

T. Baghchand Galada Vs. the State of Tamil Nadu Represented by the (Chief) Secretary to the Government, (Home Dept.) and anr.

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Court : Chennai

Decided On : Mar-09-1971

Reported in : (1971)2MLJ120

Appellant : T. Baghchand Galada

Respondent : The State of Tamil Nadu Represented by the (Chief) Secretary to the Government, (Home Dept.) and anr

Judgement :

ORDER

K.S. Palaniswamy, J.

1. The petitioner is the owner of the premises No. 83, Sir Thiagaraya Road, T. Nagar, Madras. The said building was taken over by the State Government, the first respondent and allotted to the Southern Railway, the second respondent in the year 1947 for locating the town booking office. The petitioner requested Government to release the building from accommodation for the use of his son. On considering the merits, the Government in their Memorandum dated No. 151766/1A.C. 65-4 Home Department, dated 10th January, 1966 terminated the Government tenancy and directed the Accommodation Controller to inform the railway to secure alternative accommodation within three months. Accordingly, the Accommodation Controller issued proceedings on 22nd January 1966, requesting the railways to secure alternative accommodation within three months and hand over possession of the premises to the Accommodation Controller on or before 9th April, 1966. The railways did not protest at that time. They appear to have taken some efforts to find alternative accommodation but could not succeed. Thereupon, they wrote to the Government stating that they were not able to get any alternative accommodation and that the booking office could not be shifted to any other place, without causing inconvenience to the general public. Thereafter, the Government issued a notice to the petitioner to show cause why the order of releasing the building should not be set aside. The petitioner made his representations protesting against the proposal and stating inter alia that once the tenancy had been put an end to, it was not open to the Government to go back upon their order. Overruling this objection, the Government cancelled the previous order and it is to quash this order that this writ petition has been filed.

2. It is contended on behalf of the first respondent that the tenancy cannot be said to have come to an end before possession is given to the petitioner and that inasmuch as the cancellation order was made before possession was given, it was open to the Government to cancel the order by which the premises was released. I am unable to

accept this argument. The Government unequivocally stated by the order dated 10th January, 1966, that the building was released from accommodation. The fact that the railways were given time to vacate did not affect the validity of the termination of the tenancy. All that could follow from the mere grant of time to the Railways is that the railways continued to be licencees to remain in possession until the expiry of three months granted to them. By the mere grant of time, it cannot be said that the order of termination was to come into effect only on the railways surrendering possession. As a matter of fact, in the communication sent by the Government on 8th May, 1967, to the railways, the Government unequivocally admitted that the tenancy was terminated by the order dated 10th January, 1966. It is therefore not open to the Government to say that the tenancy was not terminated and that the termination was to come into effect only on the Railways surrendering possession.

3. It is also not open to the Government to state that it was within their power to cancel the termination order, because the termination was effected not on any fraudulent misrepresentation by the petitioner. The Government considered the claims of the petitioner for release and on being satisfied about the bona fides of the claim, passed the order of release. It would undoubtedly be different, if the Government had come to know that any fraud had been practised upon them by the petitioner and that by practice of fraud, the petitioner managed to get the order of release. But that is not the position here. Therefore, once the tenancy agreement came to an end, it was no longer open to the Government to unilaterally bring about a fresh lease, ignoring the wishes of the petitioner. On the valid termination of the statutory tenancy, fresh statutory tenancy can come into being only if the provisions of the Act are attracted. But that is not the position here. Therefore, the Government, after having terminated the tenancy, had no jurisdiction to cancel it, after the termination came into effect. In this view, the impugned order is unsustainable and is liable to be quashed. It is accordingly quashed.

4. The writ petition is allowed. The Railways, are however, given time till the end of September, 1971, to vacate. There will be no order as to costs.

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