs. 200/- per month from the month of February, 1987. While R.W.1 was cross-examined, he had admitted that the demand of enhanced rent was only in the month of April, 1987. If the above said admission is taken into consideration, it is evident that the non-payment of rent for the months of February and March, 1987 could not be due to the alleged demand of enhanced rent at Rs. 200/- per month.

9. Whether the non-payment of rent referred to above will amount to wilful default or not is the question next to be considered in this matter. Admittedly, there is no written agreement for the lease between the revision petitioner and the respondents herein with regard to the demised premises. As per Section 10(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the "Act"), a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, i.e., for the month of February, 1987, they can pay the rent on or before 31.3.1987. Likewise for the month of March, 1987, the rent can be paid on or before 30th April, 1987.

10. In this case, it is evident from a perusal of Ex.R-1 dated 24.4.1987 that the respondents herein have sent the rent by money order for the months of February and March, 1987 on 24.4.1987 and the same was returned as refused on 27.4.1987. It is evident from a perusal of the postal seal affixed in Ex.R-1. A mention has also been made in the notice Ex.B-2 dated 24.4.1987 sent by the learned

counsel for the respondents herein to the revision petitioner about it. Of course, no acknowledgment was produced for the receipt of the notice Ex.B-2. But, the said notice was sent by registered post as seen from the postal receipt issued by post office for sending the registered notice Ex.B-2. If the said documents are taken into consideration in the light of the evidence of R.W.1, it is quite clear that the rent for the months of February and March, 1987, was tendered by money order on 24.4.1987, but the same was returned as refused on 27.4.1987. The tendering of rent for the month of March, 1987 is within the time as contemplated under the Act. There is a delay of only 24 days in tendering the rent to the revision petitioner by the respondents herein for the month of February, 1987.

11. In S. Sundaram Pillai, etc. - vs.- V.R. Pattabiraman, a larger Bench of the Hon'ble Apex Court has held as follows:-

"A consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or other Acts referred to above."

In this case, it is not the case of the revision petitioner that the respondents herein have committed default in payment of rent despite oral demands or reminders, but it is for the first time there was a default in payment of rent for the month of February, 1987 by 24 days. As already pointed out, the rent tendered for the month of March, 1987 was within the stipulated time under the Act. There is no material to hold that the default in payment of rent by the respondents herein was intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. In view of the said circumstances, it cannot be held that the default committed in payment of rent for the month of February, 1987 by the respondents herein will come within the definition of wilful default so as to order eviction against them. Therefore, this Court is of opinion that the learned Rent Control Appellate Authority was right in coming to the conclusion that the respondents herein have not committed wilful default in payment of rent. Hence, the finding of the learned Rent Control Appellate Authority in that respect has to be sustained and accordingly sustained.

12. The fact remains that the son of the revision petitioner, Srinivasan is a graduate. According to the revision petitioner, he is said to be carrying on business in lottery tickets in front of the house bearing Door No. 66 Big Sowrashtra Street, Woraiyur, Tiruchy Town wherein the revision petitioner is in occupation. The said fact of doing business in lottery tickets at the above said place has been disputed by the respondents herein. To establish the fact of carrying on business in selling lottery tickets by Srinivasan, the son of the revision petitioner, the revision petitioner produced Exs.A-1 to A-5 receipts for purchase of lottery tickets from Sri Ram Lottery Agency. A perusal of Exs.A-1 to A-5 would disclose that the said lottery tickets were purchased in the months of February, March, April, May and October, 1987 by one T.A.S. Lucky Centre. There is nothing to show on the side of the revision petitioner to establish that the son of the revision petitioner is carrying on business in lottery tickets under the name and style of 'T.A.S. Lucky Centre' except the interested testimony of P.W.1. It is evident from a perusal of the order of the Appellate Authority that the son of the revision

petitioner had not obtained licence from the Municipal Authorities for doing business of selling lottery tickets. There is also no other evidence including the evidence of Srinivasan to establish that the said Srinivasan is carrying on business in selling lottery tickets under the name and style of 'T.A.S. Lucky Centre'. Therefore, the contention raised by the learned counsel appearing for the revision petitioner that the demised premises is required for the son of the revision petitioner to carry on business in selling lottery tickets cannot be accepted.

13. As already pointed out, the revision petitioner is in occupation of a portion of the building bearing Door No. 66 Big Sowrashtra Street, Woraiyur, Tiruchy Town in which the demised premises is a portion. The present petition has been filed by the revision petitioner for eviction on the ground of own use and occupation, but not on the ground of additional accommodation. Whether a petition for eviction on the ground of own use and occupation, while the landlord is in occupation of a portion of the building, can be maintained is the question to be considered next. The answer to the said question is in the decision rendered by the Hon'ble Apex Court in Shri Balaganesan Metals - vs. - M.N. Shanmugam Chetty and others followed by other decisions as referred hereunder:-

"It is no doubt true that under Section 2(2) a building has been defined as not only a building or hut but also part of a building or hut let separately for residential or non-residential purpose. That would, however, only mean that a part of a building which has been let out or which is to be let out separately can also be construed as a separate and independent building without reference to the other portion or portions of the building where it is not necessary to treat the entire building as one whole and inseparable unit. A limitation on the definition has been placed by the Legislature itself by providing that the application of the definition is subject to the contextual position. Therefore, it follows that where the context warrants the entire building being construed as one integral unit, it would be inappropriate to view the building as consisting of several disintegrated unit and not as one integrated structure. Secondly there is vast difference between the words "residential building" and "non-residential building" used in Section 10(3)(a)(i) and (iii) on the one hand and Section 10(3)(c) on the other. While Section 10(3)(a)(i) and (iii) refers to a building only as residential or non-residential, Section 10(3)(c) refers to a landlord occupying a part of a building, whether residential or non-residential. Furthermore, Section 10(3)(c) states that a landlord may apply to the Controller for an order of eviction being passed against the tenant "occupying the whole or any portion of the remaining part of the building" . If as contended by the appellant each portion of a building let out separately should always be construed as an independent unit by itself then there is no scope for a landlord occupying "a part of a building" seeking eviction of a tenant "occupying the whole or any portion of the remaining part of the building". It is, therefore, obvious that in so far as Section 10(3)(c) is concerned the Legislature has intended that the entire building, irrespective of one portion being occupied by the landlord and the other portion or portions being occupied by a tenant or tenants should be viewed as one whole and integrated unit and not as different entities. To import the expansive definition of the word "building" in Section 2(2) into Section 10(3)(c) would result in rendering meaningless the words "part of a building" occupied by the landlord and a tenant "occupying the whole or any portion of the remaining part of the building". The third factor militating against the contention of the appellant is that if a portion of a building let out to a tenant is to be treated in all situations as a separate and independent building then Section 10(3)(c) will be rendered otiose because the landlord can never then ask for additional accommodation since

Section 10(3)(a) does not provide for eviction of tenants on the ground of additional accommodation for the landlord either for residential or non-residential purposes. It is a well settled rule of interpretation of statutes that the provisions of an Act should be interpreted in such a manner as not to render any of its provisions otiose unless there are compelling reasons for the Court to resort to that extreme contingency.

. . . . . .

A landlord who is occupying only a part of residential building may notwithstanding anything contained in cl.(a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

A landlord who is occupying only a part of a non-residential building may notwithstanding anything contained in cl.(a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

If cl.(3) is construed in this manner there can be no scope for a contention that a landlord can seek additional accommodation for residence only if the building is a residential one and likewise he can seek additional accommodation for business purposes only if the building is a non-residential one."

Following the decision (cited supra), a learned single Judge of this Court in A.P. Swamy - v. - Kunjithapadam (1994-2 Law Weekly 661) has held as follows:-

"Admittedly, in the present case, the landlord is in occupation of the entire first floor portion and the tenant is in occupation of the ground floor. A plain reading of Section 10(3)(c) of the Act would go to show that in the present case the petition ought to have been filed only under Section 10(3)(c) of the Act.

. . . . . .

Therefore, in the present case, the petition filed for eviction under Section 10(3)(a)(iii) of the Act is not maintainable."

The decisions referred to above would show that the petition filed by the revision petitioner for own use and occupation under Section 10(3)(a)(iii) of the Act is not maintainable. Therefore, the eviction cannot be ordered on the ground of own use and occupation also, as rightly concluded by the learned Rent Control Appellate Authority.

14. In fine, the judgment and decree passed by the learned Rent Control Appellate Authority are confirmed and the Civil Revision Petition is dismissed. No costs.