
(2008) 09 MAD CK 0064
In the Madras High Court
Case No : A.S. No. 42 of 2002

Singer India Limited

APPELLANT

Vs

Christ Church

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 29 Rule 2
Constitution of India, 1950 — Article 12, 14, 226, 32
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29
Transfer of Property Act, 1882 — Section 111

Citation : (2008) 09 MAD CK 0064

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : T.L. Ram Mohan for R. Madanagopal, for the Appellant; N.D. Bahety, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This appeal has been directed against the decree and judgment in O.S. No. 1497 of 1998 on the file of

the VI Additional Judge, City Civil Court, Chennai. The defendant in O.S. No. 1497 of 1998 on the file of the VI Additional Judge, City Civil

Court, Chennai, is the appellant herein. The plaintiff has filed the suit for recovery of vacant possession in respect of the plaint schedule property

from the defendant and also for past and future mesne profits and also for damages for illegal use and occupation of the premises.

2. The averments in the plaint sans irrelevant particulars are as follows:

The plaintiff is the owner of the plaint schedule property bearing Door No. 55, Anna Salai, Chennai-2. The plaint schedule property is exempted

from the scope and purview of the Tamil Nadu Buildings (Lease and Rent Control)

Act 18 of 1960 as amended under G.O. Ms. No. 2000,

Home, dated 16.8.1976. The defendant is the tenant under the plaintiff in respect of the plaint schedule property for a monthly rent of Rs. 10,000/-

. The tenancy being from month to month according to English calendar, a sum of Rs. 1 lakh has also been paid by the defendant to the plaintiff

towards advance. The plaintiff has terminated the tenancy under the suit notice dated 30.6.1997 by the expiry of 1.8.1997. Even after the receipt

of the said notice the defendant has failed to quit and deliver the vacant possession of the plaint schedule property. Since the rent fixed by the

parties for the plaint schedule property was very low, the plaintiff at the first instance negotiated with the defendant for the payment of a reasonable

rent according to the prevailing rent in the locality. Since the negotiation failed, the plaintiff has decided to start a computer centre in the plaint

schedule property not only for the benefit of the children studying in the school but also for the general public. Therefore, the plaintiff had

terminated the said tenancy of the defendant, calling upon the defendant to pay a sum of Rs. 1 lakh per month as damages for the illegal use and

occupation of the plaint schedule property by the defendant after the termination of the said tenancy from 1.8.1997. The defendant is still

continuing to pay a sum of Rs. 10,000/- only to the plaintiff every month, and as such after giving credit to the sum of Rs. 1,00,000/- paid as

advance and a further sum of Rs. 60,000/- from 1.8.1997 to 28.2.1998 @ Rs. 10,000/- per month total aggregating to Rs. 1,60,000/- there is still

a balance to the plaintiff towards the said total damages of Rs. 7,00,000/- (from 1.8.1997 to 28.2.1998 @ Rs. 1 lakh per month), and which too

the defendant has failed and neglected to pay. Hence, the suit.

3. The defendant in their written statement would contend that the defendant M/s. Singer India Limited is a company incorporated under the

Companies Act, 1956, represented by its Law Officer and Power of Attorney Mr. R. Gunasekaran. The present suit filed by the plaintiff is not

maintainable. The notice issued by the plaintiff is not in accordance with Section 106 of the Transfer of Property Act, 1882, as the same does not

expire with the end of the month of tenancy. The suit is not maintainable and is liable to be dismissed as the same is not in accordance with the

provision under Order 29 Rule 2 of CPC. No service was effected at the

Registered Office of the defendant company. The suit is not maintainable since the plaintiff after the issuance of the notice has been accepting the rent and thereby has waived the notice of alleged termination. The defendant is now having its branch office at Chennai at Door No. 17-A, Muthiyal Naidu Street Little Mount, Saidapet, Chennai-15. The defendant became a tenant of the suit property in the year 1952. At the request of the plaintiff the rent was increased to Rs. 2,500/-. Now the rent has further been increased and the defendant is paying the rent at the rate of Rs. 10,000/- per month at present. The plaintiff is still holding the advance amount of Rs. 1 lakh paid by the defendant. There is no valid notice as contemplated u/s 106 of Transfer of Property Act, 1882, issued by the plaintiff. As such the suit is not maintainable under law. The plaintiff demanded higher rent for the suit premises. However, considering the request on charity ground the defendant offered to increase the rent to Rs. 25,000/- per month. But reasons best known to the plaintiff, the defendant's offer of rent of Rs. 25,000/- per month was rejected by the plaintiff. The claim of Rs. 1 lakh per month towards damages for illegal use and occupation is also not maintainable. The plaintiff is not entitled to claim the rent more than the prevailing rent of Rs. 10,000/- per month. The plaintiff is not entitled to adjust the advance of Rs. 1 lakh towards the alleged claim of damages. The defendant is not liable to pay the sum of Rs. 7 lakhs as claimed in the plaint towards damages. There is no cause of action for the plaintiff to file the suit. The calculation memo filed by the plaintiff is totally false. A sum of Rs. 60,000/- paid by the defendant was towards rent and not towards damages as falsely alleged in the memo of calculation by the plaintiff. The plaintiff is not entitled to claim Rs. 5,40,000/- together with interest towards damages. The defendant is paying the rent without any default. Hence, the question of interest does not arise. Hence, the suit is liable to be dismissed with costs.

4. The learned trial Judge has framed 9 issues for trial. The Secretary of the plaintiff viz. Mr. Kolin Reymond was examined as P.W.1 and Ex.A.1 to Ex.A.3 were exhibited on the side of the plaintiff. The power of attorney agent of the defendant was examined as D.W.1 and no document was marked on the side of the defendant. After meticulously going through the evidence both oral and documentary and after giving due consideration

to the submission made by the learned Counsel on both sides, the learned trial Judge has decreed the suit relegating the question of mesne profits

to a separate proceedings under Order 20 Rule 12 of CPC. Aggrieved by the findings of the learned trial Judge, on behalf of the defendant this

appeal has been preferred.

5. The points for determination in this appeal are as follows:

1) Whether the trial Court is correct in law to pass a judgment for delivery of vacant possession in lieu of the ratio laid down by the Honourable

Apex Court in AIR 1985 (1) SCC 290 and Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, ?

2) Whether the notice to quit u/s 106 of the Transfer of Property Act issued by the plaintiff is valid under law?

3) Whether the decree and judgment of the learned trial Judge in O.S. No. 1497 of 1998 on the file of the VI Additional Judge, City Civil Court,

Chennai, is liable to be set aside for the reasons stated in the memorandum of appeal?

6. Point No. 1:- The learned senior counsel Mr. Ram Mohan appearing for the appellant focusing the attention of this Court to the plaint para 6

would contend that the plaintiff had filed the suit for recovery of possession on the ground that the plaint schedule property is required for the

plaintiff to start a computer centre in the plaint schedule property for the benefit of the children studying in the plaintiff's school and also for the

general public, and that while disposing of the suit the learned trial Judge has failed to consider the aspect whether the requirement of the plaintiff

for starting a computer centre at the plaint schedule property is genuine or not, as per the ratio decidendi in AIR 1985 (1) SCC 290 (S.

Kandaswamy Chettiar v. State of Tamil Nadu and Anr.). The short facts of the above said ratio runs as follows:

Writ petitions and civil appeals by special leave were filed by the petitioners and appellants, who are tenants under the landlord, which is a Hindu,

Christian and Muslim religious public trusts and also public charitable trusts in the State of Tamil Nadu. Under the writ petitions the tenants have

challenged the legality and validity of the total exemption granted to all such buildings from all the provisions of the Tamil Nadu Buildings (Lease

and Rent Control), Act, 1960 (Tamil Nadu Act 18 of 1960) (for short "the Act") in

exercise of the powers conferred upon the State Government

u/s 29 of the Act. u/s 29 of the Act the Government can exempt any building or class of buildings from all or any of the provisions of this Act. The

Government had passed G.O. Ms. No. 1998 (Home) dated August 12, 1974, in exercise of its powers u/s 29 exempting all the buildings all the

buildings owned by the Hindu, Christian and Muslim religious trusts and charitable institutions from all the provisions of the Act. But subsequently

by a fresh G.O. Ms. No. 2000 (Home) dated August 16, 1976, the State Government, in super session of the earlier notification dated August 12,

1974, confined the exemption to all buildings owned by the Hindu, Christian and Muslim religious public trust and public charitable trust.

The tenants have challenged the aforesaid notification granting total exemption to all buildings belonging to the Hindu, Christian and Muslim

religious public trusts and public charitable trusts from all the provisions of the Act on three grounds - (a) that Section 29 of the Act suffers from

the vice of excessive delegation of legislative powers inasmuch as it vests in the State Government unguided and uncontrolled discretion in the

matter of granting exemptions and is, therefore, violative of Article 14 of the Constitution, (b) that the notification dated August 16, 1976 deprives

the tenants of all such buildings (buildings belonging to Hindu, Christian and Muslim religious public trusts and public charitable trusts) of the equal

protection of the beneficial provisions of the Act which is available to the tenants of other buildings and as such the same is discriminatory offending

against the equal protection clause of Article 14 and (c) that in any event the total exemption from all the provisions of the Act granted to such

buildings, where partial exemption would have sufficed, is excessive, unwarranted and unsupportable.

The State Government and the respondent landlords have refuted all the grounds on which the exemption has been challenged.

While disposing of the writ petitions as well as the Civil Appeal, the honourable Apex Court has held as follows:

In other words the Legislature itself has made a rational classification of buildings belonging to Government and buildings belonging to religious,

charitable, educational and other public institutions and the different treatment accorded to such buildings obviously proceeds on the well-founded

assumption that the Government as well as the landlords of such buildings are not expected to and would not indulge in rack-renting or

unreasonable eviction. These and similar other provisions crystallize the policy and purposes of the Act and furnish the requisite guidance which can

legitimately govern the exercise of power conferred on the State Government u/s 29 of the Act. The guidance thus afforded may illustratively be

indicated by stating that the power to grant exemptions or make exceptions could be legitimately exercised by the State Government in areas or

cases where the mischief sought to be remedied by the Act is neither prevalent nor apprehended as also in cases (individual or class of cases)

where a uniform or inflexible application of the law is likely to result in unnecessary or undue hardship (here to landlords) or in cases where the

beneficial provision is likely to be or is being abused by person for whom it is intended (here the tenants). The question is whether in issuing the

notification dated August 16, 1976 the State Government has exercised the power in conformity with such guidance and the same is valid as not

offending Article 14 of the Constitution.

Relying on the above said passage in the above said dictum of the Honourable Apex Court the learned senior counsel Mr. Ram Mohan for the

appellant would contend that the plaintiff has specifically pleaded in the plaint that they require the plaint schedule property only for the purpose of

starting a computer centre for the benefit of the children studying in the plaintiff's school and also for the general public. But in the absence of any

material placed before the trial Court to show that any concrete steps have been taken for starting a computer centre in the plaint schedule

property, the learned trial Judge has decreed the suit thereby directing the defendant to handover the vacant possession of the plaint schedule

property to the plaintiff, which is not the intention of the legislator u/s 106 of the Transfer of Property Act.

6(a) For the same proposition of law the learned senior counsel Mr. Ram Mohan for the appellant could also rely on Dwarkadas Marfatia and

Sons Vs. Board of Trustees of the Port of Bombay, . The relevant observations relied on by the learned senior counsel in the above said ratio are

as follows:

Our attention was also drawn to the decision in Rampratap Jaidayal v. Dominion

of India 1952 LR 54 Bom 927, 934, where the Chief Justice

Chagla observed as follows:

It is not too much to assume, as the legislature did in this case assume, that the very government whose object was to protect the tenants and

prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those very things which it sought to

prohibit its people from doing, and therefore the underlying assumption of this exemption is that government would not increase rents and would

not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose.

This Court in Baburao Shantaram More Vs. The Bombay Housing Board and Another, had to consider Section 4 of the Bombay Rents, Hotel

and Lodging House Rates Control Act, 1947, and so far as material for our present purpose explained the basis of exemption u/s 4 as that the

government or local authority or the Board would not be actuated by any profit making motive so as to unduly enhance the rents or eject the

tenants from their respective properties as private landlords are or are likely to be. In other words, this Court recognised that the basis of

differentiation in favour of the public authorities like the respondent, was on the ground that they would not act for their own purpose as private

landlords do, but must act for public purpose.

Our attention was also drawn by Mr. Chinai, learned Counsel for the appellant, to the observations in Administrative Law by wae, 5th edition at

page 355. It was stated therein as follows:

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely ? that is to say, it can validly be used in the right and

proper way which Parliament when conferring it is presumed to have intended.

It was urged that the respondent did not enjoy any special privileges/powers or benefits vis-a-vis such activities by virtue of its being a local body

or government character. In the premises, it was contended that such a body stands on the same footing as any other citizen and will, in respect of

such activity, not be subjected to public law duty.

We are unable to accept the submissions. Being a public body even in respect of its dealing with its tenant, it must act in public interest, and an

infraction of that duty is amenable in examination either in civil suit or in writ jurisdiction.

Our attention was drawn to the observations of this Court in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . Reliance was also

placed on the observations of this Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , in support of the contention that the

public corporations dealing with tenants is a contractual dealing and it is not a matter for public law domain and is not subject to judicial review.

However, it is not the correct position. The *Escorts* Decision reiterated that every action of the State or as instrumentality of the State, must be

informed by reasons. Indubitably, the respondent is an organ of the State under Article 12 of the Constitution. In appropriate cases, as was

observed in the last mentioned decision, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article

32 of the Constitution. But it has to be remembered that Article 14 cannot be construed as a charter for judicial review of State action, to call upon

the State to account for its actions in its manifold activities by stating reasons for such actions.

The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the

respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not

whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must

act in certain manner, such bodies must make good such presumption while acting by virtue of such privilege. Judicial review to oversee if such

bodies are so acting is permissible.

The High Court had relied on the observations of this Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu*

and *Others Vs. State of Jammu and Kashmir and Another*, that the State was not totally freed of the duty to act fairly and rationally, merely

because it could do so under a contract. The High Court stated that though it might be accepted that a public body like the respondent should not

act unreasonably or unfairly but it did not follow that every time they decided to take action against the contractual tenants, they had to decide the

said action in terms of fairness, equity and good faith. In support of this proposition, reliance was placed on the observations of this Court in Life

Insurance Corporation of India Vs. Escorts Ltd. and Others, . In this connection, Mr. Chinai appearing for the appellant reiterated before us as he

did before the High Court, that the basis of the legitimate assumption or expectation of which the statutory exemption had been granted by the

legislature to the Bombay Port Trust provided a guideline or touchstone by which the conduct of the public authority which had been granted

exemption, should be judged. And, according to him, the necessity of eviction in the instant case, must have been only in the public interest.

Relying on the above said ratio decidendi the learned senior counsel would contend that the learned trial Judge without adverting to the fact

whether the requirement of the plaintiff for starting a computer centre in the plaint schedule property is genuine and bona fide, had decreed the suit

which warrants interference from this Court. But it is pertinent to note at this juncture that this points were not at all raised before the trial Court by

the defendant / appellant herein in their written statement. But while examining P.W.1 a suggestion was put to P.W.1 and an answer was extracted

from P.W.1, so to say adverse to the interest of the defendant, to the effect that preparations have been made by the plaintiff for starting a

computer centre in the plaint schedule property. The answer to the question put on the side of the defendant to the effect that there was no plan

prepared for the building and no estimate was prepared for starting a computer centre by P.W.1 is of no way strengthen the case of the defendant

because only in the existing suit building the plaintiff wants to start a computer centre for which no new approval of plan is necessary and it is not

the botheration of the defendant about the expenditure that is to be incurred by the plaintiff for starting a computer centre in the plaint schedule

property. When this point was argued by the learned Counsel on both sides, the learned Counsel for the respondent informed this Court that after

the defendant vacated the suit premises on 30.11.2004, the plaintiff has started the computer centre in the plaint schedule property for the children

studying in the school and also for the general public. In lieu of the above said submission made by the learned Counsel for the respondent, this

Court has also directed the learned Counsel for the respondent to file an affidavit to that effect in the course of the day. (At 3.40 pm the learned

Counsel for the plaintiff / respondent herein filed an affidavit stating that from November-2004 onwards, the plaintiff has started the computer

centre in the plaint schedule premises and also running a kindergarten nursery in the suit premises. The said affidavit is recorded.) Under such

circumstance, the contention of the learned Counsel appearing for the appellant that the relief asked for under the plaint, in the absence of any

evidence as to show that the suit building is required by the plaintiff for the purpose of starting a computer centre is not maintainable, holds no

water. Hence, I hold on Point No. 1 that the relief granted by the trial Court for recovery of possession cannot be interfered with for the reasons

adverted to by the learned Counsel appearing for the appellant relying on the ratio decidendi in AIR 1985 (1) SCC 290 (S. Kandaswamy Chettiar

v. State of Tamil Nadu and Anr.) and Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, . Point No. 1 is answered

accordingly.

7. Point No. 2:- The other limb of argument advanced by the learned senior counsel for the appellant is that the notice u/s 106 of the Transfer of

Property Act is not maintainable on the ground that the plaintiff has asked the defendant to vacate and handover possession of the plaint schedule

property on or before 1.8.1997, which is against the provisions of Section 106 of the Transfer of Property Act, under which the plaintiff ought to

have asked the defendant to vacate and handover possession of the plaint schedule only on the expiry of the last date of the month. Section 106 of

Transfer of Property Act reads as follows:

Duration of certain leases in absence of written contract or local usage__

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes

shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable

property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen

days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in Sub-section(1) shall commence from

the date of receipt of notice.

(3) A notice under Sub-section(1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified

under that Sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that Sub-section.

(4) Every notice under Sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party

who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if

such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Ex.A.1 is the copy of the suit notice dated 30.6.1997 issued by the plaintiff to the defendant requiring him to vacate and handover vacant

possession of the plaint schedule property ie, D. No. 55, Anna Salai, Chennai-2, on or before 1.8.1997. As u/s 106(1) of Transfer of Property

Act, the lease in respect of the suit property is not for agricultural or manufacturing purpose, the lease is for a monthly rent of Rs. 10,000/- and the

tenancy is for month to month on the English calendar and the same is terminable by 15 days notice and as per Section 106(2) of Transfer of

Property Act the period for termination will commence from the date of receipt of notice. Ex.A.2 is the acknowledgment card for the defendant

having received the original of Ex.A.1-notice dated 6.7.1997. So under the law the defendant is liable to vacate and handover vacant possession

of the suit premises on or before 31.7.1997. As per Section 111 of Transfer of Property Act, a lease can be determined by efflux of time or by

conditions on the happening of some event; or when the interest of the lessor in the property terminates on, or his power to dispose of the same

extends only to the happening of any event by the happening of such event; or in case the interests of the lessee and the lessor in the whole of the

property become vested at the same time in one person in the same right; or by express surrender that is to say, in case the lessee yields up his

interest under the lease to the lessor, by mutual agreement between them; or by implied surrender; or by forfeiture; or on the expiration of a notice

to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. The suit notice u/s 106 of

Transfer of Property Act under the original of Ex.A.1 was issued by the plaintiff only as per the provisions contained in Section 111(h) of the

Transfer of Property Act, 1882. Under such circumstance, it cannot be said that the notice issued by the plaintiff u/s 106 of the Transfer of

Property Act under the original of Ex.A.1 is in contravention to the provisions of law. Point No. 2 is answered accordingly.

8. Point No. 3:- In view of my discussions and findings in the earlier paragraphs, I hold on Point No. 3 that the decree and judgment of the learned

trial Judge in O.S. No. 1497 of 1998 on the file of the VI Additional Judge, City Civil Court, Chennai, need not be set aside for the reasons stated

in the memorandum of appeal.

9. In fine, the appeal is dismissed confirming the decree and judgment of the learned trial Judge in O.S. No. 1497 of 1998 on the file of the VI

Additional Judge, City Civil Court, Chennai. No costs. At this juncture, the learned Counsel appearing for the appellant would contend that as

against the findings of the learned trial Judge in a petition filed under Order 20 Rule 12 of CPC the appellant herein had preferred a revision and

the same was disposed of by this Court on 14.7.2008 (CRP.NPD. No. 23 of 2006 and CMP. No. 156 of 2006) and this Court has remanded

the matter for fresh disposal. It is made clear that while disposing of the petition under Order 20 Rule 12 of CPC, the trial Court need not be

carried away by any of the observations made in this appeal.