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**(1993) 09 MAD CK 0095**  
**In the Madras High Court**

Arulmigu Soundiamman Deity Koil

APPELLANT

Vs

B. Gopal Raja

RESPONDENT

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**Date of Decision :** 21-09-1993

**Acts Referred:**

**Citation :** (1994) 1 MLJ 288

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

**Bench :** Division Bench

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### Judgement

Pratap Singh, J.—This civil revision petition is directed against the judgment in C.M.A.No.11 of 1982 on the file of the Court of the Subordinate Judge, Srivilliputhur, confirming the order passed in Order P.No.2 of 1981 on the file of the Court of the District Munsif, Srivilliputhur.

2. The short facts are: The respondent had claimed the benefits of Section 9 of the Tamil Nadu City Tenants' Protection Act against the revision petitioner in Order P.No.2 of 1981 and that claim was resisted by the revision petitioner. After enquiry, learned District Munsif had held that the respondent is entitled to the benefits of Section 9 of the Act and further held that the entire demised property is necessary for the enjoyment of the tenant and had also fixed the value of the same at Rs. 34,000 and also directed deposit of the amount within a period of six months from the date of the order. Aggrieved by the said order, the revision petitioner took up the matter in appeal in CM.ANo.36 of 1982 before the Court of the Subordinate Judge, Srivilliputhur and the learned Subordinate Judge, after hearing both sides, had confirmed the finding of the trial court and had dismissed the appeal. Aggrieved against the same, this civil revision is filed.

3. Learned Counsel for the petitioner Mr. Gopalraj, would submit that the court below should have fixed the minimum extent and then alone fixed the price thereof, but it has passed a composite order both regarding the minimum extent required and had fixed the value thereof. He would further submit that the minimum extent required has not been correctly fixed by the trial court and hence the matter may be remitted back to the trial court. He would further

submit that as per a clause in the lease deed, the respondent is bound to give the entire area for Sivarathiri Celebrations for one day and thus it would amount to using of the property for a religious purpose and thus it is inalienable. He would further submit that the material date for the purpose of fixing the value by taking into account the three years prior to the date would be the date of the order of the court below or the revisional court as the case may be and so price must be fixed by taking the date of the last order and fixing the value by taking into account the relevant factors within a period of three years prior to the date of the last order.

4. Per contra, Mr. Alagar, learned Senior Counsel appearing for the respondent would submit that the revision petitioner had not disputed about the minimum extent required by the tenant which has been set forth in paragraph 4 of the petition and so the present claim that minimum extent of area was not correctly fixed for the user of the property is not correct. He would further submit that the clause regarding the application on the part of the tenant to allow the landlord to use the property for Sivarathiri celebration would not amount to making the entire property being used for the religious purpose. He would fairly submit that in case, the court deems it fit, the area in which the "Peedam" is situated and the area from the "Peedam" upto the road situated on the northern side may be left out from the remaining property and the rest of the property may be directed to be sold to the respondent. He would further submit that the date on which the entitlement of the tenant to purchase the property is the material date and three years prior would be the relevant period which should be taken for the purpose of arriving at the value of the property.

5. I have carefully considered the submissions made by the rival counsels, I shall first take up the question as to which would be minimum extent required for the convenient enjoyment of the tenant for the purpose of the rice mill and for which purpose the lease was entered into. The lease agreement is marked as Ex. A-1. From the Commissioner's plan filed in the lower appellate court, it is clear that apart from the portion occupied by the rice mill, a portion has been ear marked as a godown and the rest of the place has been ear marked as drying yard. Both the courts below have discussed at length about this aspect of the case and have come to the conclusion that they are all required for the purpose of which it was leased. In view of the above, I am unable to accept the submission made by the learned Counsel for the petitioner that the entire extent was not needed for the convenient enjoyment. The purpose for which the demise was given is to be taken into account, while considering the minimum extent required. The purpose for which the lease was given was for the running of a rice mill and flour mill. While so, the area mentioned above is a necessary adjunct to the purpose for which the demise was given. It is a finding of fact based on the available evidence that the remaining space was required for the convenient enjoyment of the rice mill and the flour mill and I do not find any reason to interfere with the same, subject to what I would refer to hereunder.

6. Learned Counsel for the respondent would point out that in paragraph 4 of the petition it is stated in clear terms as to how the entire extent would be, required for the convenient enjoyment of the lease. He would further submit that there was no specific denial of the same in the counter statement. In paragraph 7 of the counter statement it is stated that several allegations contained in paragraph 4 of the petition are concocted for the purpose of this case. There is no detailed denial. But, any way I consider that denial would be sufficient for the purpose of the case. But, yet on facts in view of the concurrent acceptable findings of the courts below, I could not differ excepting to a small extent which I shall refer to presently.

7. On a perusal of the commissioner's plan, it is seen that there is one "Peedam" in the demised premises. In the commissioner's report in paragraph 4, he has stated that the measurement of this "Peedam" was 2" x 2". This "Peedam" was in existence at the time of the commissioner's visit. In the lease deed, there is a specific clause wherein it is stated that there would be celebration during Sivarathiri day for this swamy within this "Peedam". From the above, it would be clear that the space occupied by the "Peedam" was not required for the convenient enjoyment of the lease. There is a road on the northern side of this "Peedam". For the purpose of access to this "Peedam" the extent upto the northern road will have to be left out for coming to the "Peedam".

8. Learned Senior Counsel for the respondent fairly submitted that he would even persuade his client to leave a space of three feet on the east, west, north and south of the "Peedam" and the pathway upto the northern road. So, an extent of three feet on all the sides of the "Peedam" and also a pathway upto the road on the northern side a width of 6" is to be excluded from sale. Regarding the submission made by learned Counsel for the petitioner that the entire property should be left out because it was used for religious purpose on a single day, viz. on Sivarathiri day, I am unable to accept this contention, since the entire property has been demised for commercial purpose and the right which was retained was only for one day and it would not convert the entire premises as one used for religious purpose so as to make a further claim that it cannot be alienated.

9. Regarding the price to be fixed, learned Counsel for the petitioner would rely upon a ruling of a Division Bench of this Court in *M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others*, in which after the discussion of the entire law on this point, the principles which emerge are set out. The relevant portion of the decision is as follows:

For the purpose of disposing of this application, the court must first decide upon the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. Any such decision of the court, from the very nature of the case, can only be by means of an order and the date of that order will be the relevant date for the purpose of fixing the price mentioned in the third sentence in Section 9(1)(b). If the decision of the court on the minimum extent is taken

up further by way of appeal or revision and that decision is either affirmed or modified and if there had been a stay of further proceedings during the pendency of such appeal or revision, naturally the date of the order contemplated in the third sentence in Section 9(1)(b) will be the date of the order of the appellate or revisional court.

The decision of the court on the minimum extent, if taken by way of appeal or revision and that decision is either confirmed or modified and if, thereupon a stay of further proceedings is granted during the pendency of such appeal or revision, only the date of the order contemplated in the third sentence of Section 9(1)(b) of the Act will be the date of the order of the appellate court or the revisional court. Now since the matter has been taken in appeal and revision, the order of the revisional court viz. this Court, viz. to-day would be the material date for the purpose of Section 9(1)(b) of the Act and the price shall be fixed with reference to this date.

10. Learned Senior Counsel Mr. R. Alagar, would submit that the decision reported in *M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others*, , cited supra is not good law in view of the ruling rendered by the Apex Court in *M. Ramasamy Pillai (dead) by LRs. Vs. The Hazarath Syed Shah Mian Sakkaf Khadiri Thaikal*, . In that case, the Division Bench ruling of this Court referred to supra was not placed before the Supreme Court. In that case in paragraph 10, the Apex Court has stated that the court shall first decide the minimum extent of land which may be necessary for the convenient enjoyment of the tenant and the minimum extent of land according to the average market value of the three years immediately preceding the date of the order. The Apex Court has stated that while determining the aforesaid price of the land, the price shall be reckoned at the average market value of the three years immediately preceding the present order, viz. the order of the Apex Court. In that case, it is to be mentioned that they have not given the date of the order of the trial court as the material date for fixing the value of the property. So, I am unable to accept the submission of learned Senior Counsel for the respondent.

11. In view of the above said two factors, viz. (i) The "peedam" and three feet, on all the four sides of "peedam" and a pathway to the "Peedam" with a width of six feet, upto the road on the north, should be left out and excluded and the remaining area of the demised premises alone is the minimum extent required for the use of the tenant. For carrying out the above area to be excluded, and (ii) for fixing the price for the remaining area, the price to be reckoned at the average market value of the three years, immediately preceding the date of this order, viz. 21.9.1993, the matter is to be remitted back to the court below. 12. The civil revision petition is allowed to the above extent and the matter is remitted back to this Court below. The trial court is directed to restore the case on file and dispose of it according to law and in the light of the observations made in this order, expeditiously. There will be no order as to costs.