

(1983) 08 MAD CK 0038
In the Madras High Court

Shantha Ammal and Others

APPELLANT

Vs

Arasadi Karpaga Vinayagar Temple

RESPONDENT

Date of Decision : 05-08-1983

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41

Citation : (1983) 96 LW 663 : (1984) 1 MLJ 36

Hon'ble Judges : M. Fakkir Mohammed, J

Bench : Division Bench

Judgement

M. Fakkir Mohammed, J.—Defendants 2 to 4. in ejectment suit No. 156 of 1975 on the file of the IV Judge, Court of Small Causes, Madras, are the revision petitioners. The plaintiff filed the suit for ejectment of the first defendant from the suit building in his capacity as the Managing Trustee of a private trust. Subsequently, the first defendant died and the revision petitioners were added as his legal representatives. At the time when the suit was filed, Tamil Nadu Act XVIII of 1960 was in force and G.O. No. 1998 of 1974 had exempted all trusts, whether private or public, from the operation of the said Act. Therefore, it was that the plaintiff had to file the ejectment suit instead of approaching the Rent Controller. Subsequently, G.O. No 2000 of 1976 was notified by the State Government in suppression of all the previous Government Orders to the effect of exempting only public trusts from the operation of the Tamil Nadu Act XVIII of 1960 After the issue of the second Government Order, the revision petitioners filed an additional written statement raising the plea that the suit is not maintainable in the civil Court, since the property belonged to the private trust and since the previous Government Order stood superseded by the subsequent Government Order notified in 1976. Necessary issue as to the maintainability of the ejectment suit was also framed. The parties went to trial and the trial Court inter alia held that the subsequent G.O. No. 2000 of 1976 has no retrospective operation and the suit having been filed validly, while the previous Government Order was in force, the plaintiff was entitled to proceed with the trial of the suit and get a decree. The suit was ultimately decreed in favour of the plaintiff. u/s

41 of the Presidency Small Causes Courts Act, the present revision has been filed challenging the finding of the trial Court on the issue of maintainability.

2. It is not disputed that the subsequent G.O. No. 2000 of 1976 does not contain any specific provision of giving retrospective effect to the proceedings that were initiated before the said Government Order was notified. The learned Counsel for the revision petitioners contends that even though no specific words are found giving retrospective effect to the said Government Order, it contains words of supersession of all the previous Government Orders and that, therefore, the retrospective operation is a matter of inference. It has been held in *Chellappa Sebastian and Another Vs. R.C. Diocese and Others*, and *Ethirajammal v. N. Hassan Khanoo alias N.M. Hassan* (1977) 90 L.W. 597 : AIR 1977 Mad. 327, that there can be no retrospective operation of a Government Order unless the Government Order contains specific words to that effect. The above principle has been further confirmed by a Bench of this Court in *Sengalatteer Pillaiyar Temple, Koranadu v. Manickam Chettiar* (1977) 90 L.W. 162. The trial Court has relied upon the decisions rendered in *Chellappa Sebastian and Another Vs. R.C. Diocese and Others*, as well as *P. Ethirajammal Vs. N. Hassan Kanno*, and held that the subsequent Government Order has no retrospective operation u/s 6 of the General Clauses Act also any words of supersession in a subsequent enactment cannot have any effect of retrospection. Therefore, the contention of the learned Counsel for the revision petitioners has to be repelled

3. The further contention advanced by the learned Counsel for the revision petitioners is that even though the subsequent Government Order has no retrospective effect and the suit filed by the respondent herein is held to be a valid suit, at least from the date of notification of the subsequent Government Order, the tenant is entitled to claim benefit under the Government Order and hence the plaintiff can work out the decree, if any passed, only subject to the provisions contained in the subsequent Government Order and in support of such contention, has relied upon *P. Ethirajammal Vs. N. Hassan Kanno*. The relevant observation relied on by the learned Counsel for the revision petitioners is found at page 597 which reads as follows:

The suit was filed for ejectment of a tenant prior to coming into force of the Madras Amendment Act XXIII of 1973 to the Madras Buildings (Lease and Rent Control) Act, XVIII of 1960 on the footing that the building was constructed in 1965, and was hence exempt from the application of the Act u/s 30 (1). When the suit was pending in the trial Court, the Amending Act came into force, and according to the amended provision, even a building constructed after the commencement of the Act would have exemption from the provisions of the Act only for a period of five years from the date of completion of the construction. The trial Court passed a decree for possession after holding that the Amending Act was not retrospective and that it did not affect pending proceedings. The lower appellate Court modified the decree by stating that the decree is made subject to the provisions of Act XVIII of 1960 and the effect of the decree passed

by the first appellate Court was that the landlord had to go before the Rent Controller and make out a ground for eviction u/s 10 of the Act before ever the decree can be executed

Held : In this case, the trial Court cannot grant a decree ignoring the amendment. The decree passed by the first appellate Court is right.

With reference to the principles enunciated in the above paragraph, the learned Counsel for the respondent, citing a Bench decision in the same volume at page 162, pointed out the subtle distinction between the effect of amendment of the enactment by the Amending Act and the suppression of the earlier executive Government Order by a subsequent Government Order and contended that by virtue of the executive Government Order, the right accrued already to a party under the earlier Government Order cannot be nullified. In support of such contention, the learned Counsel has referred to the observations made in paragraph 16 at page 167. The relevant portion in paragraph 16 reads thus:

At the time of hearing of the revision petition before Paul, J., preliminary objection was raised on behalf of the tenant to the effect that pending the revision petition, the building became the subject of exemption from all the provisions of the Act including Section 25 under the Government's notification dated 12th August, 1974, and hence the revision did not lie. Paul, J., accepted this contention, and dismissed the civil revision petition. On behalf of the temple authorities it was argued before the learned Judge that the notification would not apply retrospectively so as to affect the revision petition pending before this Court. The learned Judge, however, expressed the opinion that in view of the fact that the Government, by its notification, had removed all buildings belonging to religious trusts from all the provisions of the Act, this Court's jurisdiction to pass any order in revision u/s 25 in regard to the premises in question had come to an end. In the course of his judgment, the learned Judge observed:

This is a case, where under the statute itself, power was given to the Government to exempt any premises from the operation of all or any of the provisions of the Act.

This passage shows that the learned Judge apparently thought that since power was given to the executive to exempt any premises from the operation of the Act, the order of exemption, when actually exercised, must be construed to have retrospective operation for no other reason than that the notification was issued by the executive in exercise of such powers. This is only another way of saying that that the very exercise of power is a justification for construing it retrospectively. Earlier in our judgment, we have referred to the principle enunciated by the Supreme Court in its decision in *Income Tax Officer, Alleppey Vs. M.C. Poonnoose and Others*, That decision, we may repeat, is authority for the position that whatever might be the principle applicable to retrospective legislation and retrospective rule-making, the exercise of executive power, as such, cannot be carried out with retrospective effect unless the enabling statute

expressly and specifically conferred such a power. Obviously, the decision of the Supreme Court was not cited before Paul, J., (sic) with results that are obvious from the judgment reported""'. (Underlining by Court).

After making such observations, the Bench has referred to Chellappa Sebastian and Another Vs. R.C. Diocese and Others, , and made the following observations:

On appeal, the Appellate Authority confirmed the order of the Rent Controller by order, dated 3rd April, 1975. Against that decision, the tenants moved this Court in revision. Before Gokulakrishan, J., who heard the revision petition, it was contended for the first time, that in view of the notification of the Government, dated 12th August, 1974 exempting buildings belonging to Christian religious trusts and institutions from the operation of the Act the order of eviction could not be confirmed by the Appellate Authority as had been done in the case. It was urged that at the time when the notification was issued on 12th August, 1974 the appeals were pending before the Appellate Authority and they came to be disposed of only subsequently on 3rd April, 1975. This contention was, however, repelled by the learned Judge, who held that Section 25 of the Act "has not empowered the Government to pass any Government Order giving retrospective effect for such exemption". The attention of Gokulakrishan, J., was drawn to the Judgment of Paul, J, but he felt bound to apply the principle enunciated by the Supreme Court in Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others, . We are in agreement the conclusion of Gokulakrishan, J.

The above observations directly apply on all fours to the contentions raised by the learned Counsel for the revision petitioners. Therefore, on the principles laid down by the Division Bench of this Court in P. Ethirajammal Vs. N. Hassan Kanno, , It is not open to the revision petitioners to urge that even though the subsequent Government Order No. 2000 of 1976 has no retrospective operation, the tenant is entitled to plead non-maintainability of the suit on the basis of the exemption at least from the date of the subsequent Government Order. It was in such similar situation in Chellappa Sebastian and Another Vs. R.C. Diocese and Others, , Gokulakrishnan, J., has held that the proceedings cannot be abruptly stopped by indirectly invoking the retrospective operation in the Government Order which really has no such operation. Therefore, the contention of the learned Counsel for the revision petitioners cannot be countenanced. It follows, therefore, that the finding of the trial Court requires to be sustained, as the same is quite correct and the civil revision petition stands dismissed with costs. Two months" time is granted from this date to the revision petitioners for vacating the suit building, on condition that the revision petitioners pay all the arrears of rent upto date, failing which the time granted will not enure to their benefit.