

D.C. OSWAL
v.
V.K.SUBBIAH AND ORS.

NOVEMBER 12, 1991

[RANGANATH MISRA, CJ. AND DR. T.K.THOMMEN, J.]

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960—Section 10—Eviction—Plea of wilful default—Landlord accepting rent for two to three months at a time—Non-payment of rent for three months—Not wilful default.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960—Section 10—Eviction—Plea of change of user raised by landlord after seven years—Effect.

Appellant was a tenant under the respondents. Action for eviction against the appellant was initiated on the pleas that there was “wilful default” in the matter of payment of rent and that the lease was residential but it had been used partly for commercial activity.

At the time of filing of the petition for eviction three months’ rent had fallen due. The appellant’s case was that rent was not being collected every month and every two to three months the respondents-landlords used to come and collect rent at their convenience, and that mixed use of the premises was the basis of the tenancy.

The original authority dismissed the petition. In appeal it was reversed. The High Court upheld the reversal holding that there was no case of wilful default and that the premises had been rented out also for business use.

In the appeal by special leave the tenant-appellant contended that there was no case of wilful default and that the premises had been rented out also for business use and the change of user was since 1973.

Allowing the appeal of the tenant, this court,

HELD: 1. In the several statutes operating in the different states regulating the law relating to landlord and tenant ‘wilful’ default has been made the ground of eviction while default is not.
[205 E]

A 2. A situation where the landlord had consented to collect rent for two to three months a time, non-payment of rent for three months cannot constitute wilful default. [205 F]

B 3. It is not disputed that from 1973 there had been change of use. The petition for eviction was of 1980. It follows that for seven years no objection was raised for change of use and for the first time when eviction was sought, conversion was made the second ground. In these circumstances the landlords accepted the user to be also other than residential. [205 C-D]

C *S.Sundaram Pillai & Ors. etc. v. V.R.Pattabiraman & Ors. etc.*, [1985] 1 SCC 591; *Premchand Banka v. A.Vasanthrai Khatod & Ors.*, C.A.No. 1367 of 1991, decided on 27.3.1991, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4447 of 1991

D From the Judgment and Order dated 24.4.1991 of the Madras High Court in Civil Revision Petition No. 4769 of 1984.

E.C.Agarwala for the Appellant.

Mrs. Jayashree Ahmed for the Respondent.

E The Judgment of the Court was delivered by

RANGANATH MISRA, CJ. Special leave granted.

F Appellant is the tenant of a premises located in Sivakasi within the State of Tamil Nadu to which the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act apply. The rental of the premises is Rs. 275 per month. Respondents initiated action for eviction on the plea that there was "wilful default" in the matter of payment of rent and change of user. It was contended that the lease was residential but it had been used partly for commercial activity.

G The appellant took the stand that rent was not being collected every month since the respondents resided away from the place where the property is situated and every two to three months they used to come and collect rent at landlord's convenience. Two receipts were produced to support this stand. Rent was collected in one case for three months and in the other for two months at a time. Admittedly at the time of filing of the petition for eviction three months' rent had fallen due. So far as the

H

change of user was concerned it was denied by pleading that mixed use was the basis of the tenancy. A

The original authority dismissed the petition but that has been reversed in appeal and the reversal has been upheld by the High Court.

Two contentions were raised before us: (i) there is no case of wilful default particularly when the two receipts showed acceptance of rent for periods as pleaded by the tenant without demur and (ii) that the premises had been rented out also for business use and at any rate admittedly from 1973 there has been this change. B

Counsel for the respondents does not dispute that from 1973 there has been change of use. The petition for eviction is of 1980. It follows that for seven years no objection was raised for change of use and for the first time when eviction was sought, conversion was made the second ground. In these circumstances, we are prepared to accept the submission advanced on behalf of the appellant that the landlords accepted the user to be also other than residential. C

Both parties relied upon a decision of this Court in the case of *S. Sundaram Pillai & Ors. etc. v. V.R. Pattabiraman & Ors. etc.*; [1985] 1 SCC 591, where default and 'wilful' default were distinctly treated. In the several statutes operating in the different States regulating the law relating to landlord and tenant 'wilful' default has been made the ground of eviction while default is not. We may also refer to a short but suggestive Order dated March 27, 1991, of this court in Civil Appeal no. 1367 of 1991 [*Premchand Banka v. A. Vasanthrai Khatod & Ors.*] to support our conclusion. A situation where the landlord had consented to collect rent for two to three months at a time non-payment of rent for three months cannot constitute wilful default. Since in the present case default was of three months at time of filing of the case, we are prepared on the basis of the evidence on record that it was not a case for wilful default. Accordingly the conclusion reached in appeal and upheld by the High Court would not be sustainable. D E F

We allow the appeal and reverse the Judgment of the High Court and dismiss the petition for eviction. We would, however, like to add that judicial notice can be taken of the fact that rental has escalated everywhere and appropriate rent in the present case should be raised to Rs. 400 per month from 1.1.1992. The tenant should have a direction to pay the rent in advance from month to month as stated by him in the Court below and it should be by the end of every month. There will be no order as to costs. G

V.P.R.

Appeal allowed.