
(1989) 06 MAD CK 0015
In the Madras High Court

Bharat Petroleum Corporation Limited APPELLANT
Vs
D.X. Francis and Another RESPONDENT

Date of Decision : 15-06-1989

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9(1)(a)

Citation : (1989) 2 LW 261 : (1989) 2 MLJ 530

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—The second defendant in O.S.No.70 of 1976 Sub Court, Mayuram, viz., Bharat Petroleum Corporation Limited, Madras, which also figured as the petitioner in O.P.No.94 of 1976, Sub Court, Mayuram, is the appellant in the Second Appeal and the petitioner in the Civil Revision Petition (hereinafter referred to as "B.P.C." for short). The respondents herein instituted O.S.No.70 of 1976 for recovery of possession of a vacant site measuring 7,200 sq., ft., situate in Ward No. 3, Block No. 21, Koranad, Mayuram, and for recovery of a sum of Rs. 4,500 as compensation for the period from 1-1-1976 to 30-6-1976 and for recovery of future damages at the rate of Rs. 750 per mensem till the date of delivery of possession.

2. According to the case of the respondents, the suit property belonged to their grandmother D.Mariakannu Ammal and on and from 1-1-1956, Burmah Shell Oil Storage and Distributing Company of India Limited, Madras (hereinafter referred to as "Burmah Shell Oil Storage Company, for short) the first defendant in the suit, had taken a lease of the same for a period of twenty years on a monthly rental of Rs. 85 agreeing to pay the Municipal Taxes etc., estimated at Rs. 100 per year and also agreeing to give vacant possession after the expiry of the lease period on 31-12-1975. On 22-12-1958, D.Mariakannu Ammal executed a Will in favour of the first respondent herein, with a direction to the second respondent to collect the rents from the suit property during the life time of one Joseph Nadar, the paternal uncle of the respondents and the respondents claimed that

by virtue of this Will, after the death of D. Mar-iakannu Ammal on 25-3-1967, they became entitled to the suit property. Even long before the expiry of the lease, the respondents stated that they had sent a notice reminding the Burmah Shell Oil Storage Company about the expiry of the lease by 31-12-1975 and requesting that possession of the premises may be handed over to the respondents by 1-1-1976. Pursuant to this Burmah Shell Oil Storage Company is also stated to have written a letter on 6-6-1975 that the advance of Rs. 300 to be adjusted as per the terms of the agreement in the last months of the tenancy, will be adjusted in the last quarter ending with December, 1975 and that deducting this amount. Burmah Shell Oil Storage Company had paid also the balance of the rent due upto the end of December, 1975. This, according to the respondents, constituted an acceptance of the determination of the tenancy with the period ending on 31-12-1975. The appellant, according to the respondents, merely represented Burmah Shell Oil Storage Company by reason of the acquisition of its business by Government and vesting it in the appellant and that it had no independent rights apart from the rights of Burmah Shell Oil Storage Company, having derived rights from it. The further case of the respondents was that as per the terms of the lease deed, the premises in question was not vacated, but that after the expiry of the lease the rent payable subsequent to 1-1-1976 was sent, which was not in order and on 27-1-1976, the respondents brought to the notice Burmah Shell Oil Storage Company that it is no longer entitled to remain in possession of the premises and that it is bound to pay compensation at the rate of Rs. 750 per mensem on and from 1-1-1976 till the date of delivery of possession and at the same time calling upon it to vacate the premises by 1-3-1976. Thereafter the respondents stated that on 3-3-1976, the appellant had sent a reply to the effect that by reason of the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (Act 2 of 1976) (hereinafter referred to as the Act"), all the rights of Burmah Shell Oil Storage Company had devolved upon it and, therefore, it is entitled to have the benefits of the lease in its favour. A further claim was also made by the appellant therein to the effect that the respondents had agreed to grant the renewal of the lease for a further period of five years on and from 1-1-1976. While denying this, the respondents stated that the appellant is not entitled to remain in possession of the property and also returned the rent sent by it. Alleging that the appellant is not entitled to any right to remain in possession of the suit property, the respondents prayed for the relief of recovery of possession as well as other reliefs set out earlier.

3. Burmah Shell Oil Storage Company, which was originally impleaded as the first defendant in the suit, did not file any written statement, as it was no longer in existence and it had been replaced by the appellant. In its written statement the appellant, while admitting the lease in respect of the suit property in favour of Burmah Shell Oil Storage Company and stating that permanent buildings and tanks at a cost of Rs. 25,144 had been put up, claimed that as a result of the provisions of the Act and the change of name into B.P.C., the benefit of the lease

will be available to the appellant. The appellant, on the basis of Sections 5 and 7 of the Act claimed that it had become entitled to the benefits under the lease deed and indeed would be even entitled to a renewal of the lease as such. A further plea was also raised by the appellant that the provisions of the Act will have overriding effect and consequently, the respondents cannot seek to recover possession of the property from the appellant. The appellant also raised a plea that it is also entitled to claim the benefits of the Madras City Tenants' Protection Act and that it was making the necessary application for a sale of the property to it for a price to be fixed by the Court. The claim for damages for use and occupation at Rs. 750 per mensem was refuted as being excessive and disproportionate. An objection that the suit is bad for want of a notice u/s 11 of the Madras City Tenants Protection Act was also raised by the appellant.

4. Consistent with the defence raised in the written statement the appellant filed O.P.No.94 of 1976 on 31-7-1976 u/s 9(1)(a) of the Madras City Tenants' Protection Act for a direction to the respondents to sell the suit property to it for a price to be fixed by the Court. That application was opposed by the respondents herein inter alia on the ground that the appellant is not entitled to any relief as the tenancy in favour of Burmah Shell Oil Storage Company had expired by efflux of time on 31-2-1975 and that there had been thereafter no relationship of landlord and tenant and in any event, the appellant is only an assignee of the rights of Burmah Shell Oil Storage Company after the extension of the provisions of the Madras City Tenants' Protection Act and, therefore, cannot claim the benefits thereof.

5. Since the subject-matter of the suit as well as the O.P. was the same and common questions had to be decided in them both were tried together and disposed of by a common judgment. On a consideration of the oral as well as the documentary evidence, the learned Subordinate Judge held that the lease in favour of Burmah Shell Oil Storage Company had never been determined and even if it had been determined by efflux of time, since the tenant continued in possession, the benefits of the Madras City Tenants' Protection Act will be available to it and by reason of the provisions of the Act, the appellant would be a successioner interest to Burmah Shell Oil Storage

6. Company and consequently, the benefits of the Madras City Tenants' Protection Act would be available to the appellant. The learned Subordinate Judge also took into account the terms of the lease deed dated 28-10-1956 and having regard to the use of the expression "lease" therein as to include the successors as well as assigns of Burmah Shell Oil Storage Company, held that even apart from the provisions of the Act the appellant will be entitled to claim the rights under the Madras City Tenants' Protection Act. Dealing with the other objection raised by the respondents that the building put up by Burmah Shell Oil Storage Company is not a superstructure within the meaning of the Madras City Tenants' Protection Act, the learned Subordinate Judge held that the masonry constructions put up in the suit property would fall within the definition of a

building u/s 2(1) of the Madras City Tenants' Protection Act. The objection raised with reference to want of notice u/s 11 of the Madras City Tenants' Protection Act was not accepted, as such an objection was held to have been waived by the appellant. The claim of Rs. 750 per mensem as damages for use and occupation made by the respondents was not accepted and instead, the learned Subordinate Judge directed an enquiry under the provisions of Order 20, Rule 12, C.P.C. However, in view of the conclusions arrived at on the application u/s 9(1) of the Madras City Tenants' Protection Act filed by the appellant the suit was decreed, subject to the final orders in O.P.No.94 of 1976, in which the appellant was directed to take necessary steps for ascertaining the market value of the site and the extent of the property which it is entitled to purchase for its convenient enjoyment and O.P.No.94 of 1976 was adjourned to 19-12-1977 for this purpose. Aggrieved by this the respondents preferred an appeal in A.S.No.50 of 1978 against the decree in the suit and C.M.A.No.2 of 1978 against the order passed in the application u/s 9 of the Madras City Tenants' Protection Act before the District Court. Nagapattinam. As in the trial Court, even before the lower appellate Court both the appeals came to be considered and disposed of by a common judgment. In a very perfunctory and unsatisfactory judgment the learned District Judge, without paying any attention to the points in controversy between the parties in the light of the relevant statutory provisions proceeded to arrive at conclusions as a matter of first impression and held that Burmah Shell Oil Storage Company having continued in possession after the expiry of the lease would be a tenant within the meaning of the Madras City Tenants' Protection Act, but that the appellant became an assignee of Burmah Shell Oil Storage Company only on 24-1-1976, long after the extension of the Provisions of the Madras City Tenants' Protection Act to the Municipal Town of Mayuram on 22-12-1965 and, therefore, the benefits of the Madras City Tenants' Protection Act would not be available to the appellant. On the question whether the appellant would be entitled to claim the benefits of the Madras City Tenants' Protection Act. as if there had been no change at all, the learned District Judge found that the lease in favour of erstwhile Burmah Shell Oil Storage Company, having expired long before 24-1-1976, the appellant cannot even under the provisions of the Act, claim the benefits of Section 9 of the Madras City Tenants' Protection Act. In that view, the learned District Judge rejected the claim of the appellant u/s 9 of the Madras City Tenants' Protection Act and having so dismissed O.P.No.94 of 1976, granted a decree in ejectment in the suit in favour of the respondents herein relegating the enquiry into mesne profits to separate proceedings under Order 20, Rule 12, C.P.C. Thereupon, the appellant herein preferred S.A.No.2299 of 1978 and C.R.P.No.2837 of 1978 before this Court questioning the correctness of the view so taken by the learned District Judge. By Judgment dated 15-4-1980, the common judgment of the learned District Judge in A.S.No.50 of 1978 and C.M.A.No.2 of 1978 was set aside the matters were directed to be disposed of afresh in accordance with law and in the light of the directions given, to consider the availability of rights to the appellant under the provisions of the Madras City Tenants' Protection Act under the terms of the lease deed as well as the

provisions of the Act. Pursuant to the remit order when the matters were heard afresh, the learned District Judge, Nagapattinam, found that the appellant would be entitled to all benefits available to Burmah Shell Oil Storage Company that on and from 1-1-1976 Burmah Shell Oil Storage Company was only a trespasser and the appellant having stepped into the place of Burmah Shell Oil storage company on 24-1-1976, could not be considered as a tenant and that the appellant cannot claim any right to the land under the provisions of the Madras City Tenants' Protection Act. In that view, the learned District Judge allowed the appeals and granted a decree in ejectment in favour of the respondents herein, directing the appellant to remove the superstructure and hand over vacant possession of the site within six months and the determination of the quantum of damages was relegated to proceedings under Order 20, Rule 12, Civil Procedure Code. It is the correctness of this that is now questioned by the appellant in this second appeal as well as the civil revision petition. 6. The Principal contention of learned Counsel for the appellant is that Burmah Shell Oil Storage Company, even after the expiry of the period covered by lease in its favour, on 31-12-1975, continued to remain in possession and was statutorily a tenant for purposes of the Madras City Tenants' Protection Act and this right vested in the appellant on and from 24-1-1976, long prior to 3-3-1980 and, therefore, the appellant would be entitled to claim the benefits of the Madras City Tenants' Protection Act. Learned Counsel also submitted that the case on hand, cannot be regarded as one of assignment of rights in favour of the appellant as normally understood, but had been brought about by the operation of the provisions of the Act and there is thus a statutory transmission of tenancy rights from one tenant viz., Burmah Shell Oil Storage Company to another, viz., the appellant herein, before 3-3-1980 and therefore, the appellant would also be in the position of a tenant entitled to claim the benefits of Section 9 of the Madras City Tenants' Protection Act, as a tenant with reference to a tenancy created before 3-3-1980. On the other hand, learned Counsel for the respondents submitted that considering the objects of the Act, the person who was originally inducted as a tenant should have continued in possession even after the expiry of the period of lease in order to claim the benefits of the Madras City Tenants' Protection Act and in this case, a totally new person viz., the appellant herein had continued in possession and it could not have, therefore either applied for or secured benefits u/s 9 of the Madras City Tenants' Protection Act. Learned Counsel further submitted that u/s 5(1) of the Act, there was no right which could have vested either in the Central Government or in the appellant on and from 24-1-1976 and, therefore there is no question of the appellant projecting rights u/s 9 of the Madras City Tenants' Protection Act. The provisions of the Act according to the learned Counsel merely brought about an assignment of whatever rights the erstwhile Burmah Shell Oil Storage Company had and as the assignment was on 24-1-1976, long after 22-12-1965, when the provisions of the Madras City Tenants' Protection Act were extended to the town concerned, the appellant could not claim any rights u/s 9 of the Madras City Tenants' Protection Act, strong reliance in this connection was also placed by the learned Counsel upon the decision in The Hindustan

7. Before proceeding to consider these submissions, it would be appropriate to notice a few facts on which there is no controversy. Under the lease deed Ex-A.I, dated 28-10-1956, Burmah Shell Oil Storage Company had executed a lease deed in favour of D.Mariakannu Ammal for a period of twenty years with effect from 1-1-1956. Even after the determination of this lease by efflux of time, Burmah Shell Oil Storage Company continued to remain in possession of the property leased to it as before. On 22-12-1965, the provisions of the Madras Tenants' Protection Act were extended to the Municipal Town Mayuram. There is no controversy between the parties even on these. Under S.I(3)(a) of the Madras City Tenants' Protection Act, the provisions of that Act shall apply in the areas in which that act is in force on the date of publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette only to tenancies of land created before that date. The publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette was on 3-3-1980 and the provisions of that Act had been in force in Mayuram town having been extended even on 22-12-1965 and if the tenancy was one created before 3-3-1980, then, such a tenant would be entitled to claim the benefits of Section 9 of the Madras City Tenants' Protection Act. This aspect will be further referred to and dealt with later. The respondents would be landlords and there cannot be and indeed there is no dispute. Section 2(4) of the Madras City Tenants' Protection Act defines a tenant as under: "Tenant in relation to any land - (i) means a person liable to pay rent in respect of such land, under tenancy a agreement expresses or implied, and (ii) includes:

(a)any such person as is referred to in Sub-clause (1) who continues in possession of the land after the determination of the tenancy agreement.

(b)any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-S.(3) of S.I and who or any of his predecessors in interest had erected any building on such land and who continues in actual "physical possession of such land and building, notwithstanding that--" (1) and (2) omitted as unnecessary.

From the aforesaid definition of tenant u/s 2(4)(ii)(a) of the Madras City Tenants' Protection Act, it follows that Burmah Shell Oil Storage Company statutorily became tenant under the respondents for purposes of the Madras City Tenants' Protection Act by reason of its having continued to remain in possession of the land after 31-12-1975, after the determination of the tenancy agreement entered into on 28-10-1956 by efflux of time. Burmah Shell Oil Storage Company having this acquired a right as a statutory tenant u/s 2(4)(ii)(a) of the Madras City Tenants' Protection Act continued to remain in possession between 1-1-1976 and 23-1-1976. It would be necessary at this stage to notice the impact of the provisions of the Act on the aforesaid statutory right of Burmah Shell Oil Storage Company as a tenant under the Madras City Tenants' Protection Act. The Act, u/s 3, provided that on the appointed day, the right, title and

interest of Burmah Shell, in relation to its undertakings in India, shall stand transferred to and shall vest in, the Central Government. u/s 4(1) of the Act, the undertaking to stand transferred and vested in the Central Government shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership possession, power or control of Burmah Shell, in relation to its undertaking in India. The statutory right of tenancy in Burmah Shell Oil Storage Company would be in the nature of a right over immovable property in the possession, power or control of Burmah Shell Oil storage company and would be covered by the general vesting of the rights of Burmah Shell Oil Storage Company provided under S3 of the Act, In other words, the statutory tenancy right of Burmah shell Oil storage Company stood transferred to and vested in the Central Government on and from 24-1-1976. u/s 5(1) of the Act, it is provided that where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government. The effect of Section 5(1) of the Act referred to above is that the statutory tenancy right which Burmah Shell Oil Storage Company had, vested in the Central Government with effect from the appointed day u/s 3(1) of the Act, viz., 24-1-1976, and u/s 5(1) of the Act on and from 24-1-1976 the Central Government statutorily became the tenant with the rights under the tenancy also transferred in its favour and vested in it. u/s 7(1) of the Act, the Central Government may, direct by notification, that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification. Section 7(2) of the Act declares that where the right, title and interest and the liabilities of Burmah Shell in relation to its undertakings in India vest in a Government company u/s 7(1) of the Act, the government company shall, on and from the date of vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company. In this case the Central Government, by means of a notification dated 24-1-1976 u/s 7(1) of the Act directed that the right, title and interest and the liabilities of Burmah Shell Oil Storage Company in relation to its undertakings in India shall instead of vesting in the Central Government, vest with effect from 24-1-1976, in Burmah Shell Refineries Limited, Burmah Shell Refineries Limited and Bharath Refineries Limited, became B.P.C. the appellant

herein. It is thus seen that the statutory right of Burmah Shell Oil Storage Company as a tenant under the Madras City Tenants' Protection Act momentarily came to be vested in the Central Government and later in Burmah Shell Refineries Limited, which eventually became B.P.C. In other words, statutorily, by reason of the operation of the provisions of the Act, the statutory right of tenancy in favour of Burmah Shell Oil Storage Company came to be vested in Burmah Shell Refineries Limited, on 24-1-1976 and Burmah Shell Refineries Limited merely underwent a change of name as Bharat Refineries Limited, on 11-2-1976 and in turn Bharat Refineries Limited came to be known as B.P.C., with effect from 28-7-1977. It follows that the statutory right of tenancy under the provisions of the Madras City Tenants' Protection Act, which was available to Burmah Shell Oil Storage Company, had, by operation of the statute, passed on to the Central Government Burmah Shell Refineries Limited, with effect from 24-1-1976 and in turn passed on to the appellant which is only a substitute in name for Burmah Shell Refineries Limited. Thus, the statutory right of tenancy available to Burmah Shell Oil Storage Company was secured by the appellant on 24-1-1976 and 28-7-1977 in the names of Bharat Shell Refineries Limited, and B.P.C. In any event, the right of statutory tenancy having thus been acquired by the appellant prior to 3-3-1980 as per Section 1(3)(a) of the Madras City Tenants' Protection Act the provisions of that Act would be applicable to such a tenancy which had been created though not by Act of parties, but by operation of the provisions of the Act, either on 24-1-1976 or even on 11-2-1976 and 28-7-1977, well before 3-3-1980. The Judgment of the lower appellate Court is a fabric of utter confusion. In paragraph 13, the lower appellate Court had stated that Burmah Shell Oil Storage Company, after the expiry of the lease by efflux of time, should be deemed to be trespasser. In so concluding, the lower appellate court overlooked the application of the provisions of the Madras City Tenants' Protection Act to the area in question on 22-12-1965 as well as the definition of a tenant occurring in Section 4(ii)(a) of the Madras City Tenants Protection Act. On this basis the lower appellate Court has further proceeded to hold that the appellant stepping into the shoes Burmah Shell Oil Storage Company cannot be considered as a tenant entitled to claim the benefits of the Madras City Tenants' Protection Act. This view again is a mistaken one, for, as pointed out earlier, on 24-1-1976, Burmah Shell Oil Storage Company had the statutory right as a tenant for purposes of the Madras City Tenants' Protection Act and it was this right which was transmitted in favour of the Central Government, Burmah Shell Refineries Limited, and eventually the appellant and that was by operation of the provisions of the Act and to hold that the appellant was an assignee of Burmah Shell Oil Storage Company, who did not have any right and, therefore, the appellant also did not have any rights, would be totally erroneous. Unfortunately, the lower appellate Court has not paid sufficient attention to the vesting provisions of the Madras City Tenants' Protection Act regarding its applicability. The effect of those provisions has already been noticed and it is clear from those provisions that the appellant had been statutorily put in the place of Burmah Shell Oil Storage Company with reference to its statutory right as a tenant under

the Madras City Tenants' Protection Act prior to 3-3-1980. If that be so, then, it is very difficult to deny the appellant the relief u/s 9 of the Madras City Tenants' Protection Act. Though learned Counsel for the respondents contended that the same person should have been a tenant previously and also continued in possession after the determination of the lease by efflux of time in order to claim the benefits of the Madras City Tenants' Protection Act, it is difficult to accept that submission. In this case, admittedly, after the expiry of the period of lease on 31-12-1975, Burmah Shell Oil Storage Company, who was the original lease alone continued in possession and but for the passing of the Act, it might have continued to remain in possession as before. It is only on account of the passing of the Act that a change was brought about in the person having the statutory right as a tenant for purposes of the Madras City Tenants' Protection Act. Further, u/s 11 of the Act the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act or in any decree or order of any Court, tribunal or other authority. The aforesaid provision would thus indicate that it is only due to the overriding operation of the provisions of the Act that a statutory substitution of the person entitled to have statutory rights as a tenant had taken place, in respect of which neither the landlord nor the erstwhile tenant or the tenant in whom the rights of the erstwhile tenant got vested, is in any manner responsible. The argument that the same tenant should have continued to remain in possession would also exclude case of assignment, which to some extent, is recognised in Section 2(4) (ii)(b) of the Madras City Tenants' Protection Act. Under those circumstances, this argument of the learned Counsel for the respondents cannot be accepted. The contention that nothing vested in the Central Government u/s 5(1) of the Act is also without substance. Earlier, it had been pointed out how Burmah Shell Oil Storage Company had in it a statutory right of tenancy for purpose of the Madras City Tenants' Protection Act by its continuing to remain in possession of the property leased out to it even after the expiry of the lease by efflux of time. That undoubtedly was a statutory right of tenancy in or over immovable property which vested u/s 5(1) of the Act in the Central Government, on 24-1-1976. The contention of the respondents that no right vested in the Central Government cannot, therefore, be accepted. With reference to the last submission of learned Counsel for the respondents that the extension of the provisions of the Madras City Tenants' Protection Act to the town in question was on 22-12-1965 and the transfer or assignment of rights in favour of the Central Government and the other Government companies was only on 21-1-1976 and, therefore the rights u/s 9 of the Madras City Tenants' Protection Act, could not be claimed it has to be pointed out that this submission totally ignores the amendment made u/s 1(3) of the Madras City Tenants' protection Act, therein it is provided that the Act shall apply in the areas in which this Act was in force on the date of publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette, only to tenancies of land created before that date. The date of publication, as noticed earlier, as on 3-3-1980 and even considering the

statutorily a new tenancy had been created in favour of the Central Government or Burmah Shell Refineries Limited or Bharat Refineries Limited, or B.P.C., on 21-4-1976 or even later such tenancies were created prior to 3-3-1980 and the Madras City Tenants' Protection Act had already been in force in the area in question on 22-12-1986 rendering the provisions of the Madras City Tenants Protection Act applicable to the instances case. The applicability of the Madras City Tenants' Protection Act to tenancies created before 3-3-1980 as provided u/s 1(3) of the Madras City Tenants Protection Act would also take in cases of statutory creation of tenancy in addition to such tenancies as are brought into being by Act of parties. The expression used is "created" and such creation could well be by the operation of the provisions of a statute as well as by act of parties. Thus even considering that there was creation of a new tenancy by reason of the operation of the provisions of the Act, such creation of tenancy was prior to 3-3-1980 and by reason of Section 1(3) of the Madras City Tenants' Protection Act, the provisions of that Act would apply as its provisions had already been extended to the area in question and that tenancy had also been created prior to 3-3-1980. Therefore, the contention of the learned Counsel for the respondents that the provisions of the Madras City Tenants' Protection Act had been extended to the area in question on 22-12-1965 and the tenancy had come into being on 24-1-1976 and, therefore, the provisions of the Madras City Tenants' Protection Act cannot be invoked, cannot be accepted. It only remains to refer to the *The Hindustan Petroleum Corporation Limited v. Raja D.V. Appa Rao Bahadur*, 98 L.W. 99, relied on by learned Counsel for the respondents. That decision had proceeded on the footing that the relevant date was 2-9-1955 as per the provisions of the Madras City Tenants' Protection (Amendment) Act, 1955 (Act 19 of 1955). It is also significant to note that in that case no rights as a tenant with reference to the amendments made by Madras City Tenants' Protection (Amendment) Act, 1979 (Tamil Nadu Act 2 of 1980) had been put forward and it was only in the context of the absence of a claim to benefits on the basis of the amended Act, Tamil Nadu Act 2 of 1980, it was pointed out that the Courts below were quite right in having dealt with the application in accordance with the provisions of the Madras City Tenants' Protection Act, as they stood prior to amendment. Such is not the position in this case. That decision would not, therefore, be of any assistance to the respondents. No other point was urged.

8. Thus, on a careful consideration of the facts and the circumstances of the case as well as the relevant statutory provisions the conclusion is irresistible that the appellant is entitled to claim the benefits u/s 9 of the Madras City Tenants' Protection Act as amended by Tamil Nadu Act 2 of 1980 in relation to the property leased out by the respondents in favour of Burmah Shell Oil Storage Company the statutory tenancy right which came to be vested, with the appellant by reason of the provisions of Burmah Shell (Acquisition of undertakings in India) Act, 1976, (Act 2 of 1976). The grant of a decree in ejectment against the appellant and the dismissal of the application filed by the appellant u/s 9 of the Madras City Tenants' Protection Act by the court below

cannot therefore be sustained.

9. Consequently, the second appeal and the Civil Revision Petition are allowed, the judgment and decree of the lower appellate Court in A.S.No.50 of 1978 and C.M A.No.2 of 1978 are set aside and the suit O.S.No.70 of 1976 and O.P.No.94 of 1976 will now stand remitted to the trial Court for being, dealt with and disposed of in the several stages, commencing from stage 3 onward, as indicated by the decision of the Division Bench of this Court in M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others, . Each Party is directed to bear the costs in the Second Appeal as well as the Civil Revision Petition.