

(2012) 12 MAD CK 0058

In the Madras High Court

Case No : C.R.P. (PD) No. 1626 of 2008, C.R.P. (NPD) No. 1580 of 2006 and M.P. No. 1 of 2008

Sivanandan

APPELLANT

Vs

Sathyabama Ammal (since deceased) and others

Sathyabama Ammal and others Vs Jayabalan and others

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2013) 1 LW 441

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : G. Muthukrishnan in CRP PD No. 1626/2008 and Mr. R. Gururaj in CRP PD No. 1580/2006, for the Appellant; G. Muthukrishnan Second respondent in CRP PD No. 1580/2006 and Mr. R. Gururaj in CRP PD No. 1626/2008, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—C.R.P. NPD No. 1580 of 2006 is against the order passed in E.P. No. 294 of 2004 in O.S. No. 918 of 1973. C.R.P. PD No. 1626 of 2008 is against the order passed in I.A. No. 53 of 2005 in O.P. No. 71 of 1980. The revision petitioners in C.R.P. NPD No. 1580 of 2006 are the respondents in C.R.P. PD No. 1626 of 2008 and the second respondent in C.R.P. NPD No. 1580 of 2006 has filed the revision in C.R.P. PD No. 1626 of 2008. The admitted facts of these two cases are as follows:-

One Kuppu Rao claiming to be the hereditary trustee and poojekar of Sri Veera Anjaneya Temple inducted one Ramalinga Gounder as a tenant in respect of the vacant land belonging to the temple. The tenant Ramalinga Gounder constructed two thatched houses in the said land and was in possession of the same by paying Municipal Tax. In the year 1963, Kuppu Rao initiated proceedings u/s 63(B) of the HR & CE Act in O.A. No. 64 of 1963 before the Deputy

Commissioner, HR & CE to declare him as hereditary trustee of Sri Veera Anjaneya Temple. That petition was dismissed and the appeal No. 16 of 1968 to the Commissioner, HR & CE was also dismissed. Therefore, the said Kuppu Rao filed statutory suit in O.S. No. 151 of 1969 before the Sub Court, Cuddalore to declare himself as a hereditary trustee of Sri Anjaneyar Temple. That suit was dismissed on 29.12.1973 and as against the dismissal of O.S. No. 151 of 1969, Kuppu Rao filed first appeal and the same was withdrawn later. In the meanwhile, Kuppu Rao was removed from the trusteeship of the temple and one Thanikachalam was appointed as trustee of the temple. Therefore, Kuppu Rao filed O.S. No. 918 of 1973 against Ramalinga Gounder for a declaration that he is entitled to the suit property and for recovery of possession and in that suit, he described himself as hereditary trustee and poojekar of Veera Anjaneya Temple. That suit was dismissed on 10.1.1975 by the District Munsif, Cuddalore and Kuppu Rao filed A.S. No. 51 of 1975 before the Sub Court, Cuddalore. During the pendency of the first appeal, he died and the revision petitioners in C.R.P. NPD No. 1580 of 2006 were impleaded as legal heirs in the first appeal in A.S. No. 51 of 1975 and the first appeal was allowed and the suit in O.S. No. 918 of 1973 was decreed and the same was confirmed in S.A. No. 955 of 1977 on 8.1.1980.

2. During the pendency of the suit in O.S. No. 918 of 1973, the sons of Kuppu Rao viz., revision petitioners 2 and 3 in C.R.P. NPD No. 1580 of 2006 filed O.S. No. 578 of 1974 on the file of the District Court, Cuddalore for a declaration that the entire land of an extent of 31 cents situate in T.S. No. 708 in Ward No. 6, Block No. 22, Cuddalore Municipality was their family private property and the Veera Anjaneya Temple is their private temple. That suit was filed against the Commissioner, HR & CE, Thanikachalam, who was appointed as trustee by the HR & CE Department and also against one Govindasamy, who was later appointed as trustee in the place of Thanikachalam and also one Kuppu Rao alias Venkataramana Rao. Ramalinga Gounder was not a party to that suit. That suit was dismissed on 24.2.1976 and A.S. No. 141 of 1976 was filed and that was allowed on 14.4.1976. The judgment in A.S. No. 144 of 1976 was also confirmed in S.A. No. 141 of 1978 by this court.

3. After the disposal of the first appeal in A.S. No. 51 of 1975, by which O.S. No. 918 of 1973 was decreed, the plaintiffs in that suit viz., revision petitioners in C.R.P. NPD No. 1580 of 2006 filed E.P. No. 33 of 1977 to execute the decree in O.S. No. 918 of 1973. During the pendency of the Execution Petition, Madras City Tenants Protection (Amendment) Act, 1979 (Amendment Act 11/1980) was passed and published on 3.3.1980, in the Government Gazette. Therefore, Ramalinga Gounder filed applications in E.A. No. 897 of 1980 in E.P. No. 33 of 1977 u/s 47 of the CPC for the relief that he is entitled to the benefits of Act II of 1980 and therefore, the decree regarding possession of the land held by Ramalinga Gounder as a tenant cannot be executable as he is entitled to protection of Tamil Nadu City Tenants Protection Act as amended by Act II of 1980. He also filed O.P. No. 71 of 1980 u/s 9 of the Tamil Nadu City Tenants Protection Act to sell the land to him. Both the applications were dismissed on

6.8.1981 by the learned District Munsif, Cuddalore. Against the dismissal of both the applications, he filed C.R.P. No. 2696 of 1981 against the order passed in E.A. No. 897 of 1980 and A.A.O. No. 672 of 1982 was filed against the order passed in O.P. No. 71 of 1980 before this court. During the pendency of the revision and appeal, Ramalinga Gounder died and his legal representatives were brought on record and this court allowed the revision and A.A.O. No. 672 of 1982 and set aside the order passed in E.A. No. 897 of 1980 and O.P. No. 71 of 1980 and remanded the matter to the court below for taking further steps by the parties. In the order passed on 9.1.1991, in C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982, this court held that the decree passed in O.S. No. 918 of 1973 is not executable in respect of land held by Ramalinga Gounder as a tenant and the tenant is entitled to benefits of the Tamil Nadu City Tenants Protection Act as amended by Act II of 1980 and remanded to the court below for further proceedings yet to be completed in accordance with law.

4. It is the case of the second respondent in C.R.P. NPD No. 1580 of 2006 that he received an intimation from the District Munsif Court, Cuddalore that O.P. No. 71 of 1980 was revived and taken on file and therefore, he filed I.A. No. 53 of 2005 in O.P. No. 71 of 1980 for appointment of advocate commissioner to find out the minimum extent of the property that has to be sold to him under the provisions of Tamil Nadu City Tenants Protection Act and to value the said extent of property. The revision petitioners in C.R.P. NPD No. 1580 of 2006 viz., the decree holders also filed E.P. No. 294 of 2004 for execution of the decree and both the applications were heard together and the court below dismissed both the applications holding that as per the remand order made in C.R.P. 2696 of 1981 A.A.O. No. 672 of 1982, E.P. No. 294 of 2004 cannot be ordered and by virtue of the Amendment Act 11/1980, viz., the Tamil Nadu City Tenants Protection Act is not applicable to the religious properties and the tenant viz., the second respondent in C.R.P. NPD No. 1580 of 2006 failed to take action within a reasonable time and filed application after lapse of twelve years for appointment of advocate commissioner and therefore, their claim is also barred. Aggrieved by the dismissal of E.P. No. 294 of 2004, the decree holders filed C.R.P. NPD No. 1580 of 2006 and aggrieved by the dismissal of I.A. No. 53 of 2005 in O.P. No. 71 of 1980, the tenant filed C.R.P. No. 1626 of 2008.

5. The parties shall be referred to herein as decree holders and judgment debtors.

6. Mr. G. Muthukrishnan, learned counsel for the tenant submitted that as per the decree passed in O.S. No. 578 of 1974 confirmed in S.A. No. 141 of 1978, the properties are declared as the private properties of the decree holders and the temple is a private temple and as per the provisions of Act II of 1996, only the properties belonging to religious institutions are exempted from the provisions of the Act and religious institution means any Temple, Math, Mosque, Church or other places by whatever name known which are dedicated to or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship. He, therefore, submitted that having obtained a

decree in O.S. No. 578 of 1974, that the suit property and the temple are private properties of the decree holders, it is not open to the decree holders to claim that by virtue of Act II of 1996, the tenant is not entitled to the benefits of the Tamil Nadu City tenants Protection Act. He, therefore, submitted that as the property has been declared as private property of decree holders, the tenants of those properties are entitled to the benefits of Tamil Nadu City Tenants Protection Act. Admittedly O.P. No. 71 of 1980 was filed within a month from the date of publication of Act II of 1980 by which the benefit of the Act was extended to Cuddalore and that application was dismissed by the Trial Court and in revision this court in C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982, remanded the cases to the Trial Court for further proceedings yet to be completed in accordance with law and though the order was passed on 9.1.1991, the tenant got intimation only on 15.12.2005 when O.P. No. 71 of 1980 was revived and immediately he filed I.A. No. 53 of 2005 for appointment of advocate commissioner to measure the minimum extent of property and value the property and therefore, the tenant cannot be blamed that he has not taken any steps to file application for appointment of advocate commissioner after the remand order was passed on 9.1.1991 and the tenant has done his part by filing application u/s 9 of the Tamil Nadu City Tenants Protection At and thereafter, it is the duty of the court to find out the minimum extent of the property and in this case only after getting intimation from the court that O.P. No. 71 of 1980 was revived on 15.12.2005, he filed application for appointment of advocate commissioner and therefore, he cannot be blamed for any delay and within three years from the date of intimation, he filed I.A. No. 53 of 2005 and therefore, the court ought to have allowed the application filed by him by appointing advocate commissioner and ought to have dismissed E.P. No. 294 of 2004.

7. He further submitted that there is no period of limitation prescribed under the Limitation Act for filing an application for appointment of advocate commissioner and u/s 9 of the Tamil Nadu City Tenants Protection Act, the tenant has to apply within one month from the date of receipt of summons or within a month from the date of publication of extension of Act by filing an application u/s 9 of the Act and once an application u/s 9 was filed within time, there is no question of any further time prescribed under the Act. He further submitted that as per the legal maxim "Actus curiae neminem gravabit - An act of the Court shall prejudice no man", the tenant cannot be blamed for not applying to the court and therefore, his revision has to be allowed.

8. On the other hand, Mr. R. Gururaj, learned counsel for the decree holders submitted that this court set aside the orders passed in O.P. No. 71 of 1980 and E.A. No. 897 of 1980 in E.P. No. 33 of 1977 in O.S. No. 918 of 1973 and allowed C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 on 9.1.1991 and remanded O.P. No. 71 of 1980 to the court below for further proceedings yet to be completed in accordance with law. He, therefore, submitted that when the matter was remanded to the court below for taking further steps in accordance with law, it cannot be contended by the tenant that he was expecting communication from

the court for the revival of O.P. No. 71 of 1980 and a duty is cast upon the tenant to apply to the court for fixing the minimum extent of property that has to be sold to him and therefore, under Article 137 of the Limitation Act, he ought to have filed the application within a period of three years from the date of order of the court in C.R.P. No. 2626 of 1981 and A.A.O. No. 672 of 1982 and he filed I.A. No. 53 of 2005 after 14 years from the date of order passed in the above revision and therefore, the court below has rightly dismissed the application. He further submitted that the court below also erred in dismissing E.P. No. 294 of 2004 filed by the decree holders on the basis of the observation made by this court in C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 and having held that the tenant has lost his right as he has not applied to the court within the time prescribed, the decree holder is entitled to execute the decree and as a matter of fact, the decree holders waited for three years for the tenant/judgment debtor to apply to the court for appointment of advocate commissioner and thereafter, filed the execution petition and therefore, the court below ought to have allowed the E.P. No. 294 of 2004. He further submitted that the tenant cannot take advantage of the decree passed in O.S. No. 578 of 1974 and the predecessor-in-title of the tenant viz., Ramalinga Gounder was not a party to the proceedings in O.S. No. 578 of 1974 and therefore, any finding in that suit viz., the suit property is a private property and the temple is a private temple cannot be taken advantage of by the tenant. He, therefore, submitted that O.P. No. 71 of 1980 was filed in execution of the decree passed in O.S. No. 918 of 1973 and E.P. No. 294 of 2004 was also filed to execute the decree in O.S. No. 918 of 1973 and in that suit it was held that the suit property belongs to the temple and therefore, when there is a finding in O.S. 918 of 1973 that the suit property is a temple property by virtue of Act II of 1996, the said property is exempted from the purview of the Act and therefore, the tenant is not entitled to invoke the provisions of the Act and on that ground also O.P. 71 of 1980 ought to have been dismissed and the tenant cannot file application for appointment of advocate commissioner to arrive at a conclusion as he is not entitled to the benefits of the Act. He further submitted that Article 137 applies to all applications under any Act and it cannot be confined to applications filed under the CPC and therefore, a period of three years prescribed under Article 137 begins to run from the date on which the right accrues to the party and in this case, the right accrued to the tenant on 9.1.1991, the date on which C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 were allowed and remanded back to the Trial Court and therefore, within three years from that date, the application ought to have been filed and hence, the application is barred by limitation. He, therefore, submitted that the court below ought to have allowed E.P. No. 294 of 2004 and dismissed I.A. No. 53 of 2005.

9. Though both the counsel relied upon various judgments, having regard to the facts of the case, there is no necessity to refer to those cases as they are not relevant for the disposal of the revisions.

10. In these revisions, we will have to see

- 1) Whether the tenant is entitled to claim the benefits of the Tamil Nadu City Tenants Protection Act having regard to the provisions of Act II of 1996.
- 2) Whether the suit property is a temple property and if so, whether the temple is a private temple or a public temple and if it is a private temple, whether the exemption provided under Act II of 1996 can be applied to the suit property.
- 3) Whether the right of the tenant to apply for appointment of advocate commissioner is barred by limitation.
- 4) What is the scope of the remand order passed in C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982.

11. Points 1 and 2:-

Before passing of the Act II of 1996 amending the provisions to Tamil Nadu City Tenants Protection Act, the benefits of the Act was made applicable to all properties whether it belongs to private or public religious institution or religious charity. Act II of 1996 came into effect on 1.11.1996 and by virtue of the Amendment Act, II of 1996, the religious institutions and religious charities belonging to Hindu Religion or Christian or other religion were exempted from the provisions of the Act. As stated supra, religious institution means any place of public religious worship. Therefore, in order to claim the benefits of the exemption conferred under Act II of 1996, the owner of the property has to prove that the property belongs to the religious institution which is a public place of worship.

12. In this case in O.S. 578 of 1974, the decree holders prayed for the declaration that the suit property with Hanuman temple constructed therein belongs to the plaintiffs family as their private property and for injunction restraining the defendants from interfering with their possession. Though that suit was dismissed by the Trial Court, the first appeal in A.S. No. 141 of 1976 was allowed and in the first appeal, it was held that the suit properties are the private properties of the plaintiffs and the temple was not constructed out of public funds and the suit temple was not subjected to the control of HR & CE Department. The said finding was confirmed in S.A. No. 141 of 1978. Therefore, as per the judgment and decree in O.S. No. 578 of 1974, confirmed in S.A. No. 141 of 1978, the property in which the temple is constructed is a private property and the temple is also a private temple. Therefore, as submitted by the learned counsel for the tenant Mr. G. Muthukrishnan, under Act II of 1996, exemption cannot be claimed and therefore, the tenant is entitled to claim benefits of the Act and he also filed application u/s 9 within the period prescribed under the Act and therefore, he is entitled to the order.

13. However, as rightly pointed out by the learned counsel for the decree holders, the findings in O.S. 578 of 1974 cannot be taken advantage of by the tenant as they are not parties to that suit. Though the decree holders are parties to O.S. No. 578 of 1974, and they are bound by the decree passed in the suit,

having regard to the fact that O.P. No. 71 of 1980 was filed in O.S. 918 of 1973 and A.A.O. No. 672 of 1982 was filed against the order passed in E.A. No. 897 of 1980 in O.S. No. 918 of 1973 in which both decree holders and tenants are parties, we will have to see the finding rendered in that suit.

14. As stated supra, O.S. No. 918 of 1973 was filed for a declaration that the plaintiffs are not entitled to the suit property and for recovery of possession that suit was dismissed and appeal in A.S. No. 51 of 1975 was allowed and while allowing the appeal the lower appellate court held that the suit property belongs to the temple and the plaintiffs are entitled to recovery of possession of the property belonging to the temple on behalf of the temple. In the second appeal also, this court confirmed the findings of the lower appellate court after taking into consideration of the dismissal in O.S. No. 151 of 1969 filed by Kuppu Rao against the commissioner, HR & CE to declare himself as hereditary trustee and that the property belongs to the temple and it is in occupation of the plaintiffs/decree holders. Therefore, the finding in O.S. No. 918 of 1973 is binding on the parties as both of them are parties to that suit and as per the finding stated above, the suit property is a temple property and in the second appeal, it has also been held that the decree holders are entitled to recovery of possession of the property as they are in possession of rest of the properties belonging to the temple. Therefore, even though the decree holders obtained a decree in their favour in O.S. No. 578 of 1974 that the suit properties is a private property and the temple is a private temple, insofar as the parties to those proceedings are concerned, they are bound by the findings in O.S. 918 of 1973 and hence, the finding that the properties belong to the temple has become final and the parties are bound by the same.

15. Once it is held that the properties are temple properties, then under the provisions of Act II of 1996, the properties are exempted from the provisions of Tamil Nadu City Tenants Protection Act. In O.S. No. 918 of 1973, the plaintiff Kuppu Rao filed the suit describing himself as hereditary trustee and poojekar of Sri Veera Hanuman Temple and earlier to that, he also applied to the Deputy Commissioner, HR & CE Department in O.A. No. 64 of 1963 to declare himself as hereditary trustee of Hanuman Temple and that application was dismissed and the appeal filed before the Commissioner, HR & CE Department in appeal No. 16 of 1968 was also dismissed and the statutory suit filed in O.S. 151 of 1969 was also dismissed.

16. Therefore, the above proceedings would prove that even prior to O.S. No. 918 of 1973, the temple has been declared as public temple and on that ground, he was not given the status of hereditary trustee and poojekar and even in O.S. 918 of 1973, it was held that the properties belong to the temple and Kuppu Rao was not declared as hereditary trustee and he was given the relief of recovery of possession as he was in possession of the properties of the temple. Therefore, it can only be a public temple and it is exempted from the provisions of Tamil Nadu City Tenants Protection Act as amended by Act II of 1996. Therefore, the tenant

is not entitled to the benefits of Section 9 of the said Act and hence, he cannot file O.P. 71 of 1980 and once he is not entitled to invoke the benefits of section 9 of the Act, he cannot file application for appointment of advocate commissioner.

17. Even assuming that the decree holders are bound by the decree in O.S. No. 578 of 1974 in which the properties are declared as private properties of Kuppu Rao's family and the temple is a private temple and therefore, the tenant is entitled to the benefits of City Tenants Protection Act, as the exemption granted under Act II of 1996 cannot be made applicable to the private temple, the tenant is also not entitled to the relief prayed for in I.A. No. 53 of 2005 in O.P. No. 71 of 1980. Admittedly, C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 were filed against the orders passed in the petition filed by the tenant in E.A. No. 897 of 1980 in E.P. No. 33 of 1977 in O.S. No. 918 of 1973 u/s 47 of the CPC and O.P. No. 71 of 1980 was filed u/s 9 of the Tamil Nadu City Tenants Protection Act, dismissing those two applications and the tenant filed C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 and those two revisions were allowed and the orders passed by the court below were set aside and O.P. 71 of 1980 was remitted back to the file of the lower court for further proceedings yet to be completed in accordance with law. u/s 9 of the City Tenants Protection Act any tenant, who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted, within one month of the date of publication of the Tamil Nadu City Tenants Protection Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which that Act has come into force or within one month after service on him of summons, apply to the court for directing the landlord to sell the property for a price to be fixed by the court. As per section 91(b), on such application being filed, the court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment of the tenant.

18. Therefore, a reading of clause 9(1)(d)(i) and 9(1)(b), a duty is cast upon the tenant to apply within a period of one month by filing application to the court seeking for a direction directing the plaintiff to sell the property and on such application being filed, the court shall first decide the minimum extent of land required for the convenient enjoyment of the tenant. The section appears to have given an impression that after the filing of application u/s 9, nothing has to be done by the tenant and a duty is cast upon the court to find out the minimum extent of the land required for the convenient enjoyment of the tenant. Though, in this case, section 9 application was filed within the prescribed time and that application was dismissed by the court below and later allowed by this court in A.A.O. No. 672 of 1982 by order dated 9.1.1991, the matter was remanded to the court below with a specific direction for further proceedings yet to be completed in accordance with law. Therefore, the tenant, who is entitled to the benefits of the Act ought to have applied to the court within a reasonable time for appointment of advocate commissioner to ascertain the minimum extent of land and also the value of the property and in this case, the application was filed 14 years later by the tenant in I.A. No. 53 of 2005.

19. Though it is contended by the learned counsel for the tenant Mr. G. Muthukrishnan that only on 15.12.2005, the tenant received a letter from the court that O.P. 71 of 1980 was revived and therefore, the cause of action arose from that date and hence, the application filed in I.A. No. 53 of 2005 was well within time, the tenant ought to have been vigilant in applying to the court and if the tenant is not vigilant in applying to the court, he is guilty of laches.

20. Under Article 137 of the Limitation Act, when there is no period of limitation provided for any application, three years is the period of limitation and the three years period shall commence when the right to apply accrues. It is not in dispute that Article 137 applies not only to the proceedings under the CPC but also to any other Act vide *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, and *The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others*, . In this case, the right to apply accrues immediately after the order of remand was made in C.R.P. No. 2696 of 1981 and A.A.O. No. 672 of 1982 on 9.1.1991 and within three years, he ought to have applied for appointment of advocate commissioner and to ascertain the minimum extent of property that has to be sold. Though the right to apply u/s 9 of the Tamil Nadu City Tenants Protection Act is a legal right available to the tenant, he ought to have applied to the court to exercise that right within the period of limitation as per Article 137 of the Limitation Act. Even assuming that Article 137 is not applicable to the present case, the tenant ought to have applied to the court within a reasonable time and it is held that the delay in seeking the remedy will disentitle the parties to make the claim even if the right or claim is not disputed.

21. In the *Dr. Jiwan Lal and Others Vs. Brij Mohan Mehra and Another*, , the Honourable Supreme Court held that the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has by his conduct done which might fairly be regarded as an equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material.

22. In the judgment reported in *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, , the Honourable Supreme Court dealt with the issue of laches as follows:-

The statement of law has also been summarised in Halsbury's Laws of England, para 911., p. 395 as follows:

In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that as occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

23. In the judgment reported in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, , the Honourable Supreme Court, quoting *Administrative Law* by H.W.R. Wade (7th Edition) at pages 342-43 held as follows:-

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void.

24. Further, where the question is not one of title, but to recover property and the plaintiff at the time of suit has no absolutely vested right to the property, the right which he seeks, being a discretionary one, the principles of equity, in the absence of a statutory provision, require that the party must come promptly and within reasonable time. Therefore, on the ground of laches, the tenant is not entitled to the benefits of Tamil Nadu City Tenants Protection Act as he approached the court after the long gap of 14 years. Further, no materials have been placed before this court that the tenant received notice from the court and after the revival of O.P. No. 71 of 1989, only on 15.12.2005, he received the

intimation from the court and the date is also not disputed by the learned counsel for the decree holders.

25. Further, as per the maxim "Actus curiae neminem gravabit", an act of the Court shall prejudice no man. In this case also, the act of the court in not taking steps to revive O.P. 71 of 1980 as well as the order of remand cannot prejudice the decree holders and the decree holders should not be made to suffer by reason of the inaction on the part of the revision petitioners/judgment debtors. Hence, the order of the court below, as against the dismissal of E.P. No. 294 of 2004 is concerned, is set aside and the order of the court below insofar as I.A. No. 53 of 2005 is confirmed for other reasons as stated above. In the result, C.R.P. NPD No. 1580 of 2006 filed by the decree holders is allowed and C.R.P. PD No. 1626 of 2008 filed by the tenant is dismissed. No costs. The connected miscellaneous petition is also dismissed.