
(2010) 01 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 17134 of 2007 and M.P. No's. 1 to 3 of 2007

G. Khader Sahib

APPELLANT

Vs

The Principal District Munsif (The Rent Controller) and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 226, 227

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(6)

Waqf Act, 1995 — Section 10, 14, 15, 16, 51

Citation : (2010) 01 MAD CK 0035

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Arumugam, for the Appellant; N.L. Rajah, for RR2 and 3, R. Neelakandan, GA for RR4 and 5 and V. Ramesh, for R6, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner has filed the present writ petition, seeking to challenge the judgment and decree passed

by the learned Principal District Munsif (Rent Controller), Tindivanam in RCOP No. 1 of 2004, dated 24.01.2005 and for setting aside the same.

2.Though the writ petition was presented during summer recess of the year 2007, the matter was not admitted. Subsequently, when the matter

came up on 05.06.2007, there was no representation. When the matter came up on 06.06.2007, the same was dismissed for want of prosecution.

Subsequently, on an application in M.P. No. 4 of 2007 being filed, the matter was restored. In the meanwhile, the respondents were served.

3.It is the case of the petitioner that he was a tenant of the premises owned by the eight respondent, which is a registered Wakf. The petitioner was

in occupation of 300 sq. ft. of plinth area and was running a provision shop. He was paying due rent to the Wakf. It is also the case of the

petitioner that the second respondent is a minor whose father was the third respondent. They are claiming to have purchased the said property

from three persons, i.e. M/s. Lakshmipathy, Pandian and Thenmozhi. The last two of them are the son and daughter of the said Lakshmipathy.

They registered their purchase of the Wakf property with the fourth respondent, the District Registrar, Tindivanam in document No. 373/2001,

dated 27.6.2001. It was stated that the document was registered illegally. The Registrar has no right to register such a document. Such registration

of the sale of a Wakf property was contrary to Section 51 of the Wakf Act, 1995. No objection certificate was never obtained from the Wakf

Board as required under law.

4.The second and third respondents filed a petition before the first respondent Rent Controller in RCOP No. 1 of 2004, claiming that they are the

landlords and the petitioner was not paying rents. After notice to the petitioner, he entered into a compromise memo and filed it before the Rent

Controller in RCOP No. 1 of 2004. In the compromise memo, the petitioner had agreed to vacate the property on or before 1.2.2007. Based on

the same, the Rent Controller passed the impugned judgment and decree. Since the petitioner did not obey the decree, execution proceedings

were initiated by respondents 2 and 3 on the file of the first respondent.

5.The petitioner however filed a suit before the District Munsif Court, Tindivanam in O.S. No. 246 of 2002. The suit itself was dismissed as

withdrawn on a memo being filed by the petitioner. The petitioner did not disclose in his affidavit about the filing of the suit. It is the case of the

petitioner that the second and third respondents have no right to purchase the property, which belonged to the Wakf. He is always willing to pay

the amount to the Wakf. Since it is a registered Wakf and he has also received a notice from the Inspector of Wakf, Villupuram to pay the rents,

the second and third respondents have no right to seek possession of the property.

6.It was also stated that the third respondent is an influential Advocate in the area and he had forced the petitioner to agree to the compromise

memo. Even the lawyer engaged by him for contesting the RCOP as well as the

Suit had colluded with the third respondent. Since it is a Wakf property, any question relating to such Wakf property can be only decided by the Tribunal constituted u/s 83 of the Wakf Act, 1995. The

jurisdiction of other courts are ousted u/s 85 of the Wakf Act, 1995. The petitioner need not go to any other court. This Court being a

constitutional Court, under Article 226 of the Constitution of India, can set aside a decree of any court including the Rent Controller if it is a nullity.

7. On behalf of the 6th respondent Wakf Board, Mr. V. Ramesh, learned Counsel submitted that since the land belonged to the Wakf, the Wakf

Board will take an appropriate action for re-claiming the properties in case of default in rentals.

8. On behalf of second and third respondents, Mr. N.L. Rajah, learned Counsel submitted that the writ petition is an exercise of futility. The

petitioner had suffered a decree before the Rent Controller. He had agreed to vacate the premises on a joint memo of compromise. The petitioner

had the assistance of a lawyer. Therefore, the allegation that there was coercion in signing the compromise memo was a false statement. Even the

civil suit was withdrawn by him. Therefore, the contention that there was coercion in signing the compromise memo was made knowing it to be

false by the petitioner. He, however, submitted that there is no dispute regarding the ownership of land by the Wakf Board.

9. The present contention is with reference to the superstructure, which is lawfully purchased by the second and third respondents from their

predecessors. Once they have purchased the same, they have duly notified it to the petitioner. It is the petitioner who is trying to create problems

by not recognising the second and third respondents, which had resulted in them moving the Rent Controller. The term "landlord" is defined u/s

2(6) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. The rental is received only for the building. The petitioner who was a tenant

in the premises in question is bound to pay rent to the building. He cannot deny the title of the landlord in collecting the rents. Since the petitioner

had not recognised the second and third respondents and also the premises is wanted for further construction, the RCOP was filed before the Rent

Controller.

10. In the present case, the petitioner did not contest the rent control

proceedings. The petitioner's attempt to move the civil court once again was also not fruitful as the petitioner had withdrawn the suit. Therefore, under the Article 226 of the Constitution, the petitioner cannot canvass the validity or otherwise of the decree, which was obtained from a competent forum. Therefore, the writ petition is a clear abuse of process of the court and is liable to be dismissed.

11. However, Mr. M. Arumugam, learned Counsel for the petitioner stated that the jurisdiction of this Court is so wide and he can invoke its power under Article 226 or 227 to nullify the decree passed by the Rent Controller as it had been obtained by fraud and coercion. The Rent Controller has no jurisdiction as the matter is squarely covered by the Wakf Act, 1995.

12. In this context, the learned Counsel placed reliance upon the judgment of the Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai and*

Others, . Reliance was placed upon the following passage found in paragraph 38 of the said judgment, which is as follows:

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction

of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC

Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High

Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to

have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing

the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where

there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for

keeping the subordinate courts within the bounds of their

jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have

or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated

argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one

view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings

in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as,

if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice

or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or

evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are

almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between

the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings

of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only

give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court

may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in

the facts and circumstances of the case.

13. However, in paragraph 21 of the very same judgment, it was also observed as follows:

21. Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of

certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is

to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to

determine whether on the face of the record the inferior court has committed any of the preceding errors occasioning failure of justice.

14. The other argument that only the Wakf Act will cover the case cannot be accepted. Even as per the admission of the petitioner, the land

belongs to a registered Wakf. Therefore, it is a Wakf property and the counsel appearing for the 6th respondent had also promised that if any

necessity arise, then they will recover it from the second and third respondents. Insofar as the shop is concerned, the petitioner is paying rent for

the building to the predecessor landlord, from whom the second and third respondents have purchased it. In such circumstances, invocation of the

provisions of the Wakf Act, 1995 does not arise.

15. It is a matter of dispute between the petitioner on one hand and second and

third respondents on the other hand. There is no manifest illegality in the compromise decree passed by the Rent Controller. This Court is not willing to believe the petitioner's contention that he was coerced into signing the compromise memo especially when he was represented by his counsel. For the sake of convenience, he is attacking his counsel who had appeared before the Rent Controller. No such allegations are made in the affidavit filed in support of the writ petition. The said counsel was also not made as a party.

16. The petitioner's further effort to challenge the sale of property by a civil suit was also withdrawn by him, which is not even disclosed in the affidavit. The validity of title of the landlord can also be gone into by the Rent Controller. The petitioner did not logically pursue the rent control proceedings. If he had a case, he could have successfully resisted his eviction. The second proviso to Section 10(1) of the Rent Control Act will be available only when the tenant denies title of the landlord. In such a case, the Rent Controller is bound to record whether the denial of claim was bona fide. Thereafter, it is the landlord who can sue the tenant in a civil court for eviction. Except for this, the civil court's jurisdiction is completely barred. There is no right vested with the tenant to move the civil court without raising such objections before the Rent Controller.

17. This position of law has been declared by the Supreme Court in *M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd.*, . The Supreme Court in paragraph 9 of the said judgment held as follows:

9. What is stated in the second proviso to Section 10(1) is the sole circumstance in which the civil court is invested with jurisdiction in matters of eviction. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a civil court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these conditions are satisfied, the civil court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned in Section 10 or Sections

14 to 16, notwithstanding that the court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease, or, his claim

of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is

completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

18. In the present case, the petitioner's abortive attempt by way of filing a suit before the civil court was not taken to its logical end but was

withdrawn. Therefore, the petitioner's attempt to move this Court is a clear abuse of process of law. Under such circumstances, the question of

invocation of the jurisdiction of this Court under Article 226 of the Constitution of India does not arise.

19. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions also stand dismissed.