

(1972) 11 MAD CK 0040
In the Madras High Court

Eswari Bai

APPELLANT

Vs

The Collector of Madras

RESPONDENT

Date of Decision : 27-11-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1973) 86 LW 507 : (1973) 2 MLJ 5

Hon'ble Judges : V.V. Raghavan, J

Bench : Division Bench

Judgement

V.V. Raghavan, J.—The plaintiff is the appellant. The suit is for declaration of title and possession and injunction restraining the defendant from interfering with the plaintiff's possession. The plaintiff is a refugee from Pakistan. The suit property is a land bearing R.S. No. 4212/1 measuring 387 Sq. ft. in Madras. This land admittedly belongs to the State Government. It was originally leased to the Madras Electric Tramways Company Limited for a period. The Tramway Company went into liquidation in or about 1955 and its properties came to be sold in auction. The Tramway Company had put up a superstructure on the demised land. The superstructure was sold in auction and the plaintiff became the purchaser. The said sale was confirmed by this Court on 19th August, 1955. The plaintiff would appear to have represented to the State of Madras that in purchasing the superstructure she was under a bona fide impression that the land also belonged to the Tramway Company, that she got the leasehold right in the property under the sale, and that she would be put to heavy loss, if she was asked to dismantle the superstructure. The Collector of Madras passed an order on 21st December, 1955 granting the land in question for temporary occupation for a period of five years commencing from 20th August., 1955 subject to the payment of annual lease rent and Municipal Taxes and also subject to the conditions specified in the order of grant that would be issued in due course. The plaintiff continued to occupy the land as per the above order of the Collector and was paying the ground rent. As per the terms of the above order, the plaintiff was entitled to be in possession of the land till 19th August, 1960, She however

continued to be in possession even thereafter. In 1965 the Collector of Madras issued a notice to the plaintiff as per the original of Exhibit A-2 calling upon her to vacate the land. The plaintiff sent a reply. In spite of the notice, the plaintiff failed to vacate and the Collector contemplated taking action under the Land Encroachment Act. Upon that, the plaintiff filed a Writ Petition No. 2503 of 1965 for a writ of prohibition against the Collector of Madras from evicting the plaintiff from the land in question. When the writ petition was pending, the plaintiff gave a notice u/s 80 of the CPC to the Collector of Madras and filed the suit. The writ petition was dismissed on 1st March, 1968. The plaintiff's case is that she is entitled to protection under the Madras City Tenants' Protection Act, and, therefore, the Collector had no right to evict her. The defendant cannot be evicted summarily without resorting to a civil Court for possession and the proceedings under the Land Encroachment Act cannot be taken on the basis that the plaintiff is a trespasser. The defendant filed a written statement contending that the proceedings under the Land Encroachment Act will be applicable as notice terminating the lease was issued and the plaintiff was only in the position of an encroacher and that she had no other right to be in possession of the land. The trial Court negatived the plaintiff's pleas and dismissed the suit. The lower appellate Court on appeal confirmed the decision of the trial Court and dismissed the appeal. The plaintiff, therefore, has filed the above second appeal.

2. The learned Counsel for the appellant contends that the plaintiff will be entitled to the benefits of the Madras City Tenants Protection Act and that consequently the attempt of the respondent to evict her as if she is a trespasser is illegal. The further contention put forward is that even assuming that the plaintiff is a trespasser she cannot be forcibly pushed out without a suit for recovery of possession. In the case of an ordinary lease it is true that a landlord even if it is the Government, cannot seek eviction without resorting to a civil Court. But in the case of a land belonging to the State, the position is different. The Land Encroachment Act gives certain rights to the State to summarily evict persons in unauthorised occupation of Government land. The plaintiff, whose lease is determined, if continues in possession will be in possession of the land unauthorisedly and, therefore the State can invoke the provision of the Land Encroachment Act and summarily evict the person in unauthorised occupation of the Government property. It is next contended that the plaintiff is entitled to the protection under the City Tenants Protection Act and that right she is entitled to invoke and that the right given under the said Act would be nullified, if the Government evicts the plaintiff from the suit land. In *State of Madras and Others Vs. T.M. Oosman Haji and Co., Madras and Others*, it was held that Section 3 of the Government Grants Act prevails over the provisions of the Madras City Tenants Protection Act and that the State is, therefore, not bound by the provisions of the Act. Sadasivam, J., who delivered the judgment on behalf of the Bench observed as follows:

We hold that it is open to the State to put forward successfully the contention that the express stipulation found in the terms of the grant, such as that the

lessee should surrender possession after the expiry of the term of demise etc.. can take effect, notwithstanding the provisions of Madras City Tenants Protection Act. It is also our view that it is not necessary for the Madras City Tenants' Protection Act to contain any provision excluding the State from the operation for such an exclusion from the operation of any particular enactment may be found in a different enactment covering the same field. In so far as the Madras City Tenants' Protection Act provides for the control over the eviction of cultivating tenants, though the relevant section excluding its operation in the case of lands belonging to certain specified bodies are concerned does not expressly refer to the exclusion of lands belonging to the State, the Government Grants Act confers that exclusion.

In the result they held that Section 3 of the Government Grants Act prevails in the instant cases and that the State is, therefore, not bound by the provisions of the City Tenants' Protection Act. The above decision is binding upon me. Applying the said decision to the facts of the present case, I am of opinion that the plaintiff cannot put forward his rights under the City Tenants' Protection Act as against the State. The learned Counsel for the appellant brings to my notice the decision of the Full Bench in Raisahab Chandanmull Indrakumar Private Ltd. Vs. State of Orissa and Others, , which apparently takes the opposite view. It is not necessary to deal with the above decision in view of the decision of a division Bench of this Court taking a different view, I am bound by the decision of the division Bench and following the said decision I hold that the plaintiff is not entitled to the relief claimed.

3. In the result, the second appeal fails and it is dismissed. There will be no order as to costs.

No leave.