

(1987) 11 MAD CK 0004
In the Madras High Court
Case No : C.R.P. 2866 of 1987

C.V. Kannappan and others	Vs	APPELLANT
S. N. Srikantan and others		RESPONDENT

Date of Decision : 12-11-1987

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : (1987) 11 MAD CK 0004

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : K. Chandramouli, for the Appellant; G. Subramaniam for Mr. K. Govindarajan, for the Respondent

Judgement

Sathiadev, J.—Plaintiffs 1 to 3 in O.S. 1076 of 1980 on the file of Sub Court, Coimbatore, are petitioners herein. First respondent herein

was the defendant who filed a petition under S. 9 of the City Tenants Protection Act, in I.A. 253 of 1983 for directing the sale of the suit property

to the petitioners after determining its value. A Commissioner was appointed, who stated that the defendant required the entire vacant site situate

on the east of the factor; shed erected by him in the leased property as it is used for storing of raw materials, finished goods, and as parking place

for vehicles. Hence, in his report dated 17.9.1985, he stated that the entire suit property is necessary for the convenient enjoyment of the

defendant and he had also fixed the value of the property at Rs. 3,000 per cent in his report dated 26.3.1985. Objections were filed and later on

the trial court held that plaintiffs were bound to sell the entire suit property to defendant for Rs. 32,250, and that within six months the defendant is

bound to pay the amount and take the sale deed. Aggrieved against this

decision, C.M.A. 39 of 1986 was filed before the District Court, Coimbatore, which agreed with the finding of the trial court and dismissed the appeal. This resulted in the civil revision petition being preferred. Mr. K. Chandramouli, learned counsel for the plaintiffs, would first submit that a composite order of this nature is contrary to the decision of the Division Bench in *Arasan Chettiar v. Narasimhalu Naidu Estate Trust* 93 L.W. 392=I.L.R. 1980-3-Mad. 13, and secondly that, in fixing the minimum extent under S. 9, what should have been prevailed upon Courts below must be with reference to enjoyment contemplated in respect of the structure, and that could be only with minimum extent of land necessary for the convenient enjoyment of the structure and not the purpose for which the tenant may require the property, in view of the decision of this Court in *Ranganathan v. Chinnadurai Nadar* 99 L.W. 956.

2. This revision petition had been argued at great length, but in view of the decision in *Ananthakrishna Nair v. Ramakrishnan* 100 L.W. 1093 (S.C.)=A.I.R. 1987 S.C 1272, there is no need to elaborately deal with this point which has arisen for consideration. Mr. Chandramouli, learned counsel for plaintiffs, in putting forth his submission regarding the interpretation to be placed on S. 9 (1)(b) of the Act, would first submit that, earlier to the Amending Act 13 of 1960, the entire land which was in tenant's occupation was to be sold to him by an order under S. 9, and it is only after the amendment, the concept of ascertaining the minimum extent of land which may be necessary for the convenient enjoyment by the tenant came to be incorporated, and, therefore, when the intendment was to restrict the compulsory sale to the barest minimum that may be needed for the structure the tenant had put up; the rationale followed in *Ranganathan v. Chinnadurai Nadar* 99 L.W. 956, deserves acceptance. He then refers to the decision in *Vajrapani Naidu v. N.T.C. Talkies* AIR 1946 S.C. 1440, in which while dealing with the scope of the Act; the amendments effected in 1960 were taken into account and it was held that, under the Amending Act, the court may direct the sale only of the minimum area of the land necessary for the convenient enjoyment by the tenant of the house built by him and the price has to be the average market price in the three years immediately preceding the date of the order. According to the learned counsel, the purport of this decision is that

the minimum extent must be with reference to the structure and its appurtenant requirements and nothing more. The purpose to which the plaintiff

may put the property is an extraneous factor. Then he would switch over to Ranganathan v. Chinnadurai Nadar 99 L.W. 956, and rely upon it

extensively. It was a case in which the tenant had admittedly taken nearly four grounds of open site on a monthly rent of Rs. 25 for the purpose of

carrying on business in firewood. A Commissioner was appointed and he found a small structure put up by the tenant in the property. The

Landlord stated that he would give an extent of 45 ft. X 30 ft. which would be the minimum extent required by the tenant, whereas the

Commissioner stated that having regard to the extent of the business and the coming of lorries at nights, and when servants were required to be

present during nights at the site for unloading purposes, etc., the whole area was necessary for the tenant. On Courts below holding that the entire

area taken on lease requires to be sold, revision petition was preferred to this Court. On an analysis of the provisions of the Act, it was held as

follows-

S. 9(1)(b) therefore gives a mandate that the court shall first decide the minimum extent of the land which may be necessary for the convenient

enjoyment by the tenant. Now it is obvious that the right to purchase land being vested only in a person who has constructed a structure on the

land and, therefore when S. 9(1)(b) refers to land which may be necessary for convenient enjoyment by the tenant, it is obvious that the enjoyment

contemplated is in respect of the structure. Therefore, the first thing which the court has to do under S. 9(1)(b), is to find out having regard to the

structure for which compensation is payable under S. 3, what is convenient enjoyment of the structure by the tenant....Both the authorities were

therefore not justified in proceeding to decide the claim of the tenant on the footing that what had to be ascertained was the requirement of the

tenant for his business. What they had to ascertain was what was minimum extent of the land which was necessary for the convenient enjoyment of

the superstructure which was constructed by him and in respect of which compensation was payable to him under S. 3 of the Act. Therefore the

finding of both the courts that the tenant was entitled to purchase the entire site leased to him, as it was necessary for the purpose of his business

was clearly vitiated.... In any case, there is nothing in the order which can be read as conceding by him the fact that the entire land is required by the tenant for his business, which circumstance as already pointed out is irrelevant, for determining a claim under S. 9(1)(a)(i) of the Act, because, what is required to be determined is not requirement for the business, but requirement for the convenient enjoyment of the premises which have been constructed and for which compensation was payable under S.3 of the Act....However, as the provisions of S. 9 of the Act stand, what has to be determined is the extent of the land necessary for the enjoyment of the structure and on the terms of the section therefore the tenant will be entitled only to the minimum extent of land necessary for the convenient enjoyment of the structure.

3. In *Ananthakrishnan v. Ramakrishnan* 100 L.W. 1093 = AIR 1987 S.C. 1272 in dealing with the scope of S. 9 (1) (b), in paragraph 9, it is stated as follows-

On making of such an application the court is under a mandatory duty to first decide the minimum extent of the land "which may be necessary for the convenient enjoyment by the tenant." The Court must hold enquiry to determine whether the tenant requires the Land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient enjoyment. The court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant. But if the court finds that the tenant needs the whole or any portion of the demised land for the "convenient enjoyment", the court has to fix the price of the land on the basis of market value of three years immediately preceding the date of the order. The Court may thereupon direct the tenant to deposit the amount so determined within a specific period not being less than three months and not more than three years. If the tenant fails to pay the amount so determined, the tenant's application shall stand dismissed

In paragraph 11 it is held as follows-

Whenever an Application is made by a tenant before the court for issuance of direction to the landlord for the sale of the whole or part of the land

to him, the court is under a mandatory duty to determine the minimum extent of land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the Court having regard to the area of the demised land and the extent of superstructure standing thereon, and the tenant's need for the land for the beneficial enjoyment of the superstructure which he may have constructed thereon. The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying S.9 of the Act is directed to safeguard the eviction of those tenants who may have constructed on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. S. 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 convenient enjoyment of the property. If the tenant does 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. This 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 event the landlord has to pay compensation to the tenant for the superstructure.

Underlining done to avoid repeating as to when, all the tenant's need alone is held as primordial.

It is thus obvious that it is the nature and purpose for which he has put the land to use, and which has led to himself putting up the superstructure, and which alone could be the guiding factor for finding out the minimum extent required for his convenient enjoyment of the property. As pointed out therein, if he does not occupy the land or the superstructure or if he is not residing or carrying on any business therein, then the aspect of convenient enjoyment by him could not arise at all. It is not the structure which has to be taken into account in abstract and then to find out what would be the area the structure may require for its convenient enjoyment. If it is so done, it would result in fixing a minimum area, without reference

to who the tenant of the property is. It is a beneficial legislation conceived to help tenants who have taken vacant lands on lease and have put up superstructures thereon at their cost for the convenient enjoyment of the vacant lands, for the purpose for which they have taken them on lease. If the purpose for which the tenant had taken the vacant site on lease is not to be the guiding factor it would then result in misreading the entire provisions of the Act. To illustrate, a lorry owner having several lorries takes a lane on lease to park the vehicle and the structure he would be requiring for operational purposes, would invariably be a small shed of 10 ft. X 10 ft. and no more. A landlord who leases a vacant site always finds out the purpose for which the tenant takes it on lease, i.e., whether it is for an agricultural or commercial purpose, etc. Whenever it is leased for a commercial purpose, then by finding the trade which the tenant would carry on therein, he charges a higher rent, if the trade is lucrative, Rent also fluctuates depending upon the type of Company which takes the land on lease. Depending extent taken quantum of rent is fixed. All these are referred to for showing that a landlord is extremely particular in ascertaining the purpose to which the entire land would be put to. A structure having been put therein, by tenant and on his invoking S. 9, he cannot then be told that he would have the right to purchase only that portion of the land which the building as such would require for its enjoyment on any theoretical basis. Then it would result in dissociating the tenant from the structure, which is never intended under S. 9(1)(b) of the Act. What is paramount therein is to find out what extent would be required for the convenient enjoyment by the tenant of the land, he had taken on lease. The structure put therein is nowhere mentioned under S. 9(1)(b). Hence, the nature of the constructing put up or the extent occupied by it are irrelevant, for ascertaining the relief to be granted under S. 9(1) (b). The structure put up by him confers a right to invoke S. 9, and it has no relevance for ascertaining the extent required for the purpose of the tenant. As held by the Supreme Court, 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 would get the relief. If the purpose had come to an 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

requirements would be the guiding factor, and in the case of a 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 carries on the leased property on the date of S.9 application. There are several instances like a timber shop where only a

small wooden structure is erected to run the office but the tenant takes a large extent of land on lease to stock timber, firewood, etc. The

intendment of the Act is to help such a tenant to get the land required, for his purposes which would mean when put to the commercial purposes

then nature an extent, of his business and then 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, foundries and stage carriage operators and the like,

considering the fact that they invariably need a large extent of vacant site for carrying on their commercial activities, irrespective of the area

occupied by the super-structure and what extent of vacant land it may require around it.

4. Since the Supreme Court had emphasised on the convenient enjoyment of the tenant in relation to the land which he had taken on lease as the

relevant factor to be taken into account for fixing the minimum extent, the view taken in Ranganathan v. Chinnadurai Nadar, viz, what is required to

be determined is not the requirement for the business but requirement for the convenient enjoyment of the premises which has been constructed

and for which compensation was payable under S. 3 of the Act," cannot any longer be treated as a precedent to be followed in other cases, and

that the decision in Ananthakrishnan v. Ramakrishnan will have to be followed in fixing the minimum extent required by the tenant. Hence on this

point, it is held that the courts below have correctly held that with reference to the nature of the business carried on by the tenant the entire area is

required by him and bound to be sold under the provisions of the Act. This finding is therefore upheld.

5. On the question of compensation, it is claimed by Mr. G. Subramanian, learned counsel for the tenant, that no objection had been ever taken to

the value fixed by the Commissioner. As held in *Arasan Chettiar v. Narasimhalu Naidu's Estate Trust* it is not proper for the courts below to fix the minimum extent and the compensation, in the same proceeding. It is only after passing order on the minimum extent required, the Court can go into the question of finding out the compensation amount. Hence, the finding rendered relating to the quantum of the compensation is set aside and the matter is remitted to the trial Court.

6. Now that the matter is being reopened on the aspect of compensation, it is well open to both parties to adduce such further oral and documentary evidence that may be required, and seek for appointment of a Commissioner to fix the market value. To what extent there has been an acceptance by the plaintiffs regarding the value of the property is an aspect which is left open to be canvassed by the defendants, and how far what has hitherto happened would be binding upon the plaintiffs, will have to be decided by the trial court at the appropriate stage. Hence, on this point, it is held that the courts below were in error in fixing the value of the property at a time when it was obliged only to decide on the minimum extent required by the tenant. Therefore, the minimum extent which a tenant could purchase under S. 9(1)(b) having been concurrently arrived at by the courts below, and for the reasons stated above, the said finding is confirmed. It is only relating to the compensation payable, the finding rendered is set aside, and the matter is remitted to the trial court for proper disposal. To this extent alone, the civil revision petition is allowed. No costs.