

(1989) 10 MAD CK 0020
In the Madras High Court

A.J. Dastagir alias A.J. Mohammed Meera, Proprietor Taj
Mahal Hotel

APPELLANT

Vs

K.P. Abdullah and Others

RESPONDENT

Date of Decision : 06-10-1989

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : (1990) 1 LW 138 : (1990) 2 MLJ 39

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—This revision is directed against the order passed by the Subordinate Judge, Devakottai, in C.M.A. No. 3 of 1986.

The revision petitioner is the petitioner-tenant in O.P. No. 5 of 1975 and also the appellant before the Sub-Court.

2. The facts which are necessary for the disposal of this revision can be briefly stated as follows:-The father of the revision petitioner took the

petition mentioned vacant land on lease on 23.10.1950 from the deceased second respondent in O.P. No. 5 of 1975 and other joint owners, and

he put up a superstructure and was running a hotel. After his father's death the petitioner continued to be the tenant. The City Tenants Protection

Act was extended ended to Karaikudi Municipal area on 14.12.1955. The first respondent, after obtaining sale of the property from the other

sharers filed the suit O.S. No. 429 of 1974, against the revision petitioner and his sister for eviction. The petitioner filed O.P. No. 5 of 1975 u/s 9

of the Act, for directing the respondents to sell the property to him on payment of the value fixed by Court. The said petition was resisted by the

first respondent and in the counter it is specifically denied that the

superstructure structure was put up by the father of the revision petitioner. The father of the revision petitioner only purchased the superstructure from the prior owner of the superstructure. The petitioner is not entitled to the benefits of Section 9 of the Act. The second respondent died and his legal representatives were added as respondents 3 to 8. The 8th respondent filed a counter and the said 8th respondent contended that the petitioner was running a hotel on the eastern portion of the petition mentioned property on the date of the suit, i.e., till about 6 or 8 months prior to filing of the petition u/s 9 of the Act, that the western portion was only vacant and that he is not entitled to ask for sale of that property over which he has now put up a temporary tin sheet structure. The first respondent in the additional counter contended that the petitioner was running the business only in the south western portion of T.S. No. 2 and the extent of the said building was 1620 sq. ft., and he is entitled to ask for sale only in respect of that portion.

3. The District Munsif, Devakottai, on the basis of the evidence as well as the Commissioner's report, held that the petitioner is entitled to purchase the land marked red in the Commissioner's plan Exhibit C 2 as A.H. EL.DL.BH as the said portion is required for running his business.

Aggrieved by the same the petitioner has preferred appeal. The Sub-Judge allowed the appeal, set aside the order of the court below and

remanded the matter to the court below for appointing a Commissioner for the purpose of finding out the extent of the enjoyment of the

superstructure in the occupation of the revision petitioner as well as the minimum extent of the land which is necessary for the "convenient

enjoyment in the light of the decision in Kannappan v. Srikantan (1988) 1 L.W. 115 and decide the matter according to law. Aggrieved by the

same the revision is filed. According to the learned Counsel for the revision petitioner, the Court below failed to appreciate that the entire property

demised to the tenant's father was 300 kulies, approximately 3,600 sq. ft. and that the petitioner required this area for his convenient enjoyment.

Further, during the pendency of the suit, a Commissioner was appointed and he filed the report Exhibit C.3. According to the said report, the

approximate area of the building in the occupation of the tenant in which he was running the hotel was approximately 2890 sq. ft. The main

contention of the learned Counsel for the revision petitioner is that the minimum extent of land necessary would have to be determined with

reference to the business as it was carried at the time of commencement of the proceedings i.e., in 1975 and the Subordinate Judge cured in

holding that the present state of business alone would be relevant.

4. The question to be considered in this revision is, whether the nature of the business and the area occupied by the tenant at the time of

commencement of the lease in 1975 is to be taken into account or the extent of the portion which is in the occupation of the tenant revision

petitioner when the petition u/s 9 of the Act was ordered. In this case, the date of the order u/s 9(1)(b) is only 1985. It is also the admitted case of

the revision petitioner himself that though the business was carried on in the entire portion in 1975, now there was business only in a lesser area and

he has now intended to extend the business. The learned Counsel for the revision petitioner relied on the decision reported in Ranganathan v.

Chinnadurai Nadar 99 L.W. 956 and submitted that the lower Court ought not to have relied on the decisions in Ananthakrishnan v. Ramakrishnan

: [1987]2SCR734 and Kannappan v. Srikantan (1988) 1 L.W. 115, on the facts of the case. I do not find any merit in the said contention. Even

according to the revision petitioner, in 1975 he was carrying on business in the premises wherein he has put up the superstructure, but now he has

been carrying on business in a smaller area than the one in which he was carrying on in the year, 1975. In Ananthakrishnan v. Ramakrishnan :

[1987]2SCR734 , it was held:

The policy underlying Section 9 is directed to safe guard the eviction of those tenants who may have constructed superstructures on the demised

land, so that they may continue to occupy the same for the purpose of their residence or business, Section 9(1)(b) ordains the Court to first decide

the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. It therefore, contemplates that the tenant

requires the land for the convenient enjoyment of the property. If the tenant docs not occupy the land or the superstructure or if he is not residing

therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The Court has to consider the need of

the tenant and if it finds that the tenant does not require any part of the land, it

may reject the application and direct eviction of the tenant. In that extent the landlord has to pay compensation to the tenant for the superstructure. It is clear from the above decision that only if the tenant occupies the land or superstructure and resides or carries on business therein, the question of convenient enjoyment of the land by him would arise and he can claim for sale of that portion and not otherwise. His past occupation is not the criterion. The above view was reiterated in Kannappan v. Srikantan (1988) 1 L.W. 115 and it was rightly held that Ranganathan Chinnadurai Nadar 99 L.W. 956 is no longer to be treated as precedent in view of the decision in Ananthakrishnan v. Ramakrishnan : [1987]2SCR734 . It was held in that decision:

The convenient enjoyment is with reference to the tenant and it necessarily means the purpose for which he holds the land on lease. If the purpose continues to exist he could get the relief. If the purpose had been come to end, he would not get any relief whatsoever, even if the structure exists.

Therefore, if a tenant had taken a land on lease and put up a structure wherein he resides, then his residential requirement would be the guiding factor, and in the case of tenant who had taken land for business purposes and puts up a small structure, then, the extent required by him would not be with reference to the nature of structure erected by him, but could only be with reference to the nature of commercial activity he carried on in the leased property on the date of Section 9 application.

It is further held:

The intendment of the Act is to help such a tenant to get the land required, for his purpose which would mean when put to the commercial process then nature and extent of his business and it was never intended that the relief to be granted under the Act would be with reference to the nature and extent of structure erected, and then to fix as to what extent of vacant site, the said structure may require for its survival and enjoyment as and the like. Relief is granted to companies, firewood shops, agro industrial enterprises, foundaries and stage carriage operators and the like.

Considering the fact that they invariably need large extent of vacant site for carrying on their commercial activities irrespective of the area occupied by the superstructure and what extent of vacant land and it may require around it.

The Court below rightly applied the ratio laid down in the said decisions and came to the conclusion that it is necessary to first fix the minimum

extent required by the tenant with reference to the business carried on by him and for that purpose, a commissioner has to be appointed. I do not

find any infirmity or illegality in the said finding of the Court below.

5. Next it was argued on the question, which is the date to be taken into account for fixing the minimum extent required by the tenant. On a reading

of Section 9, it is seen that the date of Section 9 application with reference to the nature of commercial activity the tenant carries on would be the

date criterion. In *M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others*, , a Division Bench of this

Court considered the scope of Section 9 and observed:

A reading of the section clearly shows that it contemplates the various steps to be taken by a court before it ultimately passes the order

contemplated by Sub-section (3) of Section 9 which alone will be the final order. The moment application is filed by a tenant under a Section 9(1)

(a) of the Act, the Court will have to first fix the minimum extent of the land which will be necessary for the convenient enjoyment by the tenant.

That this is the first step is made clear by the use of the expression "first" occurring in the first sentence in Section 9(1)(a). After fixing the minimum

extent of the land, the Court will have to proceed to fix the price, of the minimum extent of the land decided as above. That flows from the

language of the second sentence in Section 9(1)(b). It is clear from the ratio in the above decision and the provision of Section 9(1)(b), that the

date of application is the criterion for fixing the minimum extent required by the tenant. Hence, on a careful analysis of the entire materials, I do not

find any illegality or irregularity in the impugned order.

6. Consequently, this revision fails and stands dismissed in the circumstances of the case there will be no order as to costs. Since the matter is

pending from the year 1975, the District Munsif, to whom the matter is remanded, is directed to dispose of the matter as expeditiously as possible

and in any event within three months from the date of receipt of the order copy. The Sub-Judge is also directed to despatch the records to the

District Munsif, forthwith if not already sent.