

## **S. Mahahoo Sheriff (died) and Others Vs Abdul Khudoos (died) and Others**

**Court:** Madras High Court

**Date of Decision:** July 7, 1994

**Acts Referred:** Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 " Section 10(3)(i)

**Citation:** (1995) 1 MLJ 120

**Hon'ble Judges:** Pratap Singh, J

**Bench:** Division Bench

### **Judgement**

@JUDGMENTTAG-ORDER

Pratap Singh, J.

This civil revision petition is directed against the judgment in R.C.A. No. 26 of 1981 on the file of the Additional

Subordinate Judge, Vellore (Appellate Authority), in which the appellate authority had confirmed the order passed in R.C.O.P. No. 89 of 1979 on

the file of the Principal District Munsif, Vellore (Rent Controller).

2. Short facts are:

The first respondent has filed a petition for eviction u/s 10(3)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for wilful default

in payment of rent. It is the case of the respondents that there was a written lease agreement between the parties dated 1.12.1975. As per the

deed, the tenant has to pay monthly rent of Rs. 150 and that the tenancy is according to English calendar month. The tenant was highly irregular in

payment of rent and the total outstanding amount towards arrears of rent is Rs. 3,175. The default is wilful. Hence, the petition.

3. The first revision petitioner/tenant resisted the claim, on the following grounds:

First respondent is not the owner of the premises. The premises was purchased by the daughters of the petitioner in the court below on

21.12.1975. The landlord informed the tenant that he purchased the house from the prior owner Fareed Khan and that the petitioner tenant should

pay Rs. 150, as rent per mensem. The tenant did not agree for the same and the matter was left in a nebulous stage. On coming to know that the

landlord (respondent) is not the owner of the premises, he asked the respondents to give the particulars of the real owner. The landlord

(respondent) did not give proper reply. This was in January, 1976. When the respondent met the petitioner, he had no objection to pay the rent of

Rs. 100. The allegation that the rent of the premises is Rs. 150 is not true. The rent was fixed only at Rs. 100 per mensem, from 5.4.1976 and the

respondent has been receiving the same without any demur. He is estopped from claiming higher rent. The claim that there is arrears of rent by the

petitioner herein is false. Hence, the dismissal of the petition was prayed for, After elaborate enquiry, learned Rent Controller had allowed the

petition. Aggrieved by the same, the tenant filed an appeal in R.C.A. No. 26 of 1986 before the appellate authority and having failed there, has

come forward with this revision petition.

4. Mr. M.S. Sampath, learned Counsel appearing for the petitioners would submit that the respondent herein is not the owner of the property while

so he cannot file a petition for eviction without the written consent of the landlord of the premises as enjoined by Section 10(8) of the Act.

Secondly, he submitted that there was no default in payment of rent, much less wilful default. Learned counsel finally submitted that in any case,

time should have been given to the tenant to deposit the arrears of rent, as found by the court below and that has not been done.

5. Per contra, learned Counsel appearing for the respondents, would submit that admittedly, the first petitioner has been paying the rent and the

first respondent has been receiving the same, that the parties have entered into an agreement that Section 10(8) of the Act would come into play

only in case where the person collecting rent is an agent of the landlord and such is not the case here, so Section 10(8) of the Act is not applicable

and that therefore, the petition is not maintainable. Though the tenant would contents that rent was only Rs. 100, in view of the written lease

agreement entered into between the landlord and the tenant, he cannot say so, since the rent was Rs. 150 as per the written lease agreement and

as per the letter written by the tenant to the landlord under Ex.A-3 end when the rent was Rs. 150 there was arrears of rent and considering the

conduct of the tenant, it cannot be termed, except as wilful. Finally it is contended that when there is wilful default the court need not in every case

give time for depositing the rent by the, tenant.

6. I have carefully considered the submissions made by learned Counsel for the petitioners. I shall first take up the first submission made by learned

Counsel for the petitioners. To consider this submission, Section 2(6) of the Act which defines ""landlord"" needs extraction which is as follows:

Landlord includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another or

on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled

to receive the rent, if the building were to a tenant.

The above inclusive definition brings within its scope the following persons as "landlord" for the purpose of this Act and they are the persons who

are receiving or is entitled to receive the rent of the building,

(a) whether on his own account,

(b) or on behalf of another,

(c) on behalf of himself and others,

(d) as an agent,

(e) trustee,

(f) executor,

(g) administrator,

(h) receiver

(i) guardian or who would receive the rent are entitled to receive the rent, if the building were let to tenant.

The above categories of persons who are receiving the rent or entitled to receive the rent come within the definition of "landlord" I shall now pass

on to Section 10(8) of the Act which reads as follows:

Notwithstanding anything contained in this section no person who is receiving or is entitled to receive the rent of a building merely as an agent of the

landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of tenant.

(Emphasis supplied)

A conjoint reading of Sections 2(6) and 10(8) of the Act would show that only one category of landlord mentioned in Section 2(6) of the Act

would come within the ambit of Section 10(8) of the Act, viz., a person who is receiving or is entitled to receive the rent of a building merely as an

agent of the landlord. The other categories of persons who are in the inclusive definition of landlord in Section 2(6) of the Act, would not come u/s

10(8) of the Act.

7. Bearing this in mind, I shall now consider the evidence available in this case to examine the question as to whether the petitioner would fall within

the category of a person receiving rent, merely as an agent of the landlord. In this case, as per part 1 of the petition, there is a written lease

agreement between the parties herein dated 1.12.1975. This fact has not been denied by the petitioners herein. In paragraph 4 of the counter-

affidavit, it is stated that the respondent herein met him and informed on 1.12.1975 that he had purchased the house from Fareed Khan and that

the tenant should pay Rs. 150 as rent. It was further submitted that the tenant/petitioner did not agree for the same and so, the matter was left in a

nebulous stage. Apart from that, there is no specific denial of the positive allegation made in paragraph 1 of the petition that there was a written

lease agreement between the parties dated 1.12.1975. In evidence, written lease agreement is produced and marked as Ex.A-5. In it there is a

recital that the rate of rent was fixed at Rs. 150 per mensem. Furthermore it is to be noted that it was entered into between the first petitioner and

the first respondent. Ex. A-3 is the letter written by the petitioner to the respondent wherein it is stated that the former owner of the premises had

introduced the respondent as the vendor of the house with effect from 1.12.1975 under an agreement that an agreement had been executed to that

effect, that a sum of Rs. 150 has been refixed as monthly rent for the house which the tenant occupy and that a sum of Rs. 300 has been paid to

the respondent herein on the same day, on the basis of the said agreement, as advance. This letter would again confirm Ex.A-5 agreement.

Though, the petitioner herein would deny it, the signature in the letter was found to be that of the petitioner herein. This finding of fact is not

disputed before me. Exs.A-3 and A-5 would show two things. One is, the petitioner herein has entered into an agreement with the respondent with

regard to the payment of rent for the suit premises. Second this is, the rent agreed was Rs. 150.

8. Though in the petition, it is alleged that the petitioner is the owner of the property, it is disputed in the counter wherein it is stated that the sale

deed is in favour of the first petitioner's (first respondent herein) daughter. It turned out in evidence that the sale deed was in the name of the

daughter of the first respondent herein. But, the first petitioner herein has been paying rent to the first respondent herein. According to the

respondents, first respondent is the owner of the premises and he is getting rent because he purchased the property in the name of his daughters.

The sale deed stands in the name of the first respondent's daughters. There is nothing to show that he was receiving the rent as an agent, appointed

for the purpose of receiving rent. An agent merely receiving rent, will come within the purview of Section 10(8) of the Act. So, on facts, I am clear

that the first respondent would not come within the category of "agent" merely receiving rent and as such Section 10(8) of the Act is not applicable

to the facts of this case.

9. In Shanmugha Appah v. Abdul Hameed 86L.W. 103, Kailasam, J. (as he then was) has laid down as follows:

Sub-section(8) of Section 10 requires the written consent in the case of a person who is receiving or is entitled to receive the rent of a building,

merely as an agent of the landlord. The use of the word "merely" is significant and the class to be excluded is the class of persons who receive or

are entitled to receive the rent as agents. According to the definition what is stated in that it includes the person who is entitled to receive rent

whether on his own account or on behalf of another or on behalf of himself and others. It also includes persons who are receiving or entitled to

receive the rent as agents and that, though persons who receive the rent on their own account or on behalf of any other or on behalf of themselves

and others would, in a sense, by receiving rent on behalf of others as agent, that class is not excluded u/s 10(8). But the only class that is excluded

is the class of persons covered by the words "'or as agent" in the definition of landlord". The other class of persons would not fall within Section

10(8) and as such written consent of the landlord would not be required.

10. In *V. Bichawa v. M. Venkatesan* 92L.W. 529. A Division Bench of this Court had an occasion to consider this aspect of the case. In

paragraph 9 it is observed as follows:

The next decision of Kailasam, J. as he then was, is *Shanmugha Appa v. Abdul Hameed* 86 L. W. 103, in that decision also, the learned Judge

had to consider the scope of Section 2(6) as well as Section 10(8) of the Act. As far as the facts of that case were concerned the defence of the

tenant was that the petitioner was not entitled to maintain the petition as he was one of the joint co-owners. The learned Judge, while holding that

Section 10(8) would apply to an eviction u/s 14 also, took the view that as far as the case with which he was concerned the landlord did not fall

within the category covered by Section 10(8) and that therefore, the previous written consent was not mandatory.

In paragraph 12 learned Judges have stated that they agree with the view taken by Kailasam, J., as he then was. The view which I have taken

above is following the view expressed in the above rulings.

11. I shall now pass on to consider the question as to whether the findings of the courts below on facts that there was wilful default in payment of

rent is correct or not. As I have already indicated, there was an agreement between the parties with regard to payment of rent and the rent was

fixed at Rs. 150 per mensem. Admittedly, rent was not paid at the rate of Rs. 150 per mensem. Learned counsel for the petitioners drew my

attention to the copies of the postal orders and the copies of letters which are filed on the side of the tenant to substantiate the case that the rent

was fixed at Rs. 100. It is seen from the postal orders produced that rent was sent at the rate of Rs. 100 to the respondents only after exchange of

notice between the parties. So, they cannot be relied on for supporting the case of the tenant that rate was only Rs. 100. After deducting admitted

amount paid as rent, still there is outstanding arrears of rent. Admittedly, rent was not paid at the rate of Rs. 150 which was also agreed. In the

circumstances of the case, it cannot be said that arrears of rent outstanding, is not wilful. It is a clear case of wilful default in payment of rent.

12. Coming to the last submission that an opportunity ought to have been given to the tenant by the courts below to deposit the arrears of rent

arrived at learned Counsel for the petitioners relied on the proviso to Section 10(3)(vii) of the Act which reads as follows:

Provided that in any case falling under Clause (i) if the controller is satisfied that the tenant's default to pay or tender rent as not wilful he may,

notwithstanding anything contained in Section 11 give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him

to the landlord upto the date of such payment or tender, the application shall be rejected.

Only in case where the tenant's default to pay or tender rent was not wilful, such an opportunity, has to be given. That is not the case here. Hence,

this proviso cannot be applied to the case on hand.

13. Since, none of the submissions of Mr. M.S. Sampath finds acceptance with me, the inevitable result is the civil revision petition will have to be

dismissed not accordingly the civil revision petition shall stand dismissed. The petitioner/tenant is given four months time to vacate the premises. No

costs.