
(1979) 04 MAD CK 0035
In the Madras High Court

M.K.M. Mohammed Abu Bucker and Others

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 03-04-1979

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 11

Citation : (1979) 92 LW 497 : (1979) 2 MLJ 512

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The plaintiffs in O.S. No. 399 of 1969 on the file of the Court of the District Munsif of Tirunelveli, who lost before the Court below, are the appellants herein. The suit was one for recovery of possession of the suit properties and for arrears of rent. It is not necessary to refer to the various allegations and counter-allegations made by the parties in their respective pleadings. Admittedly, the suit properties belonged to the appellants-plaintiffs, and equally admittedly they had leased out the suit lands to the respondent-defendant for installing and erecting and maintaining underground tanks, delivery pumps, etc., and putting up necessary structures for the purpose of storing and selling petrol, petroleum products, oils, etc. When the suit was instituted for recovery of possession, the respondent put forward the contention that the respondent is entitled to the benefits of the Madras City Tenants' Protection Act. In the additional written: statement filed by the respondent, the respondent claimed that the City Tenants' Protection Act applied and that the suit was not maintainable u/s 11 of the said Act. This contention was put forward on the basis that the respondent herein had been continuously a tenant of the premises in question and its occupation was prior to 1944. There was no oral evidence let in either by the parties in the present case, and the suit was disposed of on the basis of the documentary evidence alone. In this case, four leases had been produced. Exhibit B-13 is the earliest lease deed, dated 3rd July, 1944 under which the lease commenced from 1st April, 1944 and was to enure for a period of seven years, the rent being Rs. 180 per annum. The second lease

deed is Exhibit B-14. dated 15th March, 1951 and under that document the lease was to commence from 1st April, 1951 for a period of seven years and the rent was Rs. 325 per annum. The significant thing to be noticed about Exhibits B-13 and B-14 is that Exhibit B-14 had come into existence even before the expiry of the period of lease provided for in Exhibit B-13 and there is continuity of the term, because the lease under Exhibit B-14 has commenced immediately on the expiry of the period under Exhibit B-13. The next lease deed is Exhibit A-3, dated 6th July, 1959. Though this lease deed is dated 6th July, 1959, the deed itself provided that the lease should commence from 1st April, 1959 and the rent shall be Rs. 1,500 payable annually in advance on or before the 5th day of April, and the period of lease was ten years. According to Clause 3(d) of this lease deed, the landlord agreed with the tenant that

the landlord will on the written request of the tenant made two calendar months before the expiry of the term thereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the tenant hereinbefore contained, grant to it a lease of the demised premises for the further term of ten years from the expiration of the said term at a rent to be decided by mutual consent at the time of renewal and containing the like covenants and provisos as are herein contained.

The respondent herein claims to have exercised the right under Clause (d) for the renewal of the lease for a period of 10 years and it is not necessary to consider the correctness or otherwise of the stand of the respondent in this behalf in view of the fact that even that period of ten years expired on 31st March, 1979. The significant thing to be noticed as far as Exhibit A-3 is concerned is that though it was entered into on 6th July, 1959, the parties agreed for the commencement of the lease from 1st April, 1959 and in between the termination of the lease under Exhibit B-14, and the commencement of the lease under Exhibit A-3, there was an interval of one year. There is absolutely no evidence to show that during that interval the respondent continued to be a tenant of the premises in question and Exhibit A-3 is only a renewal of the lease starting under Exhibit B-14 which itself was a renewal of the lease provided for under Exhibit B-13. The above question has considerable significance in view of the claim put forward by the respondent that the respondent is entitled to the benefits of the City Tenants' Protection Act. It is not in dispute that the City Tenants' Protection Act was extended to the area in question only by the notification of the Government made under G.O. No. 533, Revenue, dated 15th October, 1956 published in Fort St. George Gazette, Part I, page 1667, under which the Act has been extended to Tirunelveli Municipal Town with effect from 31st October, 1956. Section 1(3) of the Act provided that the Act shall apply only to tenancies of land created before the date with effect from which the Act shall be extended to particular town or village concerned. In this case, since the Act had been extended to Tirunelveli town only with effect from 31st October, 1956, it would apply only to tenancies created before that date and not later. Here, as I pointed out already, the tenancy was created under Exhibit A-3, though it takes

effect with from 1st April, 1959. This is a tenancy created subsequent to 31st October, 1956. The respondent herein would be entitled to succeed in its claim to the benefits under the City Tenants' Protection Act only if the respondent is able to prove that the lease under Exhibit A-3 was in continuation of the tenancy under Exhibit B-14 which commenced from 1st April, 1951. As I pointed out already, there is a gap of one year between the termination of the tenancy under Exhibit B-14 and the commencement of the tenancy under Exhibit A-3 and therefore the tenancy under Exhibit A-3 cannot be said to be a renewal or a continuation of the tenancy under Exhibit B-14.

2. However, learned Counsel for the respondent sought to contend that the crucial date for this purpose is 14th September, 1966, on which date G.O. Ms. No. 2769, Revenue, dated 6th September, 1966 was published in the Tamil Nadu Government Gazette, being a notification u/s 2(1)(i) of the City Tenants' Protection Act. I am of opinion that this has no relevancy to the controversy between the parties. What is relevant for the decision is the date on which the Act applied to the tenancy between the appellant and the respondent. The Act contemplates the Government issuing two different types of notifications. One notification is u/s 2(3) of the Act extending the Act itself to tenancies in a particular area. The second notification is in relation to the definitions of the term "building" occurring in Section 2(1) of the Act. Section 2(1) defines the expression "building" and Clause (i) relates to the user of the premises "for residential or non-residential purposes", and "Clause (ii) to the user for residential purposes only". Under Clause (i) after referring to the following areas viz., the City of Madras, and the municipal towns of Coimbatore, Madurai, Salem and Tiruchirapalli, it refers to "such other municipal town as the Government may, by notification, specify." It is with reference to this power of the Government mentioned in Section 2(1) of the Act, that the notification, dated 6th September, 1966 was published in the Tamil Nadu Government Gazette, dated 14th September, 1966. As I pointed out already, what, is relevant is the applicability of the Act to the tenancy and not whether the premises in question comes within the scope of the definition of the term "building" in Section 2(1) or not. As far as the applicability of the Act to the tenancy is concerned, the relevant notification is that which was published in October, 1956 and not the notification published in September, 1966. With reference to the notification published in October, 1956, as I pointed out already, the same has no application to the tenancy in question, because the tenancy in the present case came into existence only with effect from 1st April, 1959 under Exhibit A-3, dated 6th July, 1959 and there being no evidence to establish that the tenancy brought about under Exhibit A-3 is a continuation or renewal of the tenancy which came into existence on or before 31st October, 1956 the respondent herein would not be entitled to claim the benefit of the City Tenants' Protection Act.

3. Under these circumstances, the second appeal is allowed and the judgments and decrees of the Courts below are set aside and the suit instituted by the appellants herein will stand decreed as prayed for. No order as to costs.