

(1976) 08 MAD CK 0011
In the Madras High Court

Kandaswamy Mudaliar and Others

APPELLANT

Vs

Madurai T.S. Naina Mohammed Rowther Charity

RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Citation : (1977) 90 LW 123 : (1977) 1 MLJ 244

Hon'ble Judges : S. Suryamurthy, J

Bench : Division Bench

Judgement

S. Suryamurthy, J.—These two civil revision petitions arise out of a common order passed by the learned appellate authority (Subordinate

Judge), Madurai, under the Tamil Nadu Buildings (Lease and Rent Control) Act. C.R.P. No. 1112 of 1975 has been preferred against the order

of the learned appellate authority in C.M.A. No. 452 of 1972. C.R.P. No. 1147 of 1975 has been preferred against the order of the same learned

appellate authority in C.M.A. No. 473 of 1972. The respondent herein filed the petition for eviction of the tenants from the portions in their

respective occupation inter alia on the ground that the building was required for demolition and reconstruction. The tenants contended that as

Madurai City had been declared a Corporation, the Tamil Nadu Buildings (Lease and Rent Control) Act, is not applicable, that there was no valid

notice to quit, that they are the sub-tenants of the first respondent in the petition for eviction and that the building was not required bona fide for

demolition and re-construction. These contentions were negated by the learned Rent Controller, and eviction was ordered. Against the order of

the learned Rent Controller, the civil miscellaneous appeals were filed. Both the appeals were dismissed by the appellate authority on 3rd

February, 1975. C.R.P. No. 1112 of 1975 was filed in this Court on 11th April, 1975 and C.R.P. No. 1147 of 1975 was filed in this Court on

25th April, 1975. While the appeals were pending before the learned appellate authority a notification dated 12th August, 1974 in G.O.Ms. No.

1998, Home, was issued by the Government of Tamil Nadu exempting all the buildings owned by the Hindu, Christian and Muslim religious trusts

and charitable institutions from all the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (referred to hereinafter as "the

Act"). This notification was issued by the Government by virtue of the power conferred on it u/s 29 of the Act. Section 29 of the Act states that,

Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they may deem fit, by notification, exempt any

building or class of buildings from all or any of the provisions of this Act.

2. It is contended by the learned Counsel for the civil revision petitioners that the G.O. aforesaid was passed while the appeals were pending

before the learned appellate authority and that, therefore, the learned appellate authority had no jurisdiction to pass any order disposing of the

appeals. In support of this contention, reliance is placed on a decision in G. Ambiga Ammal Vs. Selvaraja Mudaliar, wherein Paul J., has laid

down that,

No doubt, at the time when this revision petition was filed, the petitioner had the right to file a revision petition u/s 25 of the Act before this Court.

But in view of the fact that the Government by its notification has removed all buildings belonging to religious trusts from the purview of the Act, in

my view, this Court's jurisdiction to pass any orders in regard to the premises in question in this case which by reason of the aforesaid notification

has been exempt from all the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act including Section 25, has come to an end.

Paul J., has further observed that,

The effect of the notification passed by the Government of Tamil Nadu mentioned above is that in respect of the premises in question, the

provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, would no longer apply and no order can be passed in respect of such a

building under any of the provisions of the Act including Section 25 which provides for a revision to this Court.

3. Per contra, Gokulakrishnan, J., has laid down in Chellappa Sebastian and Another Vs. R.C. Diocese and Others, . that,

As far as the G.O.Ms. No. 1998, Home, dated. 12th August, 1974, is concerned, it contemplates only exemption for the religious institutions and

other charitable trusts from coming under the purview of the Tamil Nadu Act XVIII of 1960. The intention of the Government Order is only to

facilitate the religious institutions to have its buildings for its own purpose without recourse to the Rent Controller's Court. That does not mean the

right the institution had before the passing of the Government Order has been nullified. The Government Order is only to facilitate the religious

institutions to have quicker remedy for having the building of its own for its own purpose. If that be so, there is no question, of the orders passed or

pending proceedings in the Rent Controller's Court u/s 10 (3) (b) getting nullified. On the other hand, it is clear from the Government Order that

there is no question of any retrospective effect given, for the exemption granted by the said Government Order u/s 29 of the Tamil Nadu Act

XVIII of 1960.

4. Referring to the decision of Paul J., G. Ambiga Ammal Vs. Selvaraja Mudaliar, . Gokula krishnan, J., has observed that"

It is clear from the decision rendered in G. Ambiga Ammal Vs. Selvaraja Mudaliar, . that the effect of passing such Government Orders in respect

of the pending proceedings and also proceedings ended prior to such passing of the Government Order had not been discussed, in the light of

various decisions that had been rendered on such subjects. Unless the Legislature makes its effect retrospective the amendment will not in any way

affect the pending proceedings. As far as the present case is concerned, the Government Order enacted by the Government under the provisions

of Section 29 of the Act, cannot be construed as a substantive law, nor one which gives the retrospective effect to such provisions mentioned in the

Government Order.

Gokulakrishnan, J., has subsequently referred to a decision of the Supreme Court in Income Tax Officer, Alleppey Vs. M.C. Ponnose and

Others, . and has extracted the following passage to the effect that,

It is open to the Sovereign Legislature to enact laws which have retrospective operation. The Court will not ascribe retrospectivity to new laws

affecting rights unless by express words or necessary implication it appears that such was the intention, of the Legislature. The Parliament can

delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers

have been delegated by the Legislature, it may or may not be possible to make the same so as to give retrospective operation. It will depend on

the language employed in the statutory provision, which may in express terms or by necessary implication empower the authority concerned to

make a rule or regulation with retrospective effect. But where no such language is to be found, it has been held by the Courts that the person or

authority exercising subordinate legislative functions cannot make a rule, regulation or by-law which can operate with retrospective effect.

Thereafter, Gokulakrishnan, J., has observed that Section 29 of the Act ""has not empowered the Government to pass any Government Order

giving retrospective effect for such amendments. Applying the abovesaid Supreme Court decision, the present Government Order cannot be

considered as one giving retrospective effect. On the other hand, the pending proceedings are saved from the language of the present Government

Order in view of the Supreme Court decision referred to above"" Gokulakrishnan, J., further referred to a decision of the Bench of this Court in

M/s. Killick Nixon Ltd. v. V.R. Narayana Rao (1974) 1 M.L.J. 16. wherein it has been laid down that,

If the Legislature intended the amendment to be retrospective so as to affect vested rights, it would have made a specific provision for abatement

of the pending proceedings and the decisions rendered therein as was done when the Amending Act (II of 1962) was passed. It cannot be held

that Act XXIII of 1973 either expressly or by necessary implication has provided for abatement of pending proceedings. In the absence of any

such provision, it has to be taken that the amending Act was only prospective.

Thereafter, Gokulakrishnan, J., concludes that,

As far as the present case is concerned, there is no such amending Act by the Legislature excepting the Government passing a Government Order

under the powers conferred upon them u/s 29 of the Act. Hence, it is clear that the present Government Order can neither affect a decision

rendered nor interfere with the pending proceedings inasmuch as there is

nothing retrospective in the exemption granted to the religious institutions by the said Government Order.

Gokulakrishnan, J., therefore, held that this Court has jurisdiction to continue the proceedings which arose prior to the passing of the Government Order referred to above.

5. Thus, it would be seen that there is a conflict of views between Paul, J. and Gokulakrishnan, J., regarding the maintainability of a proceeding

pending at the time when the notification u/s 29 of the Act was issued by the Government exempting the buildings belonging to religious trusts from

the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. The notification has been issued by the Government in exercise of the

powers delegated to it by the Legislature u/s 29 of the Act. As a mere subordinate legislation it cannot have retrospective operation, nor does it

purport to do. But a new law,

cannot always be solely prospective in its operation; it is almost certain to affect existing rights and, still more, existing expectations. It may be

intended to operate in the future, but the mere fact that it operates a tall, inevitably, in the long run, impinges upon rights and duties which existed

long before it came into being. This is particularly true of laws concerning property of a permanent and continuing nature, such as real property,

which at some time or other must come within the ambit of every change in the law relevant to it. Indeed, it is often impossible to say of a statute

exactly what its effects will be on existing law until it has fallen to be interpreted by the Courts. It cannot, therefore, be laid down as an invariable

rule that all new law must project itself solely into the future without any influence upon the past, for there is a wider principle at work in human

affairs--namely, that past, present, and future are all part of the same streams of consciousness and event.

The rule of construction, therefore is limited to this, that "a retrospective operation is not to be given to a statute so as to impair an existing right or

obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the

enactment. If the enactment, is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only".

(Law in the Making by Sir Carleton Kemp Allen--Seventh-Edition Pages 463 and

464). Upon the presumption that the Legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

This statement of law by Maxwell on "The Interpretation of Statutes" (Twelfth Edition) at page 215, has been "so frequently quoted with approval that it now itself enjoys almost judicial authority":

Perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." (Re Athlumney (1898) 2 Q.B. 551 :

The rule has, in fact, two aspects for it "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary".

If, however, the language or the dominant intention of the enactment so demands the Act must be construed so as to have a retrospective operation, for "the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing, (Carson v. Carson (1964) 1 W.L.R. 511. per Searman, J., at page 517).

Before the presumption against retrospectivity is applied, a Court must be satisfied that the statute is in fact retrospective." (Maxwell on "The Interpretation of Statutes" (Twelfth Edition) page 216). In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such

rights (Ibid).

But if the necessary intendment of the statute is to affect the rights of parties to pending actions, the Court must give effect to the intention of the

legislature and apply the law as it stands at the time of the judgment even though there is no express reference to pending actions. This principle

was applied to the Landlord and Tenant (Rent Control) Act, 1949 in *Hutchinson v. Janncey* (1950) 1 K.B. 574. and *Jones v. Rosenberg* (1950) 2

K.B. 52. the Court of Appeal taking the view that Sir George Jessel, M. R. had gone too far when he said that express terms alone could alter the

rights of parties by taking away or conferring any pending right of action.

The effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision was discussed by the House of

Lords in *Attorney-General v. Vernazza* (1960) A.C. 965. Lord Denning said (at page 978) that it was clear that in the ordinary way the Court of

Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of

litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is

retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for the Parliament has shown

an intention that the Act should operate on. pending proceedings, and the Court of appeal are entitled to give effect to this retrospective intent as

well as a Court of first instance. For this purpose, however, a statute which actually takes away the right of appeal is not to be regarded as

affecting more matters of procedure.

The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts.

No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being,

by or for the Court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered

mode. "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."--Ibid.

A statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new

obligation or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute "is not

properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing". In *Leuri v.*

Rened (1892) 3 Ch. 402 . Lindley L.J., said: "'It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective

operation, unless its language is such as plainly to require such a construction. And the same rule involves another and subordinate rule, to the

effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.'" *Craies on Statute*

Law---Seventh Edition--page 387 etc.

Pending actions objected by new procedure of provision as to costs:

But there is no vested right in procedure or costs. Enactments dealing with these subjects apply to pending actions, unless a contrary intention is

expressed or clearly implied. "It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action,

its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception, to this rule, namely, where

enactments merely affect procedure and do not extend to rights of action." For it is perfectly settled that if the legislature forms a new procedure,

that, instead of proceeding in this form or that, you should proceed in another and 3 different way, clearly there bygone transactions are to be sued

for And enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some

good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the

tights of the parties "it will be held to apply prima facie to all actions, pending as well as future." In the House of Lords in *Attorney General v.*

Vernazza (1960) A.C. 965. it was held that the Supreme Court of Judicature (Amendment) Act, 1959, Section 1 (1) (which empowers a Court to

prevent a litigant from continuing existing proceedings when he is declared a vexatious litigant), affects only procedural rights and is therefore

retrospective. In *Colonial Sugar Refining Company v. Irving* (1905) A.C. 369. an application was made to the Judicial Committee to dismiss an

appeal from the judgment of the Supreme Court of Queensland, on the ground

that the power of the Court below to give leave to appeal had been abrogated by Section 39 of the Australian Commonwealth Judiciary Act, 1903. The action in which the appeal was brought was commenced on 25th October, 1902. The Judicial Act came into force on 25th August, 1903, and the leave to appeal was given on 4th September, 1903. The Judicial Committee dismissed the application, Lord Macnaghten saying; ""As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition (to dismiss) is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the (Judiciary) Act, it was conceded that in accordance with a long line of authorities from the time of Lord Coke to the present day the appellants (the Sugar Company) would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to his Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."" Craies on Statute Law (Seventh Edition), page 401 etc.

The large majority of enactments passed by legislatures take effect ex nunc, that is, they are applied to situations and controversies that arise subsequent to the promulgation of the enactment. It is a fundamental requirement of fairness and justice that the relevant facts underlying a legal dispute should be judged by the law which was in existence when these facts arose and not by a law which was made post factum (after the fact) and was therefore necessarily unknown to the parties when the transactions or events giving rise to the dispute occurred. The Greeks frowned upon ex post facto laws, laws which are applied retrospectively to past-fact situations. The Corpus Juris Civilis of Justinian proclaimed a strong presumption against the retrospective application of laws. Bracton introduced the principle into English law Code; and Blackstone gave currency to it; and the principle is recognised today in England as a basic rule of statutory

construction. In the United States, ex post facto laws in criminal cases and retrospective State laws impairing the obligation of contracts are expressly forbidden by the terms of the federal Constitution; in other types of situations, a retroactive legislative infringement of vested rights may present a problem of constitutional validity under the due process clause of the Constitution"" ""Jurisprudence --The Philosophy and Method of the Law"" by Edgar Bodenheimer--(1962 Edition) pages 273 and 274.

6. Even in American statutes, retroactive legislation is looked upon with disfavour, as a general rule, and this is said to be so because of the tendency of retroactive legislation to be unjust and oppressive. The statutes are so construed as to give them only prospective operation, because the basis presumption is that the Legislature does not intend to enact legislation which operates oppressively and unreasonably. In the absence of any indication in the statute that the Legislature intended for it to operate retroactively it must not be given retrospective effect, and if any reasonable doubt exists, it should be resolved in favour of prospective operation. In other words, before an Act can be construed as retrospective, its language must imperatively and clearly require such a construction.

7. The general rule is stated thus in *People v. Dilliand* 298 N.Y.S. 296 : 252 App. Div. 125.:

It is chiefly where the enactment would prejudicially affect vested rights or the legal character of past transactions, that the rule in question applies.

Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a

new duty or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature,

to be intended not to have a retrospective operation.

Crawford on ""The Construction of Statutes"" (1940) Edition at page 566, observes:

The rule that statutes should not be given a construction which will give them retrospective effect, is, as already indicated, especially applicable to

statutes where such a construction will either destroy or impair vested rights. Consequently, such statutes, should be construed, if possible, as

applying only to future cases, that is, as having no retrospective operation. In fact, here too, prospective operation is to be presumed.

However, it is essential that the difference between rights, and the remedies or procedure connected therewith should be kept in mind.

As the Court said in *Aetna Insurance Company v. O'Malley* 118 S.W. 2 . "No person can claim a vested right in any particular mode of

procedure for the enforcement of his rights. Where a new statute deals with procedure only, prima facie it applies to all actions those which have

accrued or are pending and future actions. What was before a subject of equitable relief may be made triable by jury without affecting vested

rights. If, before final decision, a new law as to procedure is enacted, it must from that time govern and regulate the proceedings.

Yet, in numerous instances, the right and the procedure connected with it may be so closely related that the alteration or abrogation of the latter will

operate to impair or destroy the former. (Crawford on "The Construction of Statutes" 1940 Edition, Pages 568 and 569).

As a general rule, legislation which relates solely to procedure or to legal remedies will not be subject to the rule that statutes should not be given

retroactive operation. Similarly, the presumption against retrospective construction is inapplicable. In other words, such statutes constitute an

exception to the rule pertaining to statutes generally. Therefore, in the absence of a contrary legislative intention, statutes pertaining solely to

procedure or legal remedy may affect a right of action no matter whether it came into existence prior to, or after the enactment of the statute, (ibid.

pages 581 and 582).

Undoubtedly, a better view is the one which will subject procedural statutes to the rule applicable to statutes generally. This judicial attitude was

taken by the Court in *Murphy v. Lostop and Maine R.R. Co.* 77 N.H. 573 : 94 At. 1967. involving a statute which placed the burden of proving

contributory negligence upon the defendant:

In cases where the Legislature have unquestionable power under the Constitution to take away or substantially modify the remedy in a pending

suit it is generally impolitic and unjust to exercise the power. When the plaintiff commences his action, he relies and has reason to rely on the

remedy which the existing law gives him in the form of action which he has chosen; and it is an established maxim in the construction of statutes that

the law giver will not be presumed to intend that a law should in any way affect

the remedy in a pending suit, unless the intention is very clearly expressed.

The same reasoning is equally applicable to a defendant with reference to the rules of procedure by which he seeks to establish his defence." (Ibid, pages 584 and 585).

The principles above discussed will likewise apply whether the statute creates a new remedy or enlarges an existing one; being limited Only by the requirement that contractual obligations cannot be affected or vested rights disturbed. So long as an alteration or extension of a remedy does not amount to a substantial impairment of an existing right, it may be deemed retroactive. This is so because a statute which affects the remedy only is remedial in its nature, and consequently is entitled to be construed as remedial legislation. Conversely, therefore, if the statute pertains to the remedy, if vested rights are impaired or destroyed, it should be regarded as within the rule against retroactive construction. To this extent, the law seems harmonious.

But, as in the case of procedural statutes, often times the right and the remedy are so closely connected that any alteration in the remedy may adversely affect the right. (Ibid, page 586).

A Court may be given jurisdiction over a cause of action which arose before the jurisdictional statute was passed. On the other hand, it is also possible that a statute may be constructed so as to take jurisdiction from a Court over a case already pending although such an intent should be clearly expressed in the statute" (Italics is mine) Ibid, page 587,

8. Thus, it would be seen that the principles regarding the interpretation of the statutes are the same in India and in England, as well as in America.

A right of appeal or revision is a vested right, and an appeal or revision pending in a forum at the time the statute affecting the jurisdiction of that

forum comes into force is not affected by the statute unless the statute clearly expresses an intention to operate retrospectively. This view is fortified

by the fact that in enacting the Tamil Nadu Cultivating Tenants (Protection) (Amendment) Act (XVIII of 1976), affecting legal proceeding or

remedy in respect of any right, privilege, obligation or liability acquired, accrued or incurred u/s 4-A of the principal Act on or after the 5th day of

July, 1973 but before the 5th day of March, 1976 it has been specifically laid down in Section 4 (3) (b) of the Act, that

every suit, appeal, application, revision or other proceeding instituted, made or taken u/s 4-A of the principal Act on or after the 5th day of July,

1973 but before the 8th day of March, 1976 and pending on the later date shall abate.

The notification in question does not purport to affect pending proceedings. Therefore, the appeals and revisions pending on the date the

notification came into force are not affected by the notification. Hence with respect, I agree with the view of Gokulakrishnan, J., in Chellappa

Sebastian and Another Vs. R.C. Diocese and Others, . The civil miscellaneous appeals before the appellate authority were pending on the date of

the notification and consequently, the appellate authority was properly seized of jurisdiction while disposing of the appeals. But, these civil revision

petitions were filed in this Court after the notification came into force and are not therefore maintainable.

9. Hence, the civil revision petitions are dismissed. There will be no order as to costs. Time to vacate three months.