

(2014) 08 MAD CK 0259

In the Madras High Court

Case No : C.R.P. (MD). No. 1162 of 2014 and M.P. (MD). No. 1 of 2014

Mahalakshmi

APPELLANT

Vs

Senathi Na. Venkitasalapathi Ayyer and Sons Private Trust

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10, 10(1), 29

Citation : (2014) 4 LW 307

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Judgement

V.M. Velumani, J.—This Civil Revision Petition has been filed to set aside the order, dated 06.01.2014, passed by the learned District Munsif, Paramakudi, in E.P. No. 21 of 2013 in O.S. No. 30 of 2002.

2. The petitioners are the defendants in the suit in O.S. No. 30 of 2002 on the file of District Munsif Court, Paramakudi and respondents in E.P. No. 21 of 2013 on the file of Sub-Court, Paramakudi, whereas the respondent is the plaintiff in the suit and petitioner in the E.P.

3. The respondent filed the suit in O.S. No. 30 of 2002 against the petitioners and their mother Mahalakshmi. The suit filed by the respondent is for eviction of the petitioners. The petitioners did not contest the suit and therefore, ex-parte decree was passed on 10.04.2002. In the year 2013, the respondent filed E.P. No. 21 of 2013, for delivery of possession. The petitioners appeared in the E.P. through their counsel, but did not file any counter. Therefore, by the order, dated 06.01.2014, the E.P. was ordered for delivery of possession, as the petitioners did not put forth their case as to why the E.P. is not maintainable. Against the said order, the present civil revision petition is filed.

4. Heard Mr. G. Prabhu Rajadurai, learned counsel appearing for the revision petitioners and Mr. S. Subbiah, learned counsel appearing for the respondent.

5. Learned counsel appearing for the revision petitioners argued that the E.P. is

not maintainable as the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is applicable to Paramakudi Town. From that date only the provision of the said Act is applicable for proceedings of eviction of a tenant and for execution of a decree.

6. In support of his submission, the learned counsel for the revision petitioners relied on the following Judgments:

(i) B.V. Patankar and Others Vs. C.G. Sastry, , wherein in paragraph Nos. 10 and 11, it has been held as follows:-

"10. The argument of waiver and estoppel is also devoid of force. This plea was based on a letter which the respondent's lawyer sent in reply to the respondent asking to make arrangements to put the appellants in possession. The former replied thereto that his client was making arrangements and as soon as he could do so, he would hand over possession to the appellants. This is slender basis for the sustainability of the plea of waiver and estoppel. There is no conduct on the part of the respondent which has induced the appellants to change their position or has in any way affected their rights and the plea of non-executability which has been taken is based on statute and against statute there cannot be an estoppel. This ground taken by the appellants is equally unsound and must be rejected.

11. The contention raised that ignoring Sections 9(1) and 16 of the 1948 House Rent Control Order is no more than an error in the exercise of jurisdiction does not appear to be sound because those sections are a fetter on the executability of the decree and not merely an error in the exercise of the jurisdiction. In the present case the two sections mentioned above were a restriction on the power of the court to execute the decree and therefore this argument must also be rejected."

(ii) A. Krishnaswami Vs. S. Rasheeda, , wherein in paragraph Nos. 7 and 10, it has been held as follows:-

"7. In the instant case, at the time the suit was filed, the area where the building is situate was not covered by the Act, because the Act had not been extended to that area. Subsequently, the Town where the building is situate, was constituted a Municipality and the provisions of the Act became automatically extended to that area. What we have to see is, whether, by reason of this fact, the petitioner herein is precluded from relying upon Section 10(1) and invoking the interdiction contained therein for obtaining the declaration that the decree obtained against him is inexecutable.

10. For the aforesaid reasons, the contentions of the petitioner have to be sustained. However, it is made clear that the decree passed against the petitioner is not a null and void one. Only its executability has been impugned by Section 10(1) of the Act. Therefore, there can only be a declaration that so long as the petitioner merits the status of tenant under the Act and so long as Section

10(1) remains on the statute book, the decree obtained by the respondent will be inexecutable. There will be a declaration to that effect in the petitioner's application. The revision will stand allowed accordingly, but there will be no order as to costs."

(iii) Murugesan Pillai Vs. The Idol Arulthiru Kannika Parameswari Temple, Thuraiyur , wherein in paragraph No. 6, it has been held as follows:-

"6. As for the reliance placed on Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, , this it not a case of going behind a decree, but the question is, whether the decree as is stands could be executed, because of Tamil Nadu Act 18 of 1960. It is because of the supervening circumstances which had come into existence after the filing of the suit, on and from 16.08.1976, no tenant in the occupation of a property belonging to a "private temple" could be evicted, except by resorting to Tamil Nadu Act 18 of 1960. Therefore, the Court below was in error in ordering eviction by 1.9.1987, and hence the said order is set aside. The decree-holder will be liable to restore the possession of the judgment debtor within one week of the receipt of the steno copy of this order....."

7. Learned counsel for the revision petitioners submitted that in view of the judgments relied on by him as per Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the decree obtained by the respondent is not executable. He also contended that there cannot be any waiver against the statute. Therefore, the learned counsel for the revision petitioners sought for setting aside the impugned order of delivery of possession passed by the lower Court and directing the respondent to re-deliver the possession to the petitioners.

8. Per contra, the learned counsel for the respondent argued that the decree obtained by the respondent is valid and executable. He also contended that the provision of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not applicable to the case of the respondent.

9. In support of his submission, the learned counsel for the respondent relied on the judgment in Sukhraj Bhawarlal and Others Vs. J. Parasmal and Sathrasala Venkatachullam Chetty's Charities, , wherein in paragraph Nos. 9 and 10, it has been held as follows:-

"9. As far as this case is concerned, a perusal of the Trust Deed itself would show that the Trust was created for charitable purposes, may be for two particular communities. In the instant case, the Trust itself filed R.C.O.P. No. 1638 of 2005 in the Rent Control Court. But had later withdrawn the said R.C.O.P. and the same was dismissed as not pressed on 10.11.2005. The chief tenant-first respondent himself filed I.A. No. 12385 of 1996 in O.S. No. 11282 of 1996, which is a suit filed by him, wherein he himself described the Trust as a Public Trust. After submitting that the second respondent is a Public Trust, now the first respondent-chief tenant contends that it is a Private Trust and therefore it is within the purview of the Act.

10. But as already stated, a perusal of the Trust Deed would show that it is a Public Trust created for doing certain religious and charitable activities by the trustees. Since the second respondent is a Public Trust, the rent control proceedings cannot be initiated because the building owned by the said Public Trust is exempted under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960."

The ratio laid down in the said Judgment is not applicable to the case of the petitioner. It applies only to Public Trust and not a Private Trust. The respondent has categorically stated that the respondent is a Private Trust.

10. Considering the above judgments, especially, the Judgment in B.V. Patankar and Others Vs. C.G. Sastry, , the decree obtained by the respondent is not executable. There cannot be any waiver or estoppel against the statute as held by the Apex Court in the judgment referred to above. As the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is made applicable to the Paramakudi Town and the impugned order is liable to be set aside to re-deliver the petition premises to the petitioners.

11. In the result, this civil revision petition is allowed and the impugned order, dated 06.01.2014, passed by the learned District Munsif, Paramakudi, in E.P. No. 21 of 2013 in O.S. No. 30 of 2002, is set aside. The respondent is directed to re-deliver the petition premises to the petitioners within four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.