

(1925) 10 MAD CK 0064
In the Madras High Court

P.S. Kesavalu Naicker

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 09-10-1925

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 2(4)

Citation : AIR 1926 Mad 381 : 92 Ind. Cas. 1053 : (1926) 23 LW 233 : (1926) 50 MLJ 301

Hon'ble Judges : Phillips, J

Bench : Single Bench

Judgement

Phillips, J.—In this case the facts are as follows: The defendant's uncle, Muthuswami Naicker, put up the building "in suit 48 years ago, on

the roadside land in the Pantheon Road, for the purpose of selling aerated waters and ice. The building is a pucca masonry one and the plaintiff,

Corporation of Madras, now wishes to eject the defendant, to whom the property was given by his uncle about 1908. The defendant obtained

lease deeds for this property in 1908, 1911 and 1914 for a period of three years each. At the end of the last lease, the Corporation proposed to

sell the right to occupy the building and site at auction and notice was issued on 18th April 1917; (Ex. IV). The defendant protested against this by

a Lawyer's notice (Ex. II) and put in a petition (Ex. III) on 30th April 1917. As a result of this, a fresh lease for one year was granted to the

defendant and this was renewed for a second year in 1918 for the year 1918 1919. When the new. Municipal Act was passed, the Corporation

seems to have thought that it could not grant a lease of the suit property and they proposed to auction the property and grant a license. On 21st

February 1919, the date of the auction, no bidders turned up. On 24th February

1. 1919 the defendant went; to the Revenue"" Officer and agreed to pay a rent of Rs. 3-8-0 per mensem in respect of the suit land, and on 14th July 1919 the Corporation granted him the lease Ex. E-1. On 17th March 1920, a notice was issued, by the Corporation, that the right of putting up: a bunk on the suit site would be sold by auction. But, as a matter of fact no auction appears to have taken place, and on 9th October 1920 the Corporation issued Ex. F, which purports to be a permit, u/s 226(1), Act IV of 1919. Under this the, defendant-was permitted to occupy the, suit site for the purpose of keeping an ice depot for one year. A similar permit was issued on 4th August" 1921for the year ending 31st March 1922. On 2nd March 1922, the Corporation again proposed to auction the site and then finally on 11th November 1922 the Corporation gave a notice to the defendant to quit. The defendant replied stating that, he had held the land for a very-long period and that he was entitled to compensation under the City Tenants" Protection Act.

2. The main question for consideration here is, whether the defendant is a tenant within the meaning of the Madras City Tenants" Protection Act.

The learned City Civil Judge has found that he was not a tenant but merely a licensee. We see that upto 31st March 1920, the defendant had been obtaining leases from the Corporation for the use of the site and was undoubtedly up to that time a tenant. It is suggested that for the year 1920 the Corporation had no power to grant a lease of the suit land as it comes within the definition of public street contained in the Act. Such public streets are vested in the Corporation and although, the Corporation has not the full ownership in them, yet they have a certain proprietary right in tiro soil, and this has been recognised in Sundaram Aiyar v. Municipal Council of Madura and the Secretary of State for India in Council 12 M.L.J. 37 in which it was held that the Corporation had a certain proprietary right in the soil of public streets. Under the new Municipal Act of 1919, the Corporation is authorised to lease any Corporation Immovable property and if the Corporation has a proprietary right in public streets to the extent of that right. it can grant a lease, and even, if it had no right to grant a lease I do not think the Corporation can now contend that the lease actually granted by them in 1919 was void as being prohibited by law. Uptil March 1920 therefore, the defendant was a tenant. But it is contended

for the respondents that by the mere fact of his accepting Exs. F and G the permits u/s 226(1) he became a mere licensee. When we turn to

Section 226(1) we find that it deals with persons making holes and causing obstruction in the street, and provides that persons are forbidden to

make holes or cause any obstruction in any street unless the consent of the Commissioner is obtained. Clause (2) prescribes that, when such

permission is granted, such persons shall cause such holes or obstruction to be sufficiently barred and enclosed and shall cause such hole or

obstruction to be sufficiently lighted during the light. It is not suggested that the plaintiff's building was in any sense an obstruction to the street and

the idea of allowing him to occupy it for the purpose of keeping an ice depot from year to year has no connection with the provisions of Section

226. Section 226 deals with the temporary obstructions, which would be an offence unless permission is granted for making them. It has nothing

whatever to do with giving licenses for keeping an ice depot. The defendant never even expressed his consent to be a licensee. He and his

predecessor had been tenants of the Corporation for over 40 years and the mere fact that these extraordinary permits were issued to him and were

not refused, cannot convert that tenancy into a holding by mere license. In the absence of evidence that the defendant agreed to be a mere licensee,

I think that the mere issue of licenses would not be sufficient material to raise a presumption of a change in the nature of his possession, which had

for many years been that of a tenant. The present case, where the license is obviously a license which the Corporation has no power to issue--in

such form and in the circumstances that existed, is much stronger and the defendant must be deemed to have been holding on as a tenant after

expiry of his last lease. Even on 10th April 1920 he was treated by the Tahsildar as a tenant Of the Corporation. No attempt was made to disturb

his possession and his possession has all along been of the same nature. Whenever any change was proposed to be made, the defendant has

protested and no change has actually been made in the nature of his possession. The question then arises whether the defendant is a tenant within

the meaning of Section 2, Clause (4) of Act III of 1922. That clause reads as follows:

"Tenant" means tenant of land liable to pay rent on it, every other person deriving title from him, and includes persons who continue in possession

after the termination of the tenancy"". The defendant certainly would seem to come within the definition. It is, however, argued that in order to understand this definition, which is not in itself ambiguous, one must refer to the preamble of the Act which says: ""Whereas it is necessary to give protection to tenants who...have constructed buildings on others' lands in the hope that they would not be evicted so long as they pay a fair rent"". The rule construction is that the preamble of the Act may be referred to in a case of ambiguity or where it is necessary to interpret the Act itself so as to give effect to its purport, but it is doubtful whether the meaning of definite and unambiguous words can be strained because their natural interpretation would seem to extend the alleged scope of the Act. In any case I do not think, that in the present instance it can be said that the Act does not refer to persons in the position of the defendant. Nor am I satisfied that the defendant's position is not that contemplated by the preamble. It is difficult now to adduce evidence that the person who constructed the suit building 48 years ago did so in the hope that he would not be evicted. The oral evidence of the actual builder to that effect would not be of much value when given for the purposes of such a suit as this, but I think, that, when a man has spent a considerable sum of money in erecting a pucca masonry building on another's land there is a legitimate inference to be drawn, that he did so in the hope that he would not be evicted, an inference, which may be rebutted by other circumstances, which show that he could not have had such a hope. In the present case there is something rather more than a mere inference, for, as the learned Judge points out, ""the defendant's predecessor-in-title apparently ventured upon a brick-built structure, in view of the favour that he then enjoyed from very high officials who got ice from him"". If he enjoyed the favour of high officials (possibly officials in the employ of the plaintiff Corporation) it is difficult to suppose, that he spent his money without hoping that he would be allowed to reap the benefit of the expenditure. In that view the defendant would come within the meaning of the Act. It is argued that if the provisions of the Act are applied literally, the scope of the Act would be very materially widened beyond that expressed in the preamble. This may be so, but when the Legislature passes an enactment, its provisions must be looked to rather than the intention of the Legislature, as revealed in the discussion which preceded the passing of the Act. Construing the

Act as it stands, I must hold that the defendant is a tenant within the meaning of the Act and consequently u/s 3, is entitled on ejectment to be paid

compensation for his building. He did make an application u/s 9 but that is not pressed. This is intelligible when we remember that the plaintiff

Corporation is not the absolute owner of the plaint site and consequently what the defendant could purchase u/s 9 is only the limited interest of his

landlord. The suit will have to be remitted to the lower Court for investigation as to the value of defendant's superstructure and when, that has been

determined, the decree will have to be modified by awarding that amount to the defendant as compensation. A finding as to the amount of

compensation payable to be submitted within three weeks. Objections seven days. The defendant will have his costs of this appeal and the costs of

the lower Court will be provided for in the revised decree.

3. In compliance of the above order the City Civil Judge, Madras, submitted the following

4. I submit a report to the effect that the structure put by the defendant on public Municipal land is worth Rs. 468-15-0 and that he is entitled to

compensation at that rate before is evicted by the plaintiff.

5. The petitioner is not entitled to rental value but only to the value of the building. The finding that it is worth Rs. 465-15-0 is, therefore, accepted

and plaintiff will have a decree for possession of the land and superstructure on payment of this amount less the annual rental due by defendant

upto date of delivering possession. Each side will bear his own costs in the lower Court. The time for delivery is one month.