(1964) 03 MAD CK 0026

In the Madras High Court

Case No : Application No. 104 of 19964 in Insolvency Petition No. 18 of 1963

Mohanarangiah Chetty (Insolvent) APPELLANT

Vs

The Official Assignee of Madras RESPONDENT

Date of Decision : 30-03-1964

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 17, 62
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(2)(1), 10(3), 2(8)

Citation : (1968) ILR (Mad) 190

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : S. Rangaswami Ayyangar, for the Appellant; N. Kotyswara Rao, Official Assignee and A. Subramaniam, for the Respondent

Final Decision : Allowed

Judgement

Venkatakaman, J.—This is an application filed by the insolvent Mohanarangiah Chetty under the following circumstances. He had been

carrying on business in textiles at No. 90, Godown Street, Madras, for twenty years. He contracted debts in the trade and he was adjudicated

insolvent on 21st January 1964 on a creditor''s petition. During the pendency of the insolvency proceedings one creditor Devi Singh had obtained

an order for attachment before judgment of the stock-in-trade in the place of business. Later the official assignee took vacant possession thereof

on 3rd February 1964. He has locked up the premises. The insolvent says in the application that there are several business men who are prepared

to take him as a working partner if permission could be given by this Court to carry on the textile business at No. 90, Godown street. He says that

the persons concerned had promised that the insolvent himself would not have any liability for the loss or debts in the business. He says that if

permission is granted he is prepared to make arrangements with the landlord for the running of the business there. He submits that the lease was

not for any fixed term and there was no leasehold right to vest in the official assignee, and the official assignee would not be liable for the future

rents. He points out that he has a large family and has no other source of income to maintain himself and his family. He undertakes to keep regular

accounts and to abide by the directions of the Court in the conduct of the business.

2. The application is opposed by the official assignee.

3. In the course of the hearing of the petition I felt it desirable to issue notice to the landlady of the premises. She appeared by Counsel Sri A.

Subramaniam.

4. The main question which was mooted in the arguments before me by Mr. S. Rangaswami Ayyangar, learned Counsel for the insolvent-

Applicant, was that though in its inception the tenancy might have been a monthly tenancy governed by the provisions if the Transfer of Property

Act, yet after the passing of the Acts relating to the letting of residential and non-residential buildings in the city, the last of which is the Madras

Buildings (Lease and Rent Control), Act, 1960 (Act XVIII of 1960) the insolvent became a statutory tenant and the relationship between him and

the landlord (the term used in the Act, which includes even the landlady) would be governed by the provisions of the Act and on a true

construction of these provisions he has only a personal right to occupy the premises as a tenant, that this personal right is not property within the

meaning of Section 17 of the Presidency Towns Insolvency Act which would vest in the official assignee, that consequently the official assignee

need not fear that he would be liable to pay rent for the future occupation of the premises, that the question of future occupation of the premises is

one which concerns only the insolvent and the landlady and that the official assignee has no right to retain possession of the keys. The learned

Counsel conceded that if the landlady should choose to evict the insolvent following the procedure prescribed under the Madras Buildings (Lease

and Rent Control) Act, 1960, he would have to submit to it in due course.

5. In support of his contention that the insolvent''s right of occupation is only

statutory under the provisions of the Madras Buildings (Lease and

Rent Control) Act and is not property which can vest in the official assignee, the foamed Counsel has cited the decision of Bhagwati J., (as he then

was) in Peregrino Rodrigues, In re ILR (1945) Bom. 702. That decision certainly supports the contention. The decision was given under the

Bombay Rent Restriction Act, 1939, and it was held that the statutory tenancy to which the insolvent became entitled by virtue of that Act was not

property within the meaning of Section 62 of the Presidency Town Insolvency Act and did not vest in the official assignee by the adjudication order

and it was not, therefore, necessary for the official assignee to disclaim any interest therein. The learned Judge followed the decision in Sutton v.

Dorf 1932 2 K.B. 304. To the same effect is the decision of the Court of Appeal in Smith v. Odder (1949) W.N. 249. It is unnecessary to go into

the facts of these cases in further detail. It is sufficient to refer to the provisions of the Madras Buildings (Lease and Rent Control) Act, 1960,

which support the contention.

6. The definition of tenant in Section 2 (8) runs thus:

Tenant means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter,

or the legal representative of a deceased tenant who had been living with the tenant in the building as a member of the tenant''s family up to the

death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in

occupation of a building by its tenant or a person to whom the collection of rents or-fees in a public market, cart-stand or slaughter-house or of

rents for shops has been farmed out or leased by a municipal council or district board or the Corporation of Madras.

7. It will be seen that under this definition the official assignee on whom the property of the insolvent would devolve u/s 17 of the Presidency

Towns Insolvency Act cannot come in. Indeed there are restrictions enacted in the Madras Buildings (Lease and Rent Control) Act, 1960, on the

right of the tenant (insolvent) to sublet or transfer the premises occupied by him. Section 10 (2) (ii) (a) of Madras Act XVIII of 1960 says that if a

tenant transfers his right or sublets the entire building or any portion thereof if the lease in his favour does not confer on him the right to do so, he is liable to be evicted on that ground by the landlord. This provision is a marked departure from the provisions of the Transfer of Property Act under

which if there is no prohibition against subletting the tenant can sublet the premises. Equally, while under the Transfer of Property Act mere non-

payment of rent will not entail eviction in the absence of express provision to that effect, under the provisions of Madras Act XVIII of 1960, non-

payment of rent will be a ground for eviction u/s 10 (2) (1). The fact that the lease may be for a fixed period is of no particular relevance on the

question of subletting under the provisions of Madras Act XVTII of 1960. The circumstances that the lease is for a fixed period will enure to the

benefit of the tenant only in the contingency of the landlord requiring the premises for his own occupation. Section 10 (3) enacts the circumstances

under which the landlord can obtain possession of his building for his own occupation. But Section 10 (3) (d) enacts:

Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this

Sub-section before the expiry of such period.

8. It is unnecessary to labour further the point that the provisions of Madras Act XVTII of 1960 have substantially modified the provisions of the

Transfer of Property Act and the provisions of the former Act will prevail.

9. The above considerations are enough to show that the right of occupation of the insolvent in the premises is not property within the meaning of

Section 17 of the Presidency Towns Insolvency Act so as to vest in the official assignee. This view, as already stated, finds support in the decision

already referred to.

10. The official assignee cited the decision in Stafford v. Levy (1946) 2 All E.R. 256; but that case is distinguishable. Though it says that there may

be some inaccuracy in the statement of facts in Sutton v. Dorf (1932) 2 K.B. 304 no doubt is cast on the proposition that where the insolvent is in

possession under a statutory tenancy that right does not vest in the official assignee. This proposition has been adopted as correct by the text book

writers also. Thus Williams on Bankruptcy, seventeenth edition, states at page 404:

A statutory tenancy under the Rent Restriction Acts is not ""property"" of the statutory tenant within the meaning of Section 167 and therefore does not pass to his trustee and cannot be disclaimed. (The decisions referred to are Sutton v. Dorf (1932) 2 K.B. 304 and Smith v. Odder (1949)

W.N. 249).

11. Similarly in Hill and Redman''s Law of Landlord and Tenant, thirteenth edition, page 1034, it is stated:

If a statutory tenant becomes bankrupt, the tenancy does not vest in the trustee in bankruptcy ...(and Sutton v. Dorf (1932) 2 K.B. 304 is cited in

support.) Similarly in Halsbury''s Laws of England, volume XXIII, paragraph 1586, page 806, it is stated:

A statutory tenant has no interest to assign, or transmit by will, or to his trustee in bankruptcy, and the cases cited in support are Sutton v. Dorf

(1932) 2 K.B. 304 and Smith v. Odder (1949) W.N. 249

11. Reference may also be made to the instructive decision of Jagadisan and Kailasam JJ., in Ganapathy v. Ayyakannu ILR (1961) Mad. 452

under the Madras Cultivating Tenants Protection Act, XXV of 1955, where also it was laid down that the interest in the land of cultivating tenant is

purely personal to him and his heirs and cannot be sublet.

12. It follows from the above discussion that the official assignee has no right to retain the keys of the premises since they were taken from the

possession of the insolvent. They must be restored to the insolvent and they cannot be handed over to the landlady. The landlady can recover

possession of the premises from the insolvent only by following the provisions of Madras Act XVIII of 1960. The right is left open.

13. As for the prayer of the insolvent to be allowed to do business in the premises, I am not inclined to grant any such permission. This, however,

is not intended to prevent him from carrying on business himself, if otherwise he is entitled to do so, so long as he observes the provisions of the

Presidency Towns Insolvency Act, 1909. For instance, the assets and profits that he acquires in the new business will vest in the official assignee

and he would be liable for punishment in the criminal Court if he borrows rupees fifty or more from a creditor without disclosing that he is an

undischarged insolvent.

14. The petition is accordingly allowed to the extent that the official assignee is directed to deliver the keys of the premises No. 90, Godown street,

to the insolvent, but is otherwise dismissed. The right of the landlady to evict the insolvent is left open.

