

A

SUBRAMANIAM SHANMUGHAM

v.

M.L. RAJENDRAN & ORS.

AUGUST 28, 1987

B

[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960—S. 10(3)(c)—A room in a residential building leased out for non-residential purposes—Whether a separate and distinct unit—Landlord whether entitled to seek eviction for residential purpose—Comparative hardship—Assessment of.

C

Words and Phrases: Expression “as the case may be”—Meaning of—S. 10(3)(c)—Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

D

The appellant was sought to be evicted under s. 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 from a room leased out to him for non-residential purposes in a residential building. The landlord needed additional accommodation for residential purposes due to marriages in the family. The High Court ordered eviction.

E

In the appeal by special leave, it was contended for the appellant that the portion let out to him was a separate and distinct unit for the purposes of s. 10(3)(c) of the Act, that the expression ‘as the case may be’ in the section has not been properly construed, and that the requirement and comparative hardship of the parties were not properly appreciated.

F

Dismissing the appeal the Court,

HELD: 1. A building may consist of separate parts if the context so warrants. In the instant case, the context and the user did not warrant treatment of the portion let out for non-residential user either as a separate or distinct unit. It was only a small part of the residential building and not a separate part. The landlord was, therefore, entitled to seek eviction of the tenant. [1148B]

G

Shri Balaganesan Metals v. M.N. Shanmugham Chetty & Ors., [1987] 2 SCC 707, referred to.

H

2. The meaning of the expression ‘as the case may be’ in

s. 10(3)(c) is what the expression says, i.e., as the situation may be, in other words, in case there are separate and distinct units then concept of need will apply accordingly. Where, however, there is no such separate and distinct unit, as in the instant case, it has no significance. [1148E] A

Bluston & Bramley Ltd. v. Leigh (Euler and Another, Third Parties) [1950] 2 A.E.R. page 29 at page 35, referred to. B

3. The appellant is an affluent businessman and it is not difficult for him to get alternative accommodation. On the other hand, the respondents who have no other residential house than the one in question will find it extremely difficult to get residential accommodation in the same locality and as such they will be put to immense hardship if they are not allowed to occupy the additional portion in their house which has been leased out to the tenant. There is no question of balance of convenience. [1148FG] C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2991 of 1986. D

From the Judgment and Order dated 13.1.1986 of the Madras High Court in Civil Revision Petition No. 3599 of 1983.

Ms. Shyamala Pappu, Ms. Dhaneshwari and R. Vasudevan for the Appellant. E

S. Srinivasan for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal by special leave from the judgment and order of the High Court on 13th January, 1986 ordering eviction under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter called the Act. This is an appeal by the tenant. A room in the front portion of the building had been leased out to the tenant for non-residential purposes. The landlord resides in the other portion. The landlord needed additional accommodation for residential purposes due to marriages in the family. Was the portion let out as such separate and distinct unit for the purpose of Section 10(3)(c) of the Act? It was not and as such the landlord was entitled to seek eviction of the tenant under section 10(3)(c) of the Act. It has been so held clearly by this Court in *Shri Balaganesan Metals v. M.N. Shanmugham Chetty and Ors.*, [1987] 2 F G H

- A SCC 707 wherein the section has been analysed and explained. Ms. Shyamala Pappu, learned counsel for the appellant submits that the decision needs reconsideration as the residential and the non-residential part of the building covered as separate units and the requirements of the two separate parts have not been properly assessed therein. We are unable to accept this criticism. A building may consist
- B of separate parts if the context so warrants. In the instant case as in *Shri Balaganesan Metal's* case the context and the user did not warrant treatment of the portion let out for non-residential user either as a separate or distinct unit. It was only a small part of the residential building and not a separate part.

- C It was secondly submitted that the expression "as the case may be", in the section has not been properly appreciated. We are unable to agree. The difference between residential part and the non-residential has been borne in mind by my learned brother in the judgment aforesaid.

- D Justice Morris in *Bluston & Bramley Ltd. v. Leigh (Euler and Another, Third Parties)*, [1950] 2 A.E.R. page 29 at page 35 explained that the phrase "as the case may be" meant in the events that have happened. Our attention was also drawn to the expression "as the case may be" as appearing in the Words and Phrases Permanent Edition 4 Page No. 596. The meaning of the expression "as the case may be" is what the expression says, i.e., as the situation may be, in other words
- E in case there are separate and distinct units then concept of need will apply accordingly. Where, however, there is no such separate and distinct unit, it has no significance. There is no magic in that expression. The expression "as the case may be" has been properly construed in the judgment mentioned hereinbefore.

- F It was lastly contended that comparative hardship in the instant appeal has not been properly considered. It appears that there is nothing in this point. The appellant is an affluent businessman and it is not difficult for him to get alternative accommodation. On the other hand, the respondents have no other residential house than the one in question will find it extremely difficult to get residential accommodation in the same locality and as such they will be put to immense
- G hardship if they are not allowed to occupy the additional portion in their house which has been leased out to the tenant. The Court has observed that there is no question of balance of convenience. In that view of the matter this appeal must fail and is, therefore, dismissed. There will, however, be no order as to costs.

- H P.S.S.

Appeal dismissed.