

(1975) 02 MAD CK 0029

In the Madras High Court

Case No : Appeal No's. 122 and 123 of 1971

C. Ramakrishnan and Others

APPELLANT

Vs

Corporation of Madras

RESPONDENT

Date of Decision : 27-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 6(1)
Madras City Municipal Corporation Act, 1919 — Section 105
Tamil Nadu City Municipal Corporation Act, 1962 — Section 100, 101, 102, 103, 104

Citation : (1975) ILR (Mad) 428

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : S. Chellaswami, for Raj and Raj, for the Appellant; Thillai Villalan, for the Respondent

Judgement

Ramaprasada Rao, J.—These two appeals are connected. Appeal Suit No. 122 of 1971 is against the judgment and decree of the learned VII Assistant Judge, City Civil Court, Madras in Original Suit No. 6659 of 1968 on his file and Appeal Suit No. 123 of 1971 is against the judgment and decree of the same learned Judge in Original Suit No. 3273 of 1968, which was for the recovery of property tax under the Madras City Municipality Corporation Act for the first half year 1965-66 and in which the Corporation of Madras as Plaintiff seeks for a charge on the property which has to bear the said property tax. It is common ground that the Defendants paid some amount towards the property tax but failed to pay the arrears claimed for the said half year. Original Suit No. 6659 of 1968, which we shall call the second suit, is again for recovery of a sum of Rs. 8,25-34 being the arrears of property tax after giving credit to the amounts paid by the owners for the second half year 1965-66, first year 1966-67 and the first half year 1967-68. Here also, the Corporation of Madras, as Plaintiff seeks for a charge on the property which is liable to pay the, property tax. In the first suit as well as in the second, the important fact of the defence of the Defendants as owners and who

are the Appellants in both the appeals, is that the suit property was vacated by Messrs. George Oaks Limited who were the prior occupants and tenants thereof, on April 30, 1965 and that the premises were thereafter vacant. This was intimated to the Plaintiff under Exhibits B-5 dated 7th May, 1965. According to the Defendants, the property so remained vacant and unlet till 31st August 1966, when Messrs. National Grindlays Bank occupied a portion of the premises and till November 1966 when the other portion of the premises was occupied by a hotelier who began to run his hoteling business under the name and style of Gaylord Restaurant. Consequent upon such vacancy and unletting of which the Defendants claim that they have given due notice, the Defendants would say that, having regard to their statutory entitlement as to vacancy remission and taking into consideration the various payments made by them from time to time towards the property tax due and payable by them in respect of the suit premises, there would not be any amount due to the Plaintiff. A special defence was raised in Original Suit No. 6659 of 1968. According to the Defendants, the first suit which was filed on 9th July 1968 should have included the claim made under the second suit as well which was filed on 12th December 1968 and the cause of action in both the suits being the same in the sense that the Corporation of Madras was demanding the property tax due and payable on the same property, the second suit was barred under Order II Rule 2, Civil Procedure Code.

2. The learned trial Judge framed the material issue, whether the Defendants are liable to pay the tax as claimed in the suit and the general issue as to what reliefs are the parties entitled to. The suits were tried together. The Plaintiff did not let in any oral evidence. The Defendants examined three witnesses, D.W. 1 being the lessee of the hotel portion of the building, D.W. 2, an engineer who looked, after the improvements done to the quondam premises then occupied by Messrs. George Oaks Limited and D.W. 3 being one of the Defendants and the owners of the suit premises. The learned Judge mainly rested his case on Exhibits A-1 and A-2. In the said letters written by D.W. 1 as the prospective tenant of the premises, he expressed that he has taken on lease the suit property from December 1965 and therefore it cannot be said that during the relevant period with which the suits are concerned, there was vacancy and much less unletting of the premises within the meaning of the provisions of the Madras City Municipal Corporation Act, hereinafter referred to as the Act. He would of course discountenance the sworn testimony of both D.W. 1 and 3 who asserted that the former did not pay and the latter did not receive any rent towards the occupation of one of the other portions referred to above till August 1966 in one case and November 1966 in the other. He would uncharitably characterize the testimony of these witnesses as untrue and would say that they were not willing to speak the truth. The learned Judge also would unreasonably reject the import of the recitals in the registered lease deed Exhibits B-1 dated 2nd July 1956 entered into between the landlords on the one hand and the National Grindlays Bank on the other, wherein it is made clear that the rent, became payable only

from 16th August 1966. He would also reject the material placed before him in the matter of opening of the hotel portion (Gaylord) in the premises as and from November 3, 1966. He would, however, assign no acceptable reason for not placing any reliance upon the registered lease deed Exhibit B-1 or on the material which appeared to be plausible and acceptable in relation to the occupancy of Gaylord Hotel in the other portion of the premises. Having thus rejected the oral testimony let in by the Defendants, he would solely, as we said already, rely upon a casual communication made by one of the tenants under Exhibits A-1 and A-2 to the effect that he has taken the premises on lease from December 1965 and negative the claim for vacancy remission as was done by the Corporation of Madras under Exhibit B-13. In the result, therefore, he rejected the defence, accepted the claim and decreed the suits as prayed for.

3. As regards the defence raised by the Defendants that the second suit is barred under Order II Rule 2, he was of the view that it was not. It is as against such common judgment and decrees rendered by the Court below that the present appeals have been filed.

4. In order to appreciate the contentions of the parties it would be convenient to set out the relevant text of the correspondence that passed between the Plaintiff (Corporation of Madras) and the Defendants prior to the institution of the respective actions as also the gist of the oral evidence. Under Exhibit 8-5, which we have already referred to, the landlord informed the Corporation of Madras that the entirety of premises No. 36-D, Mount Road, Madras which is the suit property fell vacant from April 30, 1965, and requested the Corporation to assess the above building for property tax thereafter on the above basis. The land-lords followed it up by Exhibit B-7 where they have represented that the building was vacant from 1st May 1965, and the the new tenant has not yet moved into it, and requested the Corporation to let them know as to what amount they should pay by way of property tax as they understood that a rebate was given by the Corporation of Madras for buildings that were vacant for over three months. In the meantime, the Corporation on receipt of Exhibit B-7 obviously began to enquire as to whether there was any truth in the representations made by the land-lords. On such an enquiry made, the prospective tenant who has taken a portion of the premises for the purpose of his hoteliering business wrote under Exhibits A-1 as follows:

I have acknowledged your letter No. RDC B.IV 57, dated 17th December 1965. I have taken a portion of the above premises on lease, but the restaurant has not yet started functioning and the lease deed not yet registered. I hope to register the lease deed by the end of January 1966, when I shall produce the same for your perusal.

We find a note by the Corporation officials in this very exhibit regarding as under:

The premises is still vacant. Alterations and additions are being effected. The tenant M/s Fabulous Restaurant has not stated whether any rent is paid to the

land-lord, even though the premises is not occupied. A letter may be written to the tenant to state whether any rent is being paid, even though the premises is not occupied, and, if so, the amount paid.

In Exhibit B-8, the tenant further informs the Corporation that only renovation work is going on in the premises that has not yet signed the lease deed with the land-lords and that the moment it is done, he will inform the authorities about the terms of the lease. To the same effect is Exhibit A-2. Here again, we find a note by the Corporation officials who are obviously alert to find out the truth of the representations made by both land-lords and tenant which are as follows:

This Restaurant is but one of the many booked for this purpose. Assessor will please ascertain who are the others, their settled terms of tenancy and date of commencement of tenure.

The prospective tenant again wrote under Exhibit B-10 to the effect that they have not yet signed and registered the lease deed and that the rent will be paid to the land-lords only after the commencement of the business, and categorically stated that they were not paying any rent then. To this Exhibit B-10, there is an annexure which is only an unsigned copy, but somehow has gone into the record. In this annexure. One of the land-lords mention about the continuous vacancy of the building and wanted the Corporation to treat his letter as claim for remission for the first and second half year 1965-66. Thereafter, we have a letter from the National and Grindlays Bank Exhibit B-11 which also reiterates that the terms and conditions of the lease were still under negotiations in respect of their occupation of another portion of the premises and that they have not been fully finalized. Exhibit B-13 is the disposal given by the Corporation authorities obviously in a very summary manner, of the claim for remission made by the landlords earlier in their various letters a heady referred to. As to when exhibit B-13 was served on the land-lords is not clear. But under Exhibit B-14 dated 17th of August 1966, the land-lords again reiterated their claim for vacancy remission and set out in detail the dates when the premises fell vacant and how it was not let and how it was being renovated and how there were negotiations by them with the two tenants, name by the National Grindlays Bank Ltd., and Gaylord Restaurant and lastly they said that they would be entitled to such remission as they could in law. They have also made it clear that till the date of writing the letter, the premises was unoccupied in the sense that it did not yield any rent as popularly understood. Exhibit B-1 is the registration copy of the lease deed entered into between the Defendants and the Bank wherein it is said that the Bank took on lease the property on a monthly rent of Rs. 3,890 only from 16th of August 1966. There after, under Exhibit B-16 one of the land-lords, after stating once again the fact regarding the occupation of the portions of the premises by both the Bank and the Gaylard Restaurant, claimed vacancy remission and sought for necessary orders on his application. This was also rejected by the Revenue Officer of the Corporation of Madras under Exhibit B-18. Exhibit B-20 is a letter sent by the first Defendant to the Plaintiff which does not

touch upon the matter in controversy, but would refer to the fact that a cheque for Rs. 20,000 was being sent towards the property tax. Exhibit B-2 is only a certificate issued by the Hindu so as to fortify the case of the landlords that the Gaylord Restaurant came into the portion of the suit premises only on 3rd November 1966.

5. We shall now refer to the oral evidence. D.W. 1 is a partner of the Gaylord Restaurant. He says that he is a lessee of the suit building from 1st November 1966 and he has taken on lease a portion of the building prior to November 1966. He refers to the repairs done to the premises and in chief-examination he would say that his portion was ready only on 1st November 1966 and that he started the restaurant on 3rd November 1966. He categorically states that he started to pay the rent from 1st November 1966. He refers to Exhibit A-1 and A-2 explained that what he meant was that the Defendants promised to give the premises on lease to them and that the lease actually commenced only from 1st November 1966. In cross-examination, nothing very serious was brought out. He reiterated in cross-examination that what he meant by saying that he has taken on lease was that he wanted to take the portion and there were negotiations for it. He denies the suggestion that, as early from September 1965, he has occupied the premises and that he started to pay the rent to the landlords. He would also admit that the air-conditioning and further repairing to the premises was undertaken by the landlords and he had nothing to do with it. D.W. 2 is the civil engineer who was obviously examined on the side of the Defendants to speak about the renovations carried on to the premises and he says that when he began the work, the premises was not further occupation and that the first Defendant met all the bills for the repairs. In cross-examination he would support the Defendants by saying that between September, 1965 and April 1966, it was vacant and that D.W. 1 was occupying it now in the sense that on the date when he was examined and that the Grindlays Bank portion was also vacant from September 1965, to April 1966. He would no doubt say that, when he was supervising the work, D.W. 1 also was frequenting there. D.W. 3 who was the joint owner of the premises has sworn in the witness box that during the period from 1st May 1965 to August 1966, the suit premises was not rented to anybody and that the Grindlays Bank started paying rent from August, 1966, and D.W. 1 from November 1966. He would also save that they met the bill for repairing and renovation of the suit premises. Nothing very telling was brought out in cross-examination of this witness. It is in the background of the above oral and documentary evidence that the present action should be viewed.

6. At the outset, we are unable to agree with the learned trial Judge that the oral evidence let in by the Defendants is not worthy of credence. As to why he said so passes our comprehension. As to how he got over the registered lease deed Exhibit B-1, between, a very reputed Bank and the Defendants as lessors which categorically stated that the rent was to be paid from the 1st of November 1966 is not clear at all. As to what was the reason for him to say that D.Ws. 1 and 3 were not speaking the truth is not clear to us, besides being a baseless and

unwarranted comment. If therefore the oral evince, which has not been in any way be little and shattered in cross-examination, has weight and has to gain acceptance from us, then the fact remains that the earliest point of time when the suit premises were occupied by the two tenants was as spoken to by them Messrs, National Grindlays Bank because obliged to pay the rent from 16th of August, 1966, and Messrs Gaylard Restaurant obliged themselves to pay rent from the 1st of November 1966.

7. The legal contentions of Mr. R. Thillai Villalan, the learned Counsel for the Corporation, are as follows Firstly, he would say that the entitlement as to vacancy 4-remission is not automatic, but depends upon certain requirements which the law compels the owner of the premises claiming such a remission to strictly adhere to. It is in this view it is said that the correspondence that ensued between the Corporation of Madras and the landlords prior to the institution of the action does not clearly point out that there has been such a compliance of the requirements under law. Basing his arguments of Section 105 of the Madras City Municipal Corporation Act, learned Counsel would say that, in order to gain an entitlement for vacancy remission, there should have been a notice prior to such a claim informing the Corporation of Madras not only as to the date when the premises had fallen vacant, but also during the period during which such vacancy and unletting subsisted. In the absence of such a prior intimation notice, a supervening claim as such cannot be the basis for the statutory entitlement. He has put the argument alternatively also thus. The statutory requirements u/s 105 is that there should be two notices: viz., a notice of intimation about vacancy and unletting followed up by another distinct and separate notice making a claim for the vacancy remission. He would urge, therefore, that the correspondence that ensued between the respective parties would not satisfy the statutory requirements as above and in the light of it he would say that the claim ought to be rejected.

8. On the other hand, Mr. Chellasamy, learned Counsel for the Appellants, would urge that a statutory entitlement is intended for the benefit of the person who can claim it and therefore, a substantial compliance of the provisions which would form the basis for such a claim would be sufficient and that accent on the form ought to be avoided. With reference to the same correspondence already referred to by us, he would urge that the claim is in order and ought to have been accepted by the Commissioner. He also hesitantly put forward the plea that the second suit is barred under Order II Rule 2 Civil Procedure Code. Both the parties, however, are agreed that if the claim for vacancy remission is sustainable in law, then the Corporation has to recalculate the amounts which the landlords are liable in law to pay for the various half years in question and, if on such a recalculation any amount is payable by the landlords, they would pay the amount to which the Corporation would be entitled.

9. The Tamil Nadu City Municipal Corporation Act as modified in 1962, is a self-contained code and it is intended to consolidate and amend the law relating to

the Municipal affairs of the City of Madras. Provisions like Sections 137-B, 103 and 390-A of the Act are all features which indicate that the Corporation Act is a self-contained one not only in the matter of laying down the substantive law, but also in the manner in which the substantive law should be implemented and proceeded with both by the statutory authority as well as by the citizen who has recourse to it. It has set its own norms and guidelines in the matter of taxation and finance. One of the taxes, which the Municipal Council may levy is property tax. Section 99 of the Act provides that, if the Council by a resolution determines that property tax shall be levied, such tax shall be levied on all buildings and lands within the city of Madras, save those exempted. The other part of Section 99 is not quite relevant for purposes of our discussion. Section 100 sets out the method of assessment of property. Section 101 enables the Council to grant exemption to certain buildings from the payment of property tax. There are also special exemptions provided for in Section 102 which provides for an alternative basis of property tax in respect of certain properties. Section 103 mandates that property tax shall be a first charge on the building and the land and also upon the movable property, if any, found therein and belonging to the person liable to pay such tax. Section 104 says that the property tax shall be levied every half year and shall, save as otherwise expressly provided in schedule IV, be paid by the owner of the assessed premises within 15 days after the commencement of the half year. Section 105 deals with vacancy remission. It is convenient to extract it here:

105 (1) when any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half-year, the commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half year.

(2) Every claim for remission under Sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards.

(3)(a) No claim for such remissions shall be entertained unless the owner of the building or his agent has previously there to delivered a notice to the commissioner:

(i) that the building is vacant and unlet; or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(b) The period in respect of which the remission is made shall be calculated:

(i) if remission is sought in respect of the half-year in which notice is delivered, from the date of delivery of the notice or from the date at which the building become vacant and unlet, whichever is later; and

(ii) if remission is sought in respect of the half year succeeding that in which the

notice is delivered, from the commencement of the half-year in respect of which remission is sought or from the date on which the building became vacant and unlet, whichever is later.

(c) Every notice under clause (a) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter.

10. Sections 106 to 109 deal with certain obligations on the part of the owner in case of transfer of the building or reconstruction or demolition of the same, remission of taxes, and the powers of Commissioner to condone non compliance of certain requirements under the earlier provisions and also to call for information for purposes of assessing to property tax.

11. The cumulative effect of the above provisions is fairly clear. The levy is made every half year and this is the unit of taxation. Such a levy made every half year being the basis of taxation, the hypothesis, which would prompt the taxing authorities to levy such a property tax for one half year, may not be the same for the other half year. It is in this respect that the distinctness and separability of every year half is year maintained throughout in the Act. As early as 1893, this proposition was recognized and it has stood the test of time. A Division Bench of the Bombay High Court in *Pitamberdas v. Jambusar Town Municipality* ILR 18 Bom. 510 said that the levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year.

12. In relation to vacancy remission with which we are concerned in these appeals, there are certain guidelines in the matter of the method of application for remission and the consequential grant of it by the Commissioner. Section 105(1) enables the Commissioner in cases where a building has fallen vacant and unlet for 30 or more consecutive days in any half year to remit that much of property tax as is provided for there in and in the successive sub-clauses, Section 105(3)(a) says that no claim for such remission u/s 105(2) shall be entertained unless the owner has previously delivered a notice to the Commissioner that the building is vacant and unlet or that the building is likely to fall vacant and remain unlet from a specified date either in the half year in which the notice is delivered or in the succeeding half year. There is, therefore, a provision for intimation of prospective vacancy and unletting as well, such a notice shall be followed up by a claim during the half year in respect of which the remission is sought or in the following half year and not afterwards. This is provided for in Section 105(2). The method by which remission should be granted is dealt with in Section 105(3)(b). This provision, read with Section 105(1), is obviously intended to enable the assessing authority to, grant such remission to which the landlord would be entitled and which is obviously variable according to the facts and circumstances of each case.

13. At this stage, it would be necessary to state the nature of the enquiry which

is contemplated u/s 105(3)(b). As vacancy remission and an enquiry thereto involves investigation into rights and obligations, the enquiry officer is a quasi judicial tribunal who is to follow the principles of natural justice is to hear the affected party and after giving such a full and adequate opportunity to him reckon the vacancy remission to which the landlord may be entitled to and grant that if he is so entitled to. In the instant case, we do not find any evidence that such an enquiry was held when the statutory authority rejected the vacancy remission. In a casual manner and without any due enquiry as is required of a quasi judicial tribunal, the rejection was made. We therefore, treat such orders of rejection made as nonest and unenforceable in the eye of law.

14. To continue, the important point to be noticed is that every notice contemplated u/s 105 shall expire with the half year succeeding that during which it is delivered and shall have no effect thereafter. But, Section 108-A enables the Commissioner at his discretion to condone omissions to give notice u/s 105 and other sections referred to therein. The point to be considered is whether, in the light of such statutory provisions, two independent and separate notices, as urged by Mr. Thillai Villalan, are necessary u/s 105 of the Act, one informing the taxing authority about the vacancy and unletting or the prospective vacancy or unletting followed up independently by a claim for remission. When the statute itself provides that the non-issue of notices contemplated under Section, 105 can be condoned at the discretion of the Commissioner then obviously the provision as to delivery of notice contemplated u/s 105 (3)(a) is one which is capable of being broadly construed. The main intendment of the Sub-clause (3)(a)(ii) of Section 105 is that the taxing authority should be put on notice promptly about the vacancy and unletting or the prospective vacancy and that there should be a claim for vacancy remission as prescribed by the Act. The word previously appearing in Sub-clause (3)(a) of Section 105 of the Act cannot be subject to a rigid interpretation. Taking the above relevant Sub-clauses of Section 105 together, we are of the view that both the information as to vacancy and unletting as also the claim for remission under Sub-clause (1) of Section 105 being integrated one with the other, can be consolidated in one notice. As the purpose of the provisions is not lost by such a process. The learned Counsel for the Respondent says that the delivery of the notice regarding the vacancy should proceed a claim and these provisions are mandatory. In our view, the word previously used in Sub-clause (3)(a) of Section 105 can serve only one public purpose. It is obviously intended to put the taxing authorities on notice of such vacancy or prospective vacancy and lend them to make such investigations as they may be inclined to make to test the truthfulness or correctness of such information. If a notice is cumulative in the sense that it is not only informative of the vacancy but also of the claim for remission in consequence thereof no prejudice is caused to the taxing authority. Viewed in this light, the delivery of a consolidated notice containing information about the vacancy and coupling it with a claim for remission would not, in our view, be a non-compliance with the provisions of Section 105 of the Act, and much less a

departure from this provision.) By way of analogy, the Supreme Court in *Somawanti v. State of Punjab* AIR 1963 S.C. 157 while considering the provisions of the Land Acquisition Act and in a case where the notification u/s 4 and the declaration u/s 6 were contemporaneously made in one notification, expressed the view:

A notification under Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of Section 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day.

Therefore, the serving of a consolidated notice containing the information as to vacancy and unletting coupling it with the claim for remission would sub-serve the substance of the requirements of Section 105 and would not in any way be a departure from it. As in all cases the substance of the enactment has to prevail over the form, we are of the view notice u/s 105(3)(a) and the claim u/s 105(2) could be made in one notice and the inclusion of the claim for remission in the notice informing the authority about the vacancy cannot be equitably, justifiably or even legally be said to be non compliance with the substance of the relevant requirements u/s 105.

15. The decision of V. Ramaswamy, J. in Second Appeal No. 919 of 1971 which was placed before us by Mr. Thillai Villalan, runs as follows:

That section confers power on the Commissioner of the Corporation to remit property tax. But the right to claim this remission is subjected to certain conditions. The first of such conditions is that the owner of the building shall have previously delivered a notice to the Commissioner intimating the vacancy of informing him that the building would be vacant from any particular specified future date. The other important condition is that the claim for remission should be made during the half year in respect of which the remission is sought or in the following half-year, but not afterwards. The third condition that has to be satisfied is that the building has been vacant and unlet for thirty or more consecutive days in any half-year. In order, therefore, to entitle the owner for remission, he must not only intimate the vacancy but should also specifically make a claim for remission with reference to the particular period. It would not be sufficient compliance with the section if the owner has merely intimated that the building has been vacant from a particular date. Since the remission is to be calculated with reference to the number of days for which the building has been vacant in the particular half-year, the claim therefore must state from what period to what period the building was vacant in order to enable the Commissioner to grant it.

16. We do not think that the learned Judge has expressed the view that both the

notice of vacancy and the claim for vacancy remission should be made under independent communications. What is, however, pressed into service is the in the claim for vacancy remission, the land lord must state from what period to what period the building was vacant a order to enable the Commissioner to grant it. This question would arise only in cases where there has been a partial vacancy or unletting of the premises during a particular half year. But if the premises was vacant for the entire half year, the question may not arise. Even otherwise, Section 105(3)(a) compels the landlord to deliver a notice to the Commissioner stating that the building is vacant and unlet or the building is likely to be vacant from a specified date either in the half year in which the notice is delivered or in the succeeding half year. It is only in the enquiry, which, as we have already stated is a quasi judicial enquiry which is obviously contemplated u/s 105(3)(b), that the further hypothesis might be required in order to enable the taxing authority to reckon the actual benefit to which the land lord is entitled to in consequence of such vacancy. We are of the view that the landlord could furnish such particulars as to the period during which the building was vacant or is likely to be vacant during the course of such investigation by the taxing authority. If the opinion expressed by V. Ramaswami, J., in the above Second Appeal was that if the landlord failed to state from what period to what period the building was vacant, when he delivered the notice, when there was no compliance with the norms set out in Section 105, we are unable to share that view.

17. In the light of such statutory provisions, the merits have to be considered. In so far as the first case is concerned, Exhibits, B-5, B-7 and B-14 read together do comply with the requirements of Section 105. But, each notice is self-contained in the sense that the landlords not only passed on the information as to vacancy, but they were also claiming contemporaneously their entitlement as to vacancy remission in each of these notices. As in our view such notice is possible under law and sub serve the purpose and intendment of the guidelines set out in Section 105, we are of the view that the notice as to vacancy remission and the claim for such remission contained in the above exhibits are enough for the Defendants to gain the entitlement under law regarding vacancy remission. As regards the second suit and in so far as it relates to the second half year 1965-66 and the first half year 1966-67, such notices were given by the Defendants, if not in the annexure to Exhibit B-10, but certainly under Exhibit B-14. No doubt, there is justification in the contentions of learned Counsel for the Respondent, when he says that Exhibit B-10 as such cannot be taken into consideration as it is only a copy and it is not even purported to have been signed by any one of the Defendants. But, be that as it may, Exhibit B-14, however, is sufficient for us to hold that there was a notice of vacancy coupled with a claim for the legitimate vacancy remission to which the Defendants will be entitled to. It is not necessary for us in these circumstances to consider the import of Exhibit B-16. The learned Counsel for the Appellants conceded that Exhibit B-16 would not amount to a notice of the information of vacancy within the meaning of the Act in so far as the first half year 1967-68 is concerned.

18. Having regard to the above exhibits and in view of the fact that we have accepted the oral evidence let in by the Defendants particularly the sworn testimony of D.Ws. 1 and 3 that the former did not pay the rent and the latter did not receive the rent for that portion of the suit premises occupied by Gaylord Restaurant and in view of the recital in Exhibit B-1 in and by which it is clear that National Grindlays Bank began to pay rent from the 16th of November 1966, the Appellants claim for vacancy remission has to be accepted and cannot be rejected.

19. The only surviving point for consideration is whether Order II Rule 2 would in any way be a bar to the institution of the second suit. We shall presently consider the merits in this contention. The principles governing the adoption of Order II Rule 2 as a principle of law are very well laid and need not be reiterated, except to make reference to those well-known decisions rendered by our Court, the Privy Council and the Supreme Court.

20. In AIR 1949 78 (Privy Council) the principles have been summarized by their Lordships thus:

(1) The correct test in cases falling under Order 2, R-2, is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit *Munshee Buzloor Raheem v. Shumsunnissa Begum* (1867) 2 M.I.A. 551 : 2 Saro 259 P.C. Supra. The cause of action means every fact which will be necessary or the Plaintiff to prove if traversed in order to support his right to the judgment. *Read v. Brown* (1889) 22 Q.B.D. 128 (If the evidence to support the two claims is different, then the causes of action are also different.) *Brunsdon v. Humphrey* (1884) 14 Q.B.D. 141.

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. *Brunsdon v. Humphrey* (1884) 4 Q.B.D. 141 (Supra).

(5) The cause of action has no relation whatever to the defence that may be set up by the Defendant nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers....to the matter upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. *Miss. Chandhour v. Partab Singh* ILR 16 Cal. 98 (P.C.)(Supra). This observation was made by Lord Watson in a case under S-43 of the Act of 1882 (corresponding to O-2, R-2) where Plaintiff made various claims in the same suit.

Amongst this is the well-known rule that, if the evidence to support the two claims is different, then the causes of action are also different.

21. In *M.S. Sastri v. Vijayawada Municipality* AIR 1957 A.P. 896 the well known and eminent Judge, Viswanathan Sastri, J., dealt with an analogous situation and observed as follows:

The tax had to be assessed and demanded separately for each half year by the Municipality and was also paid by the Assessee under protest in respect of each

half year. It is not as if the tax for a half year not paid becomes merged in the tax liability for the succeeding half years or that there is a continuous running account between the Municipality and the Assessee. The assessment for each half-year is a separate proceeding and an illegal levy in respect of each of the half-years gives rise to a separate cause of action to the Plaintiff for recovery of the amount so levied. On each occasion on which the Municipality exacted payment of more than what was lawfully due to it, it was committing an actionable wrong in respect of which the Plaintiff had a distinct Cause of action.

22. Again the Supreme Court in *Sidramappa Vs. Rajashetty and Others*, succinctly laid down the basic principles on which Order II Rule 2 rests. It stated the requirements of the order thus:

The requirement of Order 2, Rule 2, is that every suit should include the whole of the claim which the Plaintiff is entitled to make in respect of a cause of action. "Cause of action" means the cause of action for which the suit was brought. Cause of action is a cause of action which gives occasion for and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings.

With great respect, we shall adopt the expression that the cause of action on which the earlier suit and the latter suit are based should be the same or the foundation for both the suits should be the same and similar. We have already with reference to the decision of the Bombay High Court which is very old and in the light of the statutory provisions of the Act themselves, in the course of our judgment, stated that the levy of property tax gives rise to a distinct cause of action in each half-year in which it is levied and there are provisions in the Madras City Municipal Corporation Act itself which enable the Corporation to recover the sum in the manner stated therein. It is in this respect that the special procedure contemplated in a specially codified enactment namely the Act has to prevail over the general norms and Procedure contemplated in common law and as adumbrated in the code of Civil Procedure, as it is well known that the special prevails over the general. It is the procedure which is stated and set out in the Act which has to be followed by the Corporation or by the citizen who claims a relief under that Act and he cannot, therefore, lightly invoke the general principles of procedure and seek to set at naught a claim by the Corporation on the ground that the cause of action is continuous and one has connection with the other. The second suit is based on a cause of action which is totally independent from the cause of action on which the first suit is laid. In that view, we are unable to agree with the learned Counsel for the Appellants, who, of course, lightly argued this contention that Order II Rule 2 would bar the institution of the second suit.

23. On this point, our learned brother Ismail, J., felt a doubt and, when these appeals came up before him, in the first instance, he felt that the question is bereft of authority and that it was desirable that the same should be decided by

a Bench. It is in this context that the appeals have been set before us. In the light of our judgment as above, the Appellants are entitled to succeed.

24. The learned Counsel for the Corporation was good enough to make a calculation memo in each of these cases on the footing that the Appellants would succeed in these appeals. No doubt, this was done under our directions. On the basis of calculations, over which there is no dispute, it is now brought to our notice that, in so far as Original Suit No. 5659 of 1958 is concerned, the Corporation would be liable to refund a sum of Rs. 970-36 to the Defendants and in Original Suit No. 3273 of 1968, the calculation memo says that the Corporation would be entitled to a sum of Rs. 1,328-47 and not suit claim. Adjusting the credit and the debit as disclosed in the calculation memos, the net result is that in both the suits there will be a common decree where-under the Defendants would be liable to pay a sum of Rs. 358-11 with proportionate costs throughout. There will be no separate decree drawn in each of these suits.

25. We are thankful to Mr. Thillai Villalan for having given this calculation memo so promptly, when we requested him to do so.

26. The appeals are partly allowed with proportionate costs.