

(1995) 11 MAD CK 0008
In the Madras High Court

Ranjan Devasahayam

APPELLANT

Vs

Hindustan Bible Institute of India

RESPONDENT

Date of Decision : 16-11-1995

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(b), 2, 29

Citation : (1996) 1 LW 533 : (1996) 1 MLJ 510

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Judgement

Abdul Hadi, J.—The defendant/tenant has filed this second appeal against the impugned judgment and decree of the courts below

concurrently granting relief of possession of the suit building, arrears of rent and damages for use and occupation, in favour of the

respondent/plaintiff, Hindustan Bible Institute India.

2. Only two submissions were argued before me in this Second Appeal by the learned Counsel for the appellant. One is, the courts below have

erred in having concluded that G.O.Ms. No. 2000, Home dated 16th August, 1976 issued u/s 29 of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960 (hereinafter referred to as the Act) would apply to the suit building. In other words, according to him, the said G.O. would not

apply to the said building and therefore, if at all, the plaintiff could go before the Rent Controller to get an eviction order against the appellant from

the suit building and that the civil court will have no jurisdiction to try the present suit. The 2nd submission is that the plaintiff ""Hindustan Bible

Institute India"" is not the landlord of the appellant but only the ""Hindustan Bible Institute and College"" and that hence the present suit laid by the

plaintiff for ejectment of the appellant is not maintainable.

3. But the learned Counsel for the respondent argued contra, in regard to both the abovesaid submissions.

4. It must be noted here that out of the abovesaid two submissions the first one was not raised in the courts below at all and only the second one

was raised in the courts below and regarding the said second submission both the courts below did not accept the contentions of the appellant.

5. I shall first take up the abovesaid first submission. The material portion of the G.O.Ms. No. 2000, Home, 6th August, 1976 runs as follows:

...In suppression of the Home Department Notification No. II(2)/HO/3811/74, dated the 12th August, 1974, published at page 444 of Part II,

Section 2 of the Tamil Nadu Government Gazette, dated the 21st August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings

owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act.

The earlier G.O. which has been substituted by this G.O., is G.O.Ms. No. 1998, Home, 12th August, 1974, whose material portion runs as

follows:

...the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim Religious Trusts and charitable

institutions from all the provisions of the said Act.

6. Thus, while the earlier G.O. exempted all the buildings owned by the Hindu, Christian and Muslim ""religious trusts and charitable institutions"" the

latter G.O. exempted all the buildings owned by the Hindu, Christian and Muslim ""religious public trusts and public charitable trusts"". The

differences between the wordings of the two G.Os., are that the words ""Institutions"" found in the earlier G.O. has been omitted in the latter G.O.

and only the word ""trusts"" alone is used in the latter G.O. and the word ""public"" which was not there in the earlier G.O. has been introduced in the

latter G.O. But, in the present case, the learned Counsel for the appellant stressed about the former different viz., the omission of the word

institutions"" in the latter G.O. and the retention of the word ""trusts"" alone in the latter G.O. In other words, the learned Counsel submits that the

plaintiff in the present case is not a Trust and it is only a ""society"" registered under the Societies Registration Act and so cannot claim exemption

under the abovesaid latter G.O. In this connection he also relied on an unreported judgment of this Court in Mazda Ice Manufacturing Co. v.

Society for Prevention of Cruelty to Animals (SPCA), Madras C.R.P. No. 5013 of 1993, etc. dated 7.4.1989.

7. There, after extracting the abovesaid G.O.Ms. No. 2000, the following observation is made:

From a reading of the G.O. it is clear that it would apply to Institutions which are charitable in nature. As a matter of fact, Mr. Krishnamitra,

learned Counsel for the revision petitioner relies strongly upon the same and urges that SPCA being a Charitable Institution, the G.O. would

squarely apply, this argument, though attractive, clearly overlooks the important fact that it must be a charitable trust. It is not the case of either

party that this is a trust. It is merely an Association which has been registered under the Societies Registration Act. Therefore, there is absolutely no

scope for applying the G.O.

[Italics supplied]

8. Even at the outset, it must be stated that the above mentioned decision may not help the appellant very much since, there, it is not the case of

either party that SPCA is a trust. But such is not the position in the present suit where, while the learned Counsel for the appellant contends that the

plaintiff is not a trust, learned Counsel for the respondent contends contra. So, what has to be seen in the present case is that whether the plaintiff is

a "trust" which could claim exemption under G.O.Ms. No. 2000. No doubt, in the plaint, it is stated that the plaintiff is a "Christian Religious

Institution" registered as a "society" under the Societies Registration Act, 1860. It is also stated therein that the plaintiff is the owner of the suit

building and the defendant is a tenant under it. No doubt, the plaint does not say that the plaintiff is a trust. Further, the learned Counsel for the

appellant also points out that P.W. 1 the person who spoke on behalf of the plaintiff admitted thus:

8-A. But, the learned Counsel for the respondent points out that the abovesaid oral evidence of P.W. 1 should not alone be taken into account,

and that if the court sees the documentary evidence, Ex. A-2 the Memorandum of Association and Rules and Regulations of the plaintiff, which

alone would clinch the issue, it could easily come to the conclusion that the

plaintiff is a trust though it is also a ""society"" registered under the Societies Registration Act. I see force in this submission of learned Counsel for the respondent for the following reasons:

8-B. The relevant passages in Ex. A-2 are as follows:

Memorandum of Association of the Hindustan Bible Institute, India.

...The objects of the Society are:

a. To create, establish, maintain and function a Bible Institute or School for the systematic and comprehensive study of the Holy Bible, as the Word

of God and other courses of study which are academic in nature, including graduate work, and for the practical and efficient training of young

people for all kinds of Christian, Evangelistic, Missionary and educational work and to operate in the field of distributing the Holy Scriptures and

portions thereof in any and all languages, and other literature both evangelistic and academic and confer and issue such degrees, diplomas and

certificates as are usually granted for studies completed and work accomplished.

b.

c.

d.

e. The income and property of this Institute, wheresoever and howsoever derived shall solely be applied toward the promotion of the objects of

the society....

f. The object of the Society is that the members are not to derive any benefit from the funds of the society.

The first Members of this Society shall be twelve (12) in number.

Particulars of the Present Governing Body Members.

1.

2.

12. ...(12 persons" names are given).... The Rules and Regulations of the Hindustan Bible Institute.... The following members of the Institute

designated ""Directors"" shall be:

1.

2.

12.

The above Directors will continue in Office.... The Directors for the time being shall be the Trustees of the Society. All the properties of the

Society...shall vest with the Governing Body...." [Italics supplied] I also find that the abovesaid 12 named Directors are the same 12 who are the

earlier referred to Governing Body Members.

9. On reading of the abovesaid relevant portions of Ex. A-2 the memorandum of association and Rules and Regulations of the Institute, it is clear

that the plaintiff though a society, is also a trust and its properties are trust properties. The above referred to directors mentioned in Ex. A-2 are

stated to be the "Trustees" of the society. Further, the said properties of the society are said to vest with the said trustees (directors). Further, it is

also seen from the above passages that the income and property of the abovesaid institute shall solely be applied towards the promotion of the

abovesaid objects of the society and the members of the society are not to derive any benefit from the funds of the society. From this also, it can

be inferred that there is a dedication of the said properties for the promotion of the abovesaid religious and charitable objects of the society.

Further, on a reading of the above referred to main objects of the society, it is clear that it is a public religious and charitable trust. It is religious

because it is established for the studying of the Holy Bible. It is also charitable because it is also for the study of other courses of study which are

academic in nature including graduate work and for practical and efficient training of young people for all kinds of educational work. Further,

simply because P.W. 1 has deposed that the plaintiff is not trust, but only society, it cannot be held that the suit buildings is not a trust property,

particularly when the material documentary evidence Ex. A-2 shows that the suit building is a trust property. Therefore, there is no difficulty in

holding that G.O.Ms. No. 2000 would apply to the plaintiff.

10. I shall now come to the second submission made by the learned Counsel for the appellant. As already mentioned, the plaintiff is ""Hindustan

Bible Institute India"". In Ex. A-11 lease deed between the parties, the lessor is shown as ""Hindustan Bible Institute and College"". Therefore, the

contention of the learned Counsel for the appellant is that the plaintiff is not the lessor and that a wrong plaintiff has instituted the suit.

11. In this connection, before proceeding further, I may extract the discussion in this regard by the lower appellate court which is as follows:

The defendant D.W. 1 who is the appellant, admits that he is a tenant in respect of the suit building inducted by its owner, named Hindustan Bible

Institute and College, under the Lease Deed. Ex. A-11, executed by the defendant tenant and also the lessor. The name of the Lessor-

Organisation is also shown as Hindustan Bible Institute and College-in various other correspondences, such as Exs. A-8 and A-9. Ex. A-10,

which is a running account paper, written by plaintiff showing collection of rents, also bears the name Hindustan Bible Institute and College,

Madras-10, being the lessor. Two postal covers addressed to the defendant, but returned to the plaintiff, without service, marked as Exs. A-3 and

A-4, have also emanated from Hindustan Bible Institute and College Madras. The Memorandum of Association plus the Rules and Regulations of

the organisation, marked as Ex. A-2, described the name as ""The Hindustan Bible Institute India"", without the words, ""and College"". The certificate

of registration of societies, which certifies that the organisation is a registered one, Ex. A-1 gives, the name of the registered body as the Hindustan

Bible Institute, India, again without the words ""and College"". Relying upon the difference between the two names, consisting of the omission of the

words ""and college"" in the Registration Certificate and the Memorandum of Association Ex. A-2, the defendant/appellant has raised his content on

that the body called Hindustan Bible Institute, India, which is the plaintiff, is not the lessor...the defendant wants the suit to be dismissed on the

ground that the plaintiff under the given name and style is not a registered society and it is not the lessor in Ex. A-11 Lease Deed under which the

defendant was inducted as a tenant. P.W. 1 Peter Jabamani has clarified in his evidence that Hindustan Bible Institute, India, has established a

College and hence it is also popularly called as Hindustan Bible Institute and College, Madras, and that it is only a limb of the registered body

called Hindustan Bible Institute, India. Merely because the Lease Deed Ex. A-11 gives the Lessor's name as Hindustan Bible Institute and

College, one cannot take it as a separate organisation, having no connection with Hindustan Bible Institute India, which is the registered body,

doing religious and charitable services. In the evidence of P.W. 1 he has deposed that now there is a proposal to change the name Hindustan Bible

Institute, India, into Hindustan Bible Institute and College, and therefore, the Institution by whatever name it is called, is one and the same. He has

added that steps have been taken to have the new name of the same body i.e., Hindustan Bible Institute and College, registered under Societies

Registration Act, Taking all these facts into consideration, we can easily conclude that the lessor Hindustan Bible Institute and College is not

different from the plaintiff styled as Hindustan Bible Institute, India.

12. Thus, though in Ex. A-11 and other documents mentioned in the abovesaid extracted passages of the lower appellate court judgment, the

lessor is shown as ""Hindustan Bible Institute and College: I do not think that the suit instituted by Hindustan Bible Institute India could be held to be

not maintainable, for the following reasons. In the plaint, the plaintiff Hindustan Bible Institute India is specifically stated to be the owner of the suit

building, and the defendant is stated to be tenant under it of the suit building. As against this allegation in para. 3 of the plaint, the defendant in its

written statement admits that the defendant is tenant of the suit property and also pleads that the defendant tendered the rent to the ""plaintiff"".

Further, in the written statement, there is also no denial of the allegation in the plaint that the plaintiff as the owner of the suit building. In the above

circumstances, it is clear that the defendant himself has also accepted the plaintiff as lessor or, at lessor he treated the plaintiff as well as the

Hindustan Bible Institute and College"" as one and the same person. At any rate so far as the defendant is concerned, there was no doubt

regarding the identity of his lessor. Therefore, the suit cannot be thrown out on the ground that it has been filed by a wrong person.

12-A. Further, from there evidence of P.W. 1 it is clear that the name of the plaintiff which was originally ""Hindustan Bible Institute India"" was

sought to be changed into ""Hindustan Bible Institute and College"" though the application made in that regard appears to be pending and the new

name has not been officially registered by the authority concerned under the Societies Registration Act. This is proved by the following evidence

given by P.W. 1:

Hindustan Bible Institute and College

From this evidence, it is also clear that ""Hindustan Bible Institute India"" and ""Hindustan Bible Institute and College"" are not two different persons.

For the abovesaid reason also, the suit cannot be thrown out on the ground that a wrong person has instituted the suit.

13. In the light of the view I have taken, regarding either of the abovesaid two submissions, based on the abovesaid factual position I do not think,

there is any necessity to deal with various decisions cited on either side.

13-A. Likewise, there is no necessity to deal with, in any detail, the submission of the learned Counsel for the appellant that Section 10(3)(b) of the

Act would be come otiose if the contention of the learned Counsel for the respondent is accepted. Section 10(3)(b) of the act only deals with

institution"" spoken to therein. I have already held that the suit building is the property of a ""Trust"" coming within G.O.Ms. No. 2000 and so the

Act will not apply and the plaintiff cannot before the Rent Controller for eviction of the tenant from the said building and so there is no scope at all

for considering the alleged effect of the said G.O. on Section 10(3)(b) of the Act.

14. Therefore, the second appeal is dismissed with costs. Consequently C.M.P. No. 14498 of 1995 is dismissed.