

(1968) 11 MAD CK 0035
In the Madras High Court

K.G. Ramachandran and Others

APPELLANT

Vs

Raval and Company and Another

RESPONDENT

Date of Decision : 26-11-1968

Acts Referred:

Evidence Act, 1872 — Section 92

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 30(iii)

Transfer of Property Act, 1882 — Section 107

Citation : (1969) ILR (Mad) 584 : (1969) 82 LW 476 : (1969) 2 MLJ 8

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—This appeal is directed against the order of our learned brother Srinivasan, J., under Article 226 of the Constitution, prohibiting the Chief Rent Controller, Madras, from his further proceeding with H.R.C. No. 2942 of 1963 filed by the appellant herein for fixation of fair rent under the Madras Buildings (Lease and Rent Control) Act, Act XVIII of 1960. The appellants (hereafter referred to as the landlord) became owners of the premises, now bearing door numbers 16 and 17, Poonamallee High Road, in the City, under a registered sale deed dated 25th February, 1962. The 1st respondent herein, M/s. Raval & Co., (hereinafter referred to as the tenant) has been lessee of the premises from 20th December, 1935 and the application for the fixation of fair rent under the said Act was filed by the landlord on the 19th of July, 1963. Section 30 (iii) of the Madras Buildings (Lease and Rent. Control) Act, (XVIII of 1960), as amended by Madras Act II of 1962 (hereinafter referred to as the Rent Act) which received the assent of the President on 26th June, 1962, exempted from all the provisions of the Act any non-residential building or part thereof occupied by a tenant "if the monthly rent paid by him in respect of the building or part exceeded Rs. 400. This exemption was later removed by Madras Act (XI of 1964) which received the assent of the President on 5th June, 1964. The tenancy under consideration here is admittedly of a non-residential building. The fair rent application which was filed during the period when there was a ceiling on the rent, above which, the Act

was inapplicable to the tenancy, was laid on the basis that the rent reserved for the tenancy under the instrument of tenancy is Rs. 225 and together with an additional sum of 25 per cent of the rent reserved which is paid by the tenant, the monthly rent is within Rs. 400.

2. The tenancy in question which is for a term, commenced under and is evidenced by a registered lease deed between the tenant and the predecessor-in-title of the appellants dated 20th December, 1935. It is necessary to set out briefly the essential terms of the lease deed. The lease deed provides that the tenancy should enure till 1st May, 1969, with an option to the lessee for renewal for a further period of 15 years. The rent fixed under the deed is Rs. 225 per month, the rent for each month being payable on or before 10th of the succeeding month. The lessee is at liberty to erect any kind of structure without any objection from the lessor. The lessee was entitled to make any additions or alterations or put up new structures, provided they intimated the lessor of the same. As regards payments to the lessor provided for in the deed, the lessee, in addition to Rs. 225 per month stipulated as rent, has to pay annually (1) as contribution towards repairs a sum of Rs. 225 (2) a sum of Rs. 220 towards charges and taxes of a public nature payable on the demised premises to the Government or any local or municipal authority. It is made out on the evidence that, as a result of understanding between the predecessor-in-title of the present landlord and the tenant, without prejudice to whatever rights he may have the tenant agreed to pay certain amounts in excess of the payments provided for in the registered lease deed. It is seen and that is the finding of our learned brother Srinivasan, J., that as and from June, 1954, the tenant has been paying in all Rs. 5,032 annually to the lessor, made up of the following amounts:

1. Rent for an year at Rs. 225 per month. .. Rs. 2,700	2. Annual contribution towards repairs .. Rs. 225
3. Annual contribution towards taxes .. Rs. 220	4. Extra Municipal Tax .. Rs. 1,212
5. 25 per cent increase in rent .. Rs. 675	

Total. .. Rs. 5,032 _____

3. The tenant challenged the maintainability of the application for the fixation of fair rent filed by the landlord and moved this Court for a writ of prohibition raising questions going to the root of the jurisdiction of the Rent Controller. Among other grounds it was urged that:

1. The Madras Buildings (Lease and Rent Control) Act (XVIII, of 1960), does not apply to contractual tenancies and any right and liability under the Act. would arise only on the termination of the contractual tenancies. As the relationship between the parties is governed by contractual arrangement under the registered lease, the Rent Controller had no jurisdiction over the tenancy.

2. The monthly rent paid by the tenant as above made out is in excess of Rs. 400 and as the fair rent application was filed on 19th July, 1963 when the tenancy was outside the provisions of the Act, the application is not maintainable.

Questions under Articles 14 and 19 (1) (f) of the Constitution were also raised, it being contended" that the Amending Act XI of 1964 which removed the exemption limit in respect of non-residential buildings was discriminatory. The question whether the Rent Act would govern contractual tenancies and the question as to the constitutional validity and legislative competency of the Act with its amendments were referred to Full Bench, and the Full Bench delivered its opinion! that the Act with its amendments was within the competency of the State Legislature and validly passed. The Full Bench held that the Act was a complete Code and it enabled both the landlord and tenant to seek the benefit of fair rent under its provisions by the special machinery provided therein, whether a contractual tenancy with different terms prevailed or had been determined. The opinion of the Full Bench is reported in Raval and Co. and Another Vs. K.G. Ramachandran and Others, . On the opinion of the Full Bench, the matter was taken up by Srinivasan, J., for consideration of the tenant's contention that the monthly rent paid by the tenant was in excess of Rs. 400, making the Act inapplicable to the tenancy. The decision of Srinivasan, J., on the 30th April, 1966 upholding the tenant's objection to the maintainability of the application on the date it was made, is the subject of the present Appeal. The opinion of the Full Bench, on Certificate of Leave to Appeal obtained from this Court, is now pending in the Supreme Court as C.A.No. 15 of 1968. On the 15th April, 1968, the Supreme Court vacated the interim stay granted earlier in the matter and provided that the appeal in the Supreme Court be heard after judgment is pronounced by this Court in the appeal from the decision of Srinivasan, J.

4. The contention of the landlord before us is that the extra municipal tax of Rs. 1,212 paid by the tenant and accepted by the landlord is not " rent" and, if this amount is excluded, the monthly rent would fall far below Rs. 400. It is submitted for the landlord that, as the foundation of the tenant's case is the subsistence and currency of the tenancy created under the registered lease dated 20th December, 1935, what is payable for occupation of the premises which alone is rent, must be decided according to the rights and obligations under the lease deed only. Any amount paid in excess of the stipulations under the deed, it is said, is not referable to the lease. The learned Judge Srinivasan, J., posed the question for determination as follows:

When the tenant and landlord agree that the tenant shall make a contribution towards the extra municipal tax, does such payment become merged with the rent within the meaning of the Rent Act?

Before the learned Judge, both the excess tax of Rs. 1,212 the liability for which arose long after the commencement of the lease, and the tax contribution of Rs. 220 provided for in the deed, were denied to be rent. The learned Judge referred to the fact that the lease itself provided for an annual contribution of Rs. 220 towards tax, and observed that there was no doubt that the payment of a portion of the tax was a condition precedent for the grant of the lease, and that, if it operated as a condition for the grant of lease, that sum also partook the

character of rent. On this, having regard to the concession made by Counsel for the landlord that by subsequent agreement the tenant was in fact contributing a sum of Rs. 1,000 per year towards excess tax, the learned Judge remarked that he was unable to see why this payment of excess tax should assume a character different from the quantum of Rs. 220 expressly specified in the lease deed as payable towards tax. The learned Judge has proceeded on the basis that, if there is a sum of money, it may be rates, which a tenant agrees to pay as consideration for the tenancy, it is rent. No exception is taken before us to this proposition as one of law, but its applicability to specific amounts paid by the tenant in the context of the particular facts of the case is questioned. Dealing with the argument for the landlord that the excess taxes were taken by the landlord from the tenant under the provisions of Section 6 of the Rent Act, the learned Judge observed:

I am not convinced of the correctness of this argument. It is true that Section 6 provides that where subsequent to the demise of the premises the taxes have increased, such increase not being due to an increase of rent in respect of the building, the statute comes to the rescue of the landlord and enables him to recover that excess from the tenant. But we are concerned here not with a right secured to the landlord u/s 6 of the Act, but with the position as it emerges from the agreement between the parties. The case-law that has been referred to earlier deals with such a situation, viz., where by a contract the tenant has agreed to pay the rates, the amount of such rates is necessarily part of the rent, for the payment of the rates is also in consideration of the right of the enjoyment of the premises.

5. Mr. R. Gopalaswamy Iyengar, learned Counsel for the landlord, urges that the right of reimbursement of excess tax being statutorily provided for, there should be no inference of agreement between the parties to pay the excess rates, and the payment of the excess rates must be rested solely on the statutory provision. Learned Counsel would submit that the correspondence between the predecessor-in-title of the appellant and the tenant which is exhibited does not lead to an inference of an agreement to treat the excess rates as rent, and that, as far as the present appellants are concerned, there has been no specific agreement between them and the tenant in regard to the payment of excess tax. In the view we are taking, it is unnecessary to decide the controversy whether in fact there was a subsequent agreement between the landlord and tenant with reference to the payment of the excess tax even if we may do so in these proceedings, and whether any such agreement between the predecessor-in-title of the present landlord and the tenant would be binding on or available to the present landlord. Equally it is unnecessary to embark on an enquiry whether the excess tax are in part for structures erected by the tenant. We shall proceed on the basis that from the conduct of the predecessor-in-title of the present landlord and the correspondence it could be inferred that there has been an understanding between the parties, apart from the statutory liability u/s 6 of the Rent Act, that the tenant must pay the excess rates. The question is whether, in

the circumstances of the case, such payment would make it part of the rent for the purpose of Section 30 of the Rent Act.

6. The word " rent " is nowhere defined in the Rent Act, and it is not questioned that in the expression " monthly rent" found in Section 30 of the Act, the word " rent " is not used in any special sense. As it is the amount of rent paid, that u/s 30 brings a tenancy within the purview of the Act or takes it out of its operation, in the absence of any specific meaning being assigned to it, the word " rent " must be taken to be used as it is ordinarily understood with reference to contractual tenancies. The contention of the tenant before the learned Judge has been--and no different stand is taken before us--that any payment which the lessor calls upon the lessee to make and the lessee agrees to pay as consideration for the privilege of enjoyment of the property demised, on whatever account that sum might be demanded, should be regarded as rent. Section 105 of the Transfer of Property Act gives the meaning of the expression " lease" and " rent ". Under that section, a lease of immovable property is a transfer of a right to enjoy such property in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee who accepts the transfer on such terms. In *Karnani Properties Ltd. Vs. Augustin*, , the Supreme Court observed:

The term " rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term " rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities--agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term " rent" is within the purview of the Act....

The learned Judge Srinivasan, J., refers also to *Sidney Trading Co., Ltd. v. Finsbury B.C.* (1952) 1 All E.R. 460, wherein Lord Goddard observed:

What is the total monetary payment to be made by the tenant to the landlord? One has not to regard the rent from the common law point of view of something issuing out of land for which a distress could issue....So, here, in substance, the monetary consideration which the tenant agreed to pay for this tenancy--4\$ plus a certain sum for rates. It seems to me on the authority of the two cases which I have mentioned that it matters not whether the payment is for rates, for service, or for the use of furniture. If there is a sum of money which the tenant agrees to pay as a consideration for the tenancy, it is for this purpose a rent.

In *Halsbury's Laws of England*, Simonds Edition, Vol. 23, at page 537, it is stated:

The modern conception of rent is a payment which a tenant is bound by his contract to make to his landlord for the use of the property let.

7. It follows from the decisions that "rent" is the whole amount agreed to be paid by a tenant to his landlord in respect of his enjoyment of what is let to him, whether described as rent or not. Additional payments made for such things as fitments and payments in respect of rates where the landlord is rated, all agreed to be paid by the tenant as consideration for the tenancy, will be rent. But the essential features of rent in the absence of any special definition are; it must be the result of an agreement; and it must be in consideration of the letting.

8. If "rent" for Section 30 of the Rent Act is a payment which the tenant is bound by contract to make to his landlord for the demise, we have here to see whether the annual extra municipal tax of Rs. 1,212, paid by the tenant to the landlord, satisfies the requirements. It is not now disputed before us for the landlord that the sum of Rs. 225, the annual contribution towards repairs, and the sum of Rs. 220, annual contribution towards tax, paid by the tenant under the terms of the lease deed, are not part of the rent. Can this additional payment, agreed subsequent to the demise under which the tenancy is continued, be said to be consideration for the right of enjoyment of the premises with all that went with the lease? The entire case of the tenant is rested upon the subsistence of the contractual tenancy under the registered lease deed dated 20th December, 1935, which enures till 1st May, 1969. The consideration for the demise of the premises as stipulated in the lease deed provides for payment of three amounts--a sum of Rs. 225 per month as rent, a sum of Rs. 225 as annual contribution towards repairs and a sum of Rs. 220 as annual contribution towards tax. The specific term in the lease deed regarding contribution towards tax is Clause 11 which reads:

The lessor shall himself pay all charges and taxes of a public nature payable on the demised premises to the Government or to any local or municipal authority and the lessee shall annually pay a sum of Rs. 220 as their contribution towards such charges and taxes.

With the term as it stands, during the currency of the demise created under the deed, unless any special law should provide for it, under the general law, the landlord cannot compel the tenant to pay any amount in excess of Rs. 220 on account of rates; and the tenant can enjoy the demised premises for the term of the demise, paying only the amounts provided for under the deed. In the absence of a provision in the lease deed to pay or contribute any excess rates that may be levied on the property in the future, sums so paid cannot be taken in law to be agreed rent or consideration for the subsisting demise. The subsequent agreement pleaded seeks to vary the provisions in the lease deed in this regard and make such payment rent. It is not the case of the tenant that, for some additional advantage in relation to the demise already made, for some extra favour granted by the landlord not covered by the deed, there has been an agreement to pay sums in addition to the amounts stipulated in the deed.

9. Under the opinion of the Full Bench even during the subsistence of a contractual tenancy or an application for the fixation of "fair rent", the rent could

be increased or decreased. Notwithstanding the currency of a contractual tenancy, a landlord even as the tenant, can seek such benefits he can claim, say, the fixation of fair rent, under the provisions of the Act, Section 7 of the Act provides that, where fair rent of a building has been fixed, the landlord shall not claim, receive or stipulate for the payment of any premium or other like sum in addition to the agreed rent, provided that the landlord may receive or stipulate for the payment of, any amount not exceeding one month's rent, by way of advance. Section 6 (1) has provided that, where the amount of the taxes and cesses payable (including any new tax or cess which has become payable) by the landlord in respect of any building to a local authority for any half year commencing on the 1st April, 1950, or any later date exceeds the amount of the taxes and cesses payable in respect thereof to the same or any other local authority for the half year ending on the 30th day of September, 1946, or for the first complete half year after the date on which the building was first let whichever is later, the landlord shall be entitled to claim such excess from the tenant in addition to the rent payable for the building under the Act, provided that such excess shall not be recoverable in so far as it has resulted from an increase, of rent in respect of the building. Any dispute between the landlord and the tenant in regard to any increase claimed u/s 6(1) shall, u/s 6 (2), be decided by the Controller. It may be said that, as by virtue of Section 7 of the Act, rent payable for a tenancy under a registered instrument could be varied, parties may, without resorting to proceedings under the Rent Act, settle between themselves and agree to increase or decrease the rent originally fixed. Decisions have held that, where fair rent is not fixed, there is no prohibition for an increase of the prevailing rent by mutual agreement between the parties. There may be no difficulty in this regard when the tenancy is oral or the enhancement coincides with a fresh period of tenancy as in the case of monthly tenancies, or no dispute is raised. But when the tenancy as in this case is for a term exceeding one year and necessarily by registered instrument, " rent " being a liability which arises and is agreed upon at the time the lease is granted, payments by the tenant to the landlord by virtue of some oral agreement subsequent to the demise and during the term, for the very same lease, can hardly be regarded as consideration for the lease, and so rent. On this aspect, apart from the question of want of consideration to support an agreement for any additional demand, there is an insuperable obstacle for the tenant to overcome when he has to establish that the rent has been increased since the demise, by a subsequent agreement. The tenancy in this case being evidenced by a registered lease deed, it is not open to the tenant, during the currency of the tenancy, to plead any variation of rent which is not evidenced by another registered instrument. Sections 105 and 107 of the Transfer of Property Act read with Section 92 of the Evidence Act bar evidence of variation of the terms of the lease whether the evidence be course of conduct or correspondence. Clearly, " rent " is a term of the contract and, in view of Proviso (4) to Section 92 of the Evidence Act, any variation of rent reserved by a registered lease deed must be made by another registered instrument. In *Durga Prasad Singh v. Rajendra Narain Bagchi* ILR

(1910) Cal. 293, referring to the decision of the Judicial Committee in 6 CWN 865 (Privy Council) ., Doss, J., observed:

It is quite manifest, from the reasons I have just quoted, that if the agreement varied or affected any of the terms of the holding under the lease, or in other words, any of the incidents of the tenure, and above all, if it varied the rent, it would, in their Lordships' opinion, attract the provisions of the Registration Act and the Transfer of Property Act... .If it were open to the parties to alter any of the terms or incidents of a lease by an unregistered instrument, it seems to me that the result would be that they would be capable of altering every one of the terms of the lease by separate unregistered documents, so that all the incidents of the original lease would vanish, and the rights of the parties and the incidents of the lease would be regulated entirely by unregistered documents.

On appeal therefrom, the Privy Council in *Durga Prasad Singh v. Rajendra Narain Bagchi* (1914) L.R. 40 IndAp 223 (1914) 26 M.L.J. 25 :I.L.R. (1914) Cal. 493, affirmed this view of the Calcutta High Court. Their Lordships of the Judicial Committee observed:

The High Court found that the document by which the defendants sought to prove that Raja Jaimangal Singh has agreed to reduce the rent from Rs. 2,800 to Rs. 2,000 a year was, for want of registration, inadmissible in evidence to vary the terms of the *Kabuliyat*, and that the alleged agreement for reduction of rent was without consideration and was not enforceable. On both points their Lordships agree with these findings of the High Court. There was no reliable and admissible evidence to prove that Raja Jaimangal Singh ever bound himself to accept a reduced rent. The fact that he did not some years accept a reduced rent is consistent with the reduction having been a mere voluntary and temporary abatement.

In *Karampalli Unni Kurup v. Thekku Vittil Mothorakutti* ILR (1903) Mad. 195, a subsequent oral agreement to remit a portion of the rent each year under a registered lease deed, corroborated by a receipt or acceptance of such payment, was held inadmissible in evidence under Proviso (4) to Section 92 of the Evidence Act in a suit for two years rent. This is not to say that, if the agreed rent falls within the purview of the Rent Act the Controller cannot, under the provisions of the Act, increase or decrease the rent while fixing fair rent under the Act nor are the parties precluded from varying the rent or entering into some collateral agreement in that regard in appropriate legal form.

10. There was a faint suggestion for the tenant that the proceedings are not a suit with reference to the lease deed to apply Section 92 of the Evidence Act. But here the Court is called upon to base its decision on a case of variation in the rent which is impermissible under law. The parties are not agreed as to the rent payable, and on the agreed rent has to rest the determination whether the tenancy in question comes under the purview of the Rent Act. To oust the jurisdiction of the Rent Controller in the case, the tenant has to establish that the

rent is different from what is provided for in the registered lease deed. This, on the authorities except by another registered instrument, he is precluded from doing under Proviso (4) to Section 92 of the Evidence Act read with Sections 105 and 107 of the Transfer of Property Act.

11. It follows, assuming that from the conduct of the parties and correspondence between them one could infer an agreement to pay the excess tax in addition to the rent stipulated under the lease deed, the Court cannot permit evidence of such agreement which varies the terms of the registered lease deed. The statutory liability u/s 6 of the Rent Act is one thing. The contractual liability as a consideration for the demise is an entirely different thing and, here, for the purpose of Section 30 of the Act, to take the premises out of the Rent Act, what has to be found is the agreed or contractual rent. There is no admissible evidence that the contractual rent is different from what is stipulated in the lease deed. If the extra municipal tax of Rs. 1,212 cannot be treated as rent, the rent paid falls below a monthly rent of Rs. 400. It follows that the premises was not exempted from the provisions of the Rent Act, when the appellant filed their application for the fixation of fair rent. The Chief Rent Controller has, therefore, jurisdiction to entertain and dispose of on its merits the fair rent application filed by the appellants.

12. In the result the writ appeal is allowed with costs. The rule nisi is discharged and the writ petition dismissed with costs. Counsel's fee Rs. 250.