

(1970) 06 MAD CK 0008
In the Madras High Court

Haridas Girdhardas and Others

APPELLANT

Vs

Varadaraja Pillai and Another

RESPONDENT

Date of Decision : 17-06-1970

Acts Referred:

Citation : (1971) 84 LW 109 : (1971) 1 MLJ 200

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The plaintiffs appeal from a decree dismissing their suit for a declaration that they were, as from 1st March, 1964, the owners of the building and superstructures constructed by the first defendant on the lands demised to him by them according to the terms of the lease deed, dated 17th November, 1938, and, if necessary, for directing the 1st defendant to execute and register a deed vesting the buildings and superstructures in. the plaintiffs as from 1st March, 1964. The plaintiffs also claimed rent for the premises as from that date at the rate of Rs. 12,000 per month. By the lease deed of 17th November, 1938, vacant land of an extent of 11-3/4 grounds or (hereabouts, comprised in premises No. 2 and 3/18, Mount Road, Madras, was leased out to the 1st defendant for a period of 15 years and 3 months, from 1st March, 1930, at a rent of Rs. 560 per month, with an option of renewal of the lease for a further term of 10 years from 1st March, 1954, but at an enhanced rent of Rs. 630 per month. Under the terms of the lease, the lessee was to construct on the demised plot of land "a theatre with all proper offices and out buildings such as bazaars, restaurants, motor and dynamo sheds, etc.", and fences drains, sewers to be used for production and exhibition of films and for staging drama therein and to expend in building; such theatre a sum not less than Rs. 50,000. The lessee shall, however, be at liberty to put up other buildings in addition to them. The most important term relevant to the appeal is:

At the expiration or sooner determination of the tenancy, the Lessors shall have the option of buying the buildings to be erected on the demised land, the basis of

valuation being as follows : The buildings shall be valued at Rs. 50,000 irrespective, of the actual cost of construction and the Lessee shall allow a depreciation of 3 per cent, per annum, the period being calculated for the purposes of this valuation from 1st March, 1939. If within a week from such termination of tenancy the Lessors do not signify their willingness to purchase the building or erections at the aforesaid valuation from the Lessee, the Lessee shall within three months thereafter remove and carry away any buildings or erections on the demised plot of land and shall cause to be restored to its original or natural level State and condition the demised plot of land.

There were three further leases granted by the appellants to the first respondent of pieces of lands between December, 1939 and November 1945, which have been treated as annexes to the main premises demised under the lease deed, dated 17th November, 1938. The first respondent constructed a theatre known as "Globe Talkies" at a cost of about Rs. 3 lakhs on the site and the superstructures so built up are said to be worth now about Rs. 15 lakhs. After expiry of the renewal period of lease, the appellants, by their lawyer's letter, dated 27th February, 1964, purported to exercise their option of buying the buildings and enclosed with it a cheque for Rs. 50,000. The first respondent promptly denied the right claimed by the appellants and returned the cheque to them. This led to the suit, in which the appellants claimed that they having exercised the option of purchasing the buildings and superstructure with the tender of a sum of Rs. 50,000, they had become owners thereof from and after the expiry of February, 1964, and accordingly sought a declaration to that effect. By an amendment of the plaint they added a prayer, that, if a deed was necessary, the first respondent should be directed to execute and register it, testing the buildings and superstructure in them as from 1st March, 1964. Since he first respondent was continuing in possession even after that date, the appellants claimed that he should pay rent of Rs. 12,000 per month for the entire premises covered by the lease deed, as also the buildings and superstructures thereon, and prayed for a decree for the arrears of rent. The first respondent resisted the suit claim by relying on the protection and rights created in his favour as a tenant by the Madras City Tenants' Protection Act, 1922, as amended by Madras Act (XIX of 1955), which came into force on 10th September, 1955, and contended that the terms of the lease deed which affected his rights under the Act were not enforceable. In view of this defence, the appellants attacked the validity of the Amending Act of 1955 as violative of Articles 14, 19(1)(f) and 31(1) of the Constitution, and this question was introduced into the pleadings by another amendment of the plaint and with a further written statement. On the ground that the validity of the Act was challenged, the State Government was impleaded as the second defendant, which is now the second respondent in the appeal. Kunhamed Kutti, J., who tried the suit, accepted the defence in full, found that the appellants were not owners of the buildings and superstructures on the demised lands and were not entitled to the declaration and specific performance they had asked for, and that,

therefore, they could not also get a decree for arrears of rent as claimed by them.

2. From what we have said so far, it would be clear that the appellants can succeed only if they can successfully assail the validity of the Amending Act of 1955, without which the defence of the first respondent will almost be futile. We have, therefore, to decide (1) the validity of the Act, and (2) if it is valid, whether the appellants, notwithstanding its provisions, can enforce the terms of the main lease deed, and whether, even so, they are entitled to the relief of the declaration and specific relief and decree for arrears of rent at the rate claimed.

3. As to the validity of the Amending Act aforesaid, the appellants have failed to persuade us that it is invalid. The scope and effect of the provisions of the Madras City Tenant's Protection Act, 1921 (as amended by Madras Act XIX of 1955) have been time and again noticed by Courts, and need no reiteration. It will suffice to refer to *Swami Motor Transport (P) Ltd. and Another Vs. Sri Sankaraswamigal Mutt and Another*, and *N. Vajrapani Naidu and Another Vs. The New Theatre Carnatic Talkies Ltd. Coimbatore*, . In those cases the Supreme Court repelled the contention that the Act violated Articles 19(1)(f) and 31(1). But the appellants' argument makes a fresh approach to the question. It may be conceded that the Act of 1922 could not be questioned on Constitutional grounds such as Article 19 or Article 14. But the Statement of Objects gave a reason, that is, evictions at that time as a special situation for the relief afforded by the Act to pre-1922 tenancies. But when the Amending Act of 1955 changed the date to 12th September, 1955, it in effect made a new law with reference to that date, and so, it required to run the gamut of Articles 19 and 14. Why are the rights and liabilities of lessors and lessees in Madras City to be different from the All India position u/s 108 of the Transfer of Property Act, and why special treatment accorded to pre-September 1955 tenancies? The Concurrent List peculiar to this country was included to provide a Uniform Code on the topics enumerated therein. Suppose Parliament itself included a special rule as to Madras City in the Transfer of Property Act, it would require justification as a reasonable classification under Article 14. While Article 254 enables the State to make the special law repugnant to the Central Law with the President's assent, the Article 14 test could be the same as if Parliament itself modified the General Law as to the City of Madras. At the Bill stage of 1955 Amending Act, it was only proposed to take power to extend the Act to the mofussil. The original Act applied it to the City of Madras only to tenancies at the commencement of the Act, to wit, 21st February, 1922. The Amending Act as it finally emerged, changed the commencement of the Act to 12th September, 1955. The Statement of the Objects gave no reasons for the change as to the City, as the Bill did not contemplate any such change. Such a change of date meant to enact completely new law with respect to tenancies created between 21st February, 1922 and 12th September, 1955, and was arbitrary and unreasonable. As to Article 19, the Central Law provided the norm as reasonable for All India. Extra restrictions on the property right vested in the lessor must be treated and justified as reasonable for Madras City landowners by some acceptable reason why Central

Law will not be for Madras City either permanently or with reference to a special situation. So runs the argument.

4. It may be granted that the Statement of Objects and Reasons of the Amending Act of 1955 gave no reasons for the change of date as to the City of Madras. This is because at the initial stage of the Bill the Amending Act was not intended to apply to Madras City. But we find from the affidavit sworn to by the Additional Secretary to the Government, dated 27th January, 1970, that the idea of extending the protection of the Amending Act to City as well was suggested by some of the members of the Legislative Assembly when the Bill was introduced and during its discussion. The affidavit says:

It was represented by those members that the tenants in the City who entered into the tenancy after 1922 are also suffering a lot and that they should be given security of tenure. It was also represented by some members that certain new areas like Kodambakkam, Guindy and Ayyanavaram were also included in the City only in 1946, and originally for these areas, the Act did not apply and now they have become part of the city. The same conditions were prevailing there and the Act should be extended to these areas also.

The matter was then referred to the Select Committee which, on the basis of representations made to it and investigations, made a number of recommendations, one of them being that legislation should also cover the case of tenancies effected after 1922 and upto date in the case of City of Madras. It is therefore, pointed out for the second respondent that the Legislature, knowing the conditions, decided to give protection to post-1922 tenancies in the City of Madras. As held in *Chastleton Corporation v. Sinclair* 68 Lawyers Edn. 841, a law depending upon the existence of a certain state of facts to uphold it may cease to operate if the facts change, even though valid when passed. But in the circumstances we have just mentioned, we are of the view that the principle of *Chastleton Corporation v. Sinclair* 68 Lawyers Edn. 841, does not affect the validity of the Amending Act of 1955 as to the application of the main Act to post-1922 tenancies. The Legislature is shown to have been aware of the conditions of the tenancies subsequent to 1922, especially in areas committed to the City limits after 1922, and that knowing those conditions the Legislature extended the protection to post-1922 tenancies in the city. There is nothing to show before us that the facts and conditions which prompted the 1922 Act to be confined to pre-1922 tenancies in the City, did not also exist in respect of post-1922 tenancies in the City, the limits of which have subsequently been enlarged. When a law is made by the Legislature, as the Amending Act of 1955, and on its face the facts and conditions do not appear which prompted extension of the protection to post-1922 tenancies, the Courts cannot assume the absence of such facts and conditions. It is for the party asserting invalidity to show that such facts and conditions did not exist to warrant the change of date as to the City. Far from there being any material in support of the assertion of the appellants, the affidavit sworn to by the Additional Secretary to Government

does set out the justification for such change of date.

5. We were referred to an extract from the speech of the Law Member in introducing the Bill into the Legislative Council in 1922, which showed the object of the Legislation and the grievance it was intended to remedy. It was said that in many parts of the City of Madras dwelling houses and other buildings had from time to time been erected by tenants on lands belonging to others in the full expectation that subject to payment of a fair ground rent, they would be left in undisturbed possession, notwithstanding the absence of any specific contract as to the duration of lease or the terms on which the building was to be erected. Note was taken also of the fact that at that time attempts were made or steps taken to evict a large number of such tenants and that thereby their expectations to be permanently left undisturbed were likely to be defeated. Under the common law then and now on eviction the tenants can at best remove only the superstructure which could only be done by pulling down the buildings. There would thus be wholesale destruction of such buildings with the result that congested parts of the City would become more congested to the serious detriment of public health. It was mentioned by the Law Member therefore that it was just and reasonable that the landlords when they evicted the tenants should pay for and take the buildings. If the landlord could get a fair rent for the land, there might be cases where the landlord might be unwilling to eject the tenants. These were the stated circumstances in which the Bill provided for payment of compensation for the building in case of ejection of the tenant, option for the tenant to purchase the land at a price to be determined in the manner provided and also for fixing of fair rent. Can it be said that even on the assumption that the change of date in respect of the City brought about by the 1955 Amending Act is a new law, its validity should be tested on that basis? We fail to see how at least some of the facts and conditions which prompted the passing of the 1922 Act did not exist in 1955 justifying the Amending Act and the change of date. We cannot justifiably say that because the 1922 Act was confined in its application to the pre-1922 tenancies in the City, the Act inferentially, as is contended for the appellants, denied statutory protection to post-1922 tenants, thereby leaving them to be governed by subsequent contracts under the common law, particularly Section 108 of the Transfer of Property Act. No such inference is, in our opinion, warranted. As it happened, after the Second World War, so too now, due to a combination of economic causes, building materials have become costlier. Due to population explosion in recent years and exodus from villages and influx into cities,, there is an ever-increasing demand for more and more residential quarters in the City. Obviously, if the common law embodied in Section 108 of the Transfer of Property Act is to operate and the tenants on surrendering possession are compelled to pull down the buildings, it would undoubtedly result in wholesale destruction. It is not difficult to infer that congested parts of the City will then become more congested to the detriment of public health. These matters are common knowledge and may well be taken judicial notice of. It follows that we cannot possibly say that facts and conditions

similar to those leading to the enactment of the 1922 Acts did not exist in 1955, which warranted; the Amending Act of that year.

6. We may assume that the Concurrent List in the Constitution was included to provide a uniform Civil Code in India on the topics enumerated therein. But we fail to appreciate how the classification test of Article 14 applicable to Parliamentary enactment on any of the topics in the Concurrent List can in the same way be applied to legislation by the State Legislature on any similar topics. We have already extracted the argument for the appellants which asks as to what would happen if Parliament itself had included in the Transfer of Property Act a special rule as to the City of Madras, on the same lines as the 1955 Amending Act. It is said that while repugnancy of a State law to the Central law is got over by the President's Assent, the State law should still answer the test of Article 14 in the same way as if Parliament itself modified the general law as to Madras City. We cannot accept this reasoning as sound. The basic error in the argument is the wrong analogy on which it proceeds. Though the Parliament and the State Legislatures have concurrent competence to enact a law on any of the topics in the Concurrent List, the sphere of operation and the territorial competence of Parliament and State Legislatures are different. The State Legislature cannot enact a law to give operation to it outside its territorial limits, while Parliamentary Legislation can operate throughout the country. When, therefore, a State Legislature makes a law on a concurrent topic, by the very nature of things, its validity under Article 14 cannot be tested on the ground that, in other States, no similar law has been enacted or is not in force. No such classification will at all be called for in respect of a State Legislation. If Parliament had included a special rule as to the City of Madras in the Transfer of Property Act, whether it would be violative of Article 14 would be another matter, which does not arise. The argument that the 1955 amendment contravenes Article 19 also proceeds on the basis that the Central Law, namely, the Transfer of Property Act, provided the norm as reasonable for the entire country and what have been provided by the 1955 amendment are extra restrictions on the property right of lessors in Madras City which are unreasonable and unjustified. We have already dealt with elsewhere why the special protection to post-1922 tenants in Madras City became necessary. Also we think if the provisions of the 1955 amendment provide extra restrictions, as they are called by the appellants, they are justified and are reasonable. But in our view, those provisions can hardly be regarded as restrictions at all on the right of the landlords to hold and dispose of the land. All that the impugned Act secures is that instead of the tenant while yielding up the land being obliged to demolish the buildings, the landlord, if he seeks to eject the tenant is made liable to (pay) compensation and may take the buildings constructed by the tenant on the land at his cost. If, on the other hand, in such a contingency the tenant exercises his option to purchase, the landlord will have to part with the land not for nothing, but for its market value computed in the manner indicated in the Act. Neither of these provisions, as it appears to us, infringes the right to hold and dispose of

property. In any case, we are of opinion that they are reasonable restrictions, in public interest. This view is supported by *N. Vajrapani Naidu and Another Vs. The New Theatre Carnatic Talkies Ltd. Coimbatore*, There, by a majority opinion, the Supreme Court repelled a contention that the Madras City Tenants' Protection Act, as amended in 1955, violated Article 19(1)(f). Having held that, it was also ruled that because there was no violation of Article 19(1)(f), no independent infringement of Article 19(1) might be set up. The majority of the learned judges said:

We ought to emphasise that what Section 9 does is not so much to deprive the landlord of his property or to acquire his rights to it as to give effect to the real agreement between him and his tenant which induced the tenant to construct the building on the plot let out to him.

The attack on the validity of the 1955 Amending Act as violative of Articles 14, 19(1)(f) and 31(1) fails.

7. That takes us to the merits of the appellant's claim. Before dealing with it, we would like to dispose of the contention that it is only in a suit in ejectment, the 1st respondent could at all invoke to his aid the provisions of the Act. In our opinion, this is not a correct view of the effect of the Act. What it does is to protect the tenant, which term it has defined, from eviction in terms of the common Law under which, on expiry of the lease, the tenant is liable to surrender vacant possession after removing the the superstructures put up by him, however, valuable they may be. The availability of this protection to a tenant is not dependent upon filing of a suit in ejectment. The protection against eviction is a qualified one and the qualification no doubt operates in a suit in ejectment. That is to say, the right of the tenant to get compensation for the superstructures which he had put up on the land is a condition to its surrender or his right to exercise an option to purchase the land for its value. There is also the further protection to the tenant that he can apply for fixation of fair rent. This right is also available to the landlord. The rights of a tenant under the Act are further protected by Section 12 which says that nothing in a contract made by him shall take away or limit his rights under the Act. The operation of this section again is not dependent upon a suit in ejectment and that means the protection covers the entire range of rights of the tenant under the Act. We think, therefore, that the 1st respondent is entitled to rely on his right under the Act in defence to the suit, which, as we understand, appears to be a device in the guise of a suit for declaration and specific performance to defeat the 1st respondent's rights under the Act. We say so because once the declaration asked for is given along with a direction for specific performance, as asked for by the appellants, it would at once mean an raid of the 1st Respondent's rights under the Act.

8. The only basis for the appellant's. asking for a declaration that as and from the specified date they were owners of the buildings and superstructures constructed on the land by the 1st respondent is Clause 4(d) of the lease deed, dated 17th November, 1938, and the fact that they had exercised their option of

buying the buildings by sending a letter to that effect with a tender of a cheque for Rs. 50,000. The terms of this clause providing for the option have been extracted in the earlier part of this judgment. Neither this clause nor any other term in that or any other lease deed already referred to provides for automatic transfer of ownership in the buildings from the 1st respondent to the appellants on the latter exercising their option to purchase. The words "the lessors shall have the option of buying the buildings" and "the building shall be valued at Rs. 50,000 irrespective of the actual cost of construction" do no more than provide for a right to exercise the option and not that, when it is exercised, the ownership in the superstructure will pass from the 1st respondent to the appellants. Not only is there no agreement for passing of ownership in that manner by the mere exercise of the option to purchase, but the English *solo cedit* principle has no application to fixture on lands in this country. In 31 CWN 965 (Privy Council) the Privy Council held that it was not the law of this country that whatever is affixed or built on the soil became a part of it and was subjected to the same rights of property as the soil itself. Even if there had been an agreement between the appellants and the 1st respondent that on the exercise by the former of the option to purchase the ownership in the superstructure would stand transferred to them, it would be inoperative as it would be contrary to the rights of the 1st respondent protected under the Act. That is the effect of Section 12 : Vide *The Mylapore Hindu Permanent Fund Ltd., suing by their Secretary, Sri K. Vinayakam Vs. K.S. Subramaniya Iyer*, ; *Vajrapani Naidu v. New Theatres Carnotic Talkies Ltd.* (1965) 1 S.C.J. 368 : AIR 164 S.C. 1440; *K.S. Subramania Iyer Vs. Mylapore Hindu Permanent Fund Ltd.*, , and *R. Venkataswami Naidu and Another Vs. Narasram Naraindas*, . It follows accordingly that the appellants are not entitled to the declaration asked for.

9. It is next argued for the appellants that they are at least entitled to a decree for specific performance by compelling the 1st respondent to execute a conveyance to the appellants. We are referred to 36 Halsbury, Third Edition, page 264, as being in support of their contention. It is observed there:

If the contract is valid in form and has been made between competent parties and is unobjectionable in its nature and circumstances, specific performance is in effect granted as a matter of course, even though the judge may think it involved hardship.

This citation itself shows that one of the requisites for grant of specific performance is that the contract should be unobjectionable in its nature and circumstances. The stipulation in the contract providing for the option for the appellants to purchase the superstructure at the value agreed upon between the parties is nugatory of the rights reserved to the 1st respondent under Sections 3 and 9 of the Act and is unenforceable in view of the inhibition in Section 12. That being the case, there is no need to dwell on the general principles governing the grant or refusal of specific performance. They are well settled and are now crystallised in Section 20 of the Specific Relief Act, 1963. By granting a decree

for specific performance, the appellants would not only gain an unfair advantage over the 1st respondent, but the Court would be enabling them to enforce a contract which is unenforceable u/s 12 of the City Tenants' Protection Act, as amended in 1955. There is abundant authority that in such a situation, specific performance ought not to be granted.

10. On that view, the question of arrears of rent does not arise for consideration.

11. The appeal is dismissed with costs.