

(2002) 07 MAD CK 0294

In the Madras High Court

Case No : Writ Petition No. 9946 of 1986 11 July 2002

ADAIR DUTT and CO. (INDIA (P) LTD.

APPELLANT

Vs

APPROPRIATE AUTHORITY

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Citation : (2002) 177 CTR 120

Hon'ble Judges : R. Jayasimha Babu, J;E. Padmanadhan, J

Bench : Full Bench

Advocate : R. Thiagarajan for K.S. Gurumoorthy and V. Subramanian, for the Assessee T. Ravikumar, for the Revenue, for the Appellant;

Judgement

R. Jayasimha Babu, J.

This court had earlier negated the plea of the petitioner (assessee) that it is entitled to the protection of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (Act No. 18 of 1960), and that its tenancy in respect of 400 sq. ft. in the ground floor of premises 109 and 110, Mount Road, cannot be brought to an end by making an order u/s 269UD(1) followed by a demand u/s 269UD(2), Income Tax Act, 1961, for delivery of possession. Subsequently, the Apex Court set aside that judgment and remitted the case for disposal afresh. While so doing, the Apex Court has in para. 11 of the judgment reported in Adair Dutt & Co. (India) (P) Ltd. v. Appropriate Authority (Income Tax department) (1996) 6 SCC 622 noticed the contention that had been advanced by the counsel before it, that though the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, excludes Government buildings from its purview, such exclusion is confined. only to buildings owned by the State Government because of the definition contained in the Tamil Nadu Act for the word "Government", as meaning "State Government".

2. The petitioner has stated that it has been a tenant of this premises from 1955 on a monthly rental of Rs. 300, and has claimed the protection of Tamil Nadu

Buildings (Lease and Rent Control) Act, 1960.

3. The submission that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 does, not contain any provision which would make it inapplicable to buildings owned by the Central Government is correct. "Government" is defined in section 2(5) of that Act as meaning the "State Government". The exemption granted under that Act to buildings owned by the Government is limited to buildings owned by the State Government.

4. That, however, is not the end of the matter as it is necessary to examine as to whether this State Act can prevail over the law enacted by Parliament, namely, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act No. 40 of 1971), which provides a special procedure for the eviction of persons in unauthorised occupation of premises belonging to the Central Government. The validity of that enactment has been upheld by a Seven Judge Bench of the Apex Court in the case of Hari Singh v. Military Estate Officer, Delhi AIR 1972 SC 2205.

5. A Constitution Bench of the Apex Court in the case of Ashoka Marketing Ltd. v. Punjab National Bank (1990) 4 SCC 406 considered the question as to which of two special enactments, viz., Rent Control legislation passed by the State or Union Territory and the Central Law, both dealing with eviction, would prevail in respect of the premises owned by the Central Government. The two Acts examined in that case were the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and the Delhi Rent Control Act, 1958 (Act 59 of 1958). The court held that where both the Acts are special enactments, the purpose, policy and the legislative intent as conveyed by the language employed therein should be examined to determine which one will prevail. The court held after considering the contents of the two enactments that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, have to be construed as overriding the provisions contained in the Delhi Rent Control Act, 1958 (Act 59 of 1958) in spite of the non obstante clause contained in the Delhi Rent Control Act, 1958 (Act No. 59 of 1958).

6. The 1971 Act (Public Premises (Eviction of Unauthorised Occupants)) enacted by Parliament is relatable to Entry 32 of List I of Schedule 7 of the Constitution which reads thus : "property of the Union and the revenue therefrom, but as regards property situated in a State; subject to legislation by the State, save insofar as Parliament by the State, save insofar as Parliament by law otherwise provides".

7. The Apex Court in the case of Saiyada Mossarrat Vs. Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) and Others, adverted to Entry 32 of List I of Schedule 7 and pointed out that States cannot legislate for properties owned by the Union, when Parliament has enacted legislation with regard to such properties. The court observed in that judgment thus :

"..... Entry 32 is wide enough to cover all legislations pertaining to the property of the Union of India including the legislation for eviction of unauthorised

occupants from the property belonging to the Union of India. Once the conclusion is reached that the legislation falls under Entry 32 of List I, it is unnecessary to examine the scope of Entry 18 of List III"

8. It is, therefore, clear that though the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, does not specifically exclude the buildings owned by the Union Government from its purview, by reason of the fact that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, would become applicable to this building on and after an order in respect of that building was made under Chapter XX-C of the Income Tax Act, 1961, as a consequence of which order the building vests in the India, the State law governing eviction will cease to apply to this building.

9. An order made u/s 269UD and other provisions of the Income Tax Act does not always have the effect of depriving a tenant of his tenancy rights. As pointed out by the Apex Court in the case of C.B. Gautam Vs. Union of India and Others, , that would depend upon the terms of the agreement to sell. If the agreement does not contemplate the vacant possession being given to the buyer, termination of the lease cannot be said to be a part of the agreed terms. In this case, the agreement to sell specifically provides for the purchaser being enabled to receive the rents from the tenant after due notice to the tenant by the seller. That tenancy cannot be said to have come to an end by reason of the proceedings taken under Chapter XX-C of the Income Tax Act.

10. The Union of India, after it becomes the owner of the premises, however, may deal with the tenant in accordance with the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in the event of such tenant becoming an unauthorised occupant by reason of a notice terminating the petitioner's tenancy, being given by the Central Government.

11. The impugned notice, insofar as it requires the tenant to hand over possession solely on the ground that an order had been made under Chapter XX-C of the Income Tax Act cannot, therefore, be sustained. The same is accordingly set aside.

12. The petition is allowed.

OPEN