

**P.M. Kuppa Sah Vs. Rajaram Sah**

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**Court :** Chennai

**Decided On :** Nov-10-1978

**Reported in :** (1979)1MLJ498

**Appellant :** P.M. Kuppa Sah

**Respondent :** Rajaram Sah

**Judgement :**

T. Ramaprasada Rao, C.J.

1. The petitioner in this civil revision petition is the landlord. He owns premises No. 1-A, Balakrishna Pillai New Street, Chintadripet, Madras-2. The respondent was 'one of the tenants occupying a portion of the premises on a monthly rent of Rs. 15. A notice of determination of tenancy was given by the petitioner against three of his tenants, who were by then occupying small portions in the premises. One of the tenants, on the insurance of the notice of determination of tenancy, vacated, and the petitioner put his belongings in that portion, locked it up and kept it with him. Thereafter he filed two petitions against the remaining two tenants, who did not comply with his request for surrender of possession as asked for in his notice of determination of tenancy. H.R.C. No. 793 of 1973 was against the tenant who was in occupation of a portion on a monthly rent of Rs. 30 and H.R.C. No. 794 of 1973 was against the present respondent. He filed the two petitions on the ground that both the tenants had committed wilful default in the payment of rents from November, 1972 to January, 1973. He also sought for the portions in the 'occupation of the two tenants, for his own occupation by way of additional accommodation. This was obviously on the foot that he, was in occupation of a portion of the building which one of the tenants had surrendered after the petitioner had issued the notice of determination of tenancy.

2. So far as the question of wilful default was concerned, it was denied by both the tenants. Their common case was that they did offer the rent, but, as the petitioner demanded enhanced rent, they refused to pay the same. They, however conceded that they did not give any reply to the notice of determination of tenancy issued by the petitioner. According to them, the petition was incompetent under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as the petitioner was residing in a different building and therefore he was not entitled to additional accommodation. They would say that the petitioner could occupy the portions which had' already fallen vacant in the premises and that, as the petitioner's family consisted of himself and his wife, the available vacant portion would be sufficient for him. They would also set out the disadvantages that might be caused to them in the event of their being asked to surrender possession, and contend that the inconveniences that they are likely to suffer would outweigh the advantage to be

gained by the petitioner.

3. The Rent Controller found, on the question of wilful default, that the tenants did not commit such wilful default and disbelieved the story of the; tenants that there was a tender by them and that, because of the demand for enhanced rent, the landlord refused to receive the rents.

4. On the other point, whether the requirement of the premises by the petitioner by way of additional accommodation was bona fide, the Rent Controller found that the petition was maintainable in view of the admissions made by the tenants themselves that there is a portion which has fallen vacant in the premises, and which, is in his possession and which would be sufficient for the occupation, of himself and the members of his family. He believed the landlord when he stated that he was occupying the portion which another tenant had vacated after he issued the notice of determination of tenancy, that he had kept his belongings there and that the other portions in the occupation of the other two tenants, including the respondent herein, by way of additional accommodation was bona fide required by him and that the tenants would not be inconvenienced. He further held that physical occupation by the petitioner of the portion which had fallen vacant was not necessary.

5. On the question whether the hardship that might be caused to the tenants would outweigh the advantage which the landlord may gain, the Rent Controller, after holding that the request of the petitioner was bona fide, went into the question and found that there would not be any such inconveniences to the tenants. After observing that it was not open to the tenants to dictate to the landlord as to what portion of his own building he requires for his own occupation, and after referring to the inconvenience felt by the landlord, who was rearing up his brother's children, as he was childless himself, the Rent Controller was of the view that the granting of the prayer for additional accommodation of the portion in the occupation of the tenants would not cause hardship to the tenants.

6. In this view of the matter the Rent Controller ordered eviction.

7. The Appellate Authority, while reversing the decision of the Rent Controller, held against the landlord. He accepted that the rents as claimed by the landlord was right, but would not find that there was wilful default in the payment of such rent. He accepted the contention of the landlord that there was no proof of tender of the agreed rent, but, in his view, as the tenants had paid the entire arrears of rent on the first date of hearing and as there was some discrepancy in the quantum of rent payable, because of the confusion created by the landlord himself, when he issued receipts for a lesser amount, a liberal view should be taken and accordingly, he held that there was no wilful default. On the legal objection raised, that the petition as not maintainable under Section 10(3)(c) of the Act, the Appellate Authority held that, unless the landlord was in physical occupation of the premises, the petition under Section 10(3)(c) was not maintainable. It is as against this the present civil revision petition has been filed.

8. The Appellate Authority was of the view that under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, physical occupation by the landlord is an essential sine qua non for the maintainability of the application. The landlord in this case gave a notice of termination of tenancy to all the three tenants. On the receipt of such a notice, one of the tenants vacated. This is not in dispute. As

soon as the tenant vacated, the landlord put his own belongings in the portion and locked it up and kept it in his possession and control. Finding that the other two tenants did not vacate, he filed the present application under Section 10(3)(c) of the Act seeking for additional accommodation.

9. Inter alia both the tenants objected to the maintainability of the application under Section 10(3)(c) on the ground that the landlord was not in physical occupation of a portion of the building in question. It was in this context that the question arose whether the petition was maintainable without the landlord being in physical possession and occupation, though in corporeal possession of a part of the building, as already stated.

10. When the Legislature made a distinction between Section 10(3)(a)(i) and Section 10(3)(c), then the intendment of the Legislature in having made such a difference has to be found on a proper and meaningful understanding of the purpose for which such a legislative dichotomy has been created between the two sub-sections, Sections 10(3)(a)(i) and Section 10(3)(c). Whilst in the former case, the petitioner can seek for possession of the building owned by him and rented out' to others on the ground that he requires it for the occupation of himself, his dependants and the members of his family, the latter provision contemplates that a landlord can ask for his own purposes additional accommodation, provided that he is in occupation of a portion of the building. The essential difference between the two has already been pointed out by this Court. Notwithstanding the fact that the Legislature amended Section 10(3)(a)(i) to fall in line with the judicial pronouncements of this Court, yet it did not think it necessary to improve upon or expand the intention and purpose contemplated in Section 10(3)(c). Under this Sub-section the only requirement is that the landlord should be in occupation of a portion of the building and the additional accommodation sought for is needed bona fide by him. In so far as this Sub-section is concerned, a subsidiary finding, but equally a necessary one, has to be rendered by Courts regarding such bona fides claimed by the landlord. This 'subsidiary bona fides', if such an expression can be used, touches upon the hardship which a tenant might suffer by reason of the order of eviction. If the hardship-that is likely to be caused to the tenant outweighs the advantage which the landlord might, obtain as a result of the same, then it is necessary for the Courts to render an additional finding on this aspect of hardship in favour of either the landlord or the tenant. These are the essential differences between, Section 10(3)(a)(i) and Section 10(3)(c) of the Act.

11. In the light of this, the contention, regarding the non-maintainability of the application has to be considered. It is admitted that the portion which, the quandom tenant vacated, when notice of determination of tenancy was given, was occupied by the landlord, who put his belongings there and locked it up. The question is whether such a possession is sufficient under Section 10(3)(c) or physical occupation is a primary necessity. That possession is nine points of law is an ancient adage in jurisprudence. Possession may be physical possession or juridical possession. It is common ground that the landlord kept the premises vacant for one year and suffered loss of rent towards such portion of the building. He also took the ancillary precaution of keeping his belongings there-and kept it locked up throughout.

12. In *Accommodation Controller v. Rukmani Ammal* : AIR1971Mad342 , a Division Bench of this Court,, approving of the view of Srinivasan, J., interpreted Section 3(10)(c) of the Act in a liberal fashion, and held that even 'occupation for purposes of Section 3(10)(c) of the Act may well be occupation, where the owner resides in a

portion of the house off and on and most of the time keeps it locked. The question is one of intention as disclosed by the act of user of the portion of the house. 'Occupation may, no doubt, be physical, but it does not follow that the owner should actually reside in a portion of the house all the 24 hours in a day. It will be such occupation, if, intending to reside in the house, the owner keeps a portion therein locked, so that when the opportunity or necessity arises, the portion may be free for use by him or her'. The Division Bench affirmed the judgment of Srinivasan, J. Srinivasan, J., had observed:

It may be that a person, who does not choose to reside permanently in one place may keep a part of his premises always available for his occupation and occupy it from time to time. That will be just as much occupation as occupation for all the time permanently by the owner. 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 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 landlord and it is presumably to avoid such situations that a provision of this kind has been enacted.

The view of Alagiriswami, J., that the owner should be in physical occupation of the building was thus not approved by the Division Bench. This view of Alagiriswami, J., in *Rajammal v. V.T. Swami* (1967) 1 M.L.J. 46, is therefore no longer good law.

13. We have already expatiated on the difference in the text of Section 10(3)(a)(i) and Section 10(3)(c) of the Act. As jurisprudence contemplates juridical possession as the nearest equation of physical possession, I am of the view that, in a case where the landlord keeps his things in a portion of the premises, which was vacated after he gave notice of termination of tenancy, and keeps it locked up and under his control, and is in legal possession thereof, then it should be held that the intention of the landlord was to keep it in his physical possession, and this satisfies the requirements under Section 10(3)(c) of the Act.

14. There may be a case where the landlord, after giving notice of determination of tenancy, and, finding that only one among the three tenants has vacated, may out of necessity shift himself to that portion which has fallen vacant. In such a case the request of the landlord to evict the tenants may also be considered under Section 10(3)(c). There is nothing in law which prohibits the invocation of Section 10(3)(c) in such circumstances. A debate, however, is possible in a case where the landlord has already initiated, proceedings for eviction of the tenants under Section 10(3)(a) after issuing a notice of determination of tenancy. He might have occupied a portion of the building physically after one of the tenants had vacated the portion after such a notice of determination of tenancy. Then the question would be whether the application originally filed under Section 10(3)(a)(i) may also be considered along with the application under Section 10(3)(c) subject, however, to the prescription under Section 10(3)(c) being satisfied. As subsequent events can also be taken into consideration without the same being ignored, for all purposes, it is possible for Courts to consider such a situation under Section 10(3)(c) of the Act also. No doubt, it has to be found whether the landlord requires the premises for his occupation, and

whether the hardship that might be caused to the tenant would or would not outweigh the convenience of the landlord. This is a case where the landlord filed the application under Section 10(3)(c). This is certainly maintainable, because the landlord, though not in physical occupation, was in legal occupation of a portion of the building, I am therefore unable to agree with the conclusion of the Appellate Authority that the application was not maintainable.

15. The Rent Controller, though not expressly, but by necessary implication, has also found that the tenant would not be hard but, if he was asked to vacate the portion. What was urged, however, was that the landlord could have occupied the portions which had by then fallen vacant, instead of troubling the tenants. It is by now well-established by a series of decisions of this Court - which is not disputed either - that it is not for the tenant to dictate as to what portion the landlord should require for his own purpose. This aspect, however, weighed with the Appellate Authority. The landlord's case is that he has a 'family of, his own, though he by himself has no children. He would say that his brother's children are being maintained by him, and that he requires the portion in the occupation of the tenant' for himself. The Appellate Authority would say that the tenant, who was in occupation of the premises for several years, cannot find any alternative accommodation of a similar type anywhere else. He also felt that the portion which had fallen vacant would be sufficient to accommodate the petitioner and his family. It was in those circumstances that the Appellate Authority held that the hardship that was likely to be caused to the tenants in the event of an order of eviction being passed against them would certainly outweigh the advantage that was likely, to accrue in favour of the landlord. He therefore reversed the finding of the Rent Controller on this aspect also.

16. I am unable to agree, having regard to the view of this Court that it is not for the tenant to dictate as to what should be the requirement of the landlord. It is a decision entirely with the landlord, which a tenant cannot object to.

17. The other reason given by the Appellate Authority, that the tenant was in occupation for a number of years, and that he could not find an alternative accommodation of a similar type elsewhere, would amount to begging the question. The landlord in the instant case has explained his need and necessity. The Rent Controller has held that no hardship, as suggested, would be caused to the tenant. Merely because it will be difficult for the tenant to secure an alternative accommodation of a similar type, it cannot be said that the hardship that might be caused to him would outweigh the advantage to the landlord. This 'subsidiary bona fides', contemplated under Section 10(3)(c) proviso should be viewed in a reasonable fashion. A priori consideration, such as the non-availability of similar-accommodation, cannot be a guide, and the only guide, to come to the conclusion that the hardship would be more to the tenant. As the Appellate Authority has not given any reason to differ from the Rent Controller, who had found that such a hardship to the tenant would not outweigh the advantage to the landlord, the ultimate conclusion of the Appellate Authority is also not sustainable.

18. I am not inclined to disturb the finding of the Appellate Authority on the question of wilful default. No doubt there was some-confusion because of the attitude of the landlord himself when he issued receipts for a lesser amount for a few months prior to the institution of the petition. In any event, as there is no apparent error or any other irregularity in the exercise' of jurisdiction by the Appellate Authority, the contention of the landlord, that there was wilful default, has to fail.

19. The legal contention failing, and as the landlord has established that he requires the premises in the occupation of the respondent bona fide for his own purposes, and as he has: also satisfied the other requirements as to 'subsidiary bona fides', and, as in my view, the hardship to the tenant would not outweigh the advantage to the landlord, in the circumstances of the case, the civil revision petition is allowed, the order of the Appellate Authority is set aside, and an order of eviction is passed against the respondent-tenant, who' shall deliver possession of the portion in his occupation within three months from this date. There will be no order as to costs. This Court records with appreciation the assistance rendered by Mrs. Gomathi, appointed amicus curiae.

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