

(1968) 12 MAD CK 0003
In the Madras High Court

Sri Thiagarajaswamy Devasthanam

APPELLANT

Vs

Singaravelu Thevar, adopted son of Kumaraswamy Thevar
and Thiruthuraipundi Munsifi and Another

RESPONDENT

Date of Decision : 11-12-1968

Acts Referred:

Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961
— Section 57

Citation : (1969) ILR (Mad) 557 : (1969) 2 MLJ 439

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—The question that falls for determination in this batch of cases is whether the Madras Public Trusts (Regulation of

Administration of Agricultural Lands) Act LVII of 1961 (hereinafter referred to as the Public Trusts Act) applied to proceedings pending under the

Madras Cultivating Tenants Protection Act XXV of 1955, the Madras Cultivating Tenants Protection (Payment of Fair Rent) Act, XXIV of 1956,

and proceedings pending in the civil Court where defence under the Madras Cultivating Tenants Protection Act XXV of 1955 had been taken

when the public Trusts Act LVII of 1961 came into force. Ramamurti, J., in C.R.P. No. 2032 of 1964 and C.R.P. No. 121 of 1965 observing

that the provisions of the Public Trusts Act applied to all lands held under a public trust and that the rights and obligations of the landlord and tenant

should be governed by and worked out only under that Act even though the relationship might have arisen long anterior applied the Act to

proceedings pending under Madras Act XXIV of 1956 and terminated the proceedings. Venkatadri, J., before whom some of the cases now

before us came on for hearing, would take the view that pending cases would not be affected by Madras Act LVII of 1961, and finding that his

view ran contrary to the opinion expressed by Ramamurti, J., referred the matter to the Division Bench.

2. In A.A.O. Nos. 98 and 99 of 1963, the common appellant is Sri Thiagarajaswami Devasthanain, Tirukkuvalai, represented by its hereditary

trustee. The appeals arise out of two suits, O.S. Nos. 167 and 168 of 1961 on the file of the Court of the District Munsif of Thiruthuraipundi for

declaration of the right of the plaintiff to be in possession of the suit properties and for a permanent injunction restraining the defendant in the

respective suits from interfering with the plaintiff's possession. Alternatively there was a claim for decree of possession and consequential reliefs.

3. The case of the plaintiff was that the defendants in the suits had been prior lessees of the lands and that the plaintiff had resumed possession on

the expiry of their terms. The defendants denied resumption of possession by the plaintiff and contended that they were cultivating tenants within

the meaning of the Madras Cultivating Tenants Protection Act XXV of 1955. Claiming to be entitled to the benefits of the said Act,, they prayed

for transfer of the suits to the file of the Revenue Court, Thanjavur,, u/s 6-A of the Act. The trial Court found that the plaintiff did not resume

possession of the lands as claimed and that the defendants had continued in possession of the lands which they entered upon as lessees. It held that

the defendant in the suit O.S. No. 167 of 1961 out of which A.A.O. No. 99 of 1963 arises was in arrears of rent and so not entitled to the benefit

of Madras Act XXV of 1955. The defendant in O.S. No. 168 of 1961 out of which A.A.O. Nos. 98 of 1963 arises was found to be a cultivating

tenant entitled to continue in possession in respect of the B and C Schedule properties in that suit. So far as the A Schedule properties were

concerned, as there were arrears it was held that he could claim no protection under the Act. In that view, eviction was ordered against the

defendant in O.S. No. 167 of 1961 in respect of the entire suit properties and against the defendant in O.S. No. 168 of 1961 the suit for eviction

was decreed in respect of the A Schedule properties and dismissed in respect of B and C Schedule properties. Appeals were taken therefrom by

the respective defendants in the suits, and by the plaintiff in O.S. No. 168 of 1961 in respect of A Schedule property. Pending the appeals the

Public Trusts Act came into force on 2nd October, 1962 and the defendants raised a defence that Act LVII of 1961 was a bar to the Civil Court

entertaining the suits as Madras Act XXV of 1955 and Act XXIV of 1056 had been repealed in their application to a cultivating tenant in respect

of any land held by him under a public trust, by Section 57 of the Public. Trusts Act. The learned Subordinate Judge of Nagapattinam affirmed the

finding of the lower Court that the defendant in the respective suits was a cultivating tenant within the meaning of Madras Act XXV of 1955. He

further found that the requisite conditions to attract the provisions of Section 6-A were fulfilled in respect of the entire suit properties and action

should have been taken in the suits under those provisions. But he accepted the additional ground of defence. He overruled the objection that Act

LVII of 1961 cannot affect pending proceedings in the civil Court or under the Cultivating Tenants Protection Act of 1955. He thought that the

proper course was to direct the trial Court to return the plaint in the respective suits to the plaintiff, for re-presentation to the " authorised officer

under Act LVII of 1961. In the result; he set aside the decree of the lower Court and directed the lower Court to return the plaints for presentation

to the authorised officer under Act LVII of 1961. A.A.O. Nos. 97 and 98 of 1963 have been preferred from that order.

4. C.R.P. No. 576 of 1963 arises out of an application u/s 3(4) (a) of Madras Act XXV of 1955 for eviction of a tenant for arrears of rent, before

the Revenue Court, Kumbakonam. Pending the application in the Revenue Court, the Public Trusts Act LVII of 1961 came into force and without

reference to it, the Revenue Court directed the deposit of rent under the provisions of the Cultivating Tenants Protection Act providing for eviction

in default. The tenant has filed the civil revision petition contending that the Revenue Court constituted under Act XXV of 1955 had no jurisdiction

to pass any orders after Madras Act LVII of 1961 came into force and that the application for eviction must have been transferred by the Revenue

Court to the authorised officer constituted under Madras Act LVII of 1961.

5. In C.R.P. Nos. 1077 and 1078 of 1963, the Revenue Divisional Officer dismissed the petitions that were pending before him u/s 3 (4) (a) of

Madras Act XXV of 1955 in the view that after the coming into force of Act LVII of 1961, the Revenue Court had no jurisdiction to try the

petitions.

6. In C.R.P. Nos. 1372 and 1373 of 1963, the order of the Revenue Court under Act XXV of 1955 for deposit of arrears of rent, providing for

the passing of orders for eviction on default of deposit, are challenged by the tenants on the ground that with the coming into force of Public Trusts

Act, the Revenue Court lost jurisdiction over lands belonging to public trusts.

7. C.R.P. No. 411 of 1965 arises out of an application for fixation of fair rent under Act XXIV of 1956 filed before the Public Trusts Act came

into force.

8. Before proceeding to examine the question it will be convenient to refer to some of the provisions of Madras Act XXV of 1955, Act XXIV of

1956 and of the Public Trusts Act LVII of 1961. u/s 3 of Act XXV of 1955 no cultivating tenant can be evicted in any manner during the

continuance of the Act except as provided in the Act. Section 6 bars the jurisdiction of the Civil Court in respect of matters which the Revenue

Divisional Officer is empowered by an order under the Act to determine. There is a provision in Section 4-A for the landlord to resume one-half of

the extent of the land leased out to the cultivating tenant for personal cultivation. Section 6-A of Act XXV of 1955 bars the trial of a suit for

possession of land or injunction when the defendant is a cultivating tenant entitled to the benefits of the Act, and provides for the transfer of the suit

by the civil Court to the Revenue Divisional Officer for his disposal to be dealt with and disposed of by him as though it were an application under

the Act. The Fair Rent Act Madras Act XXIV of 1956 provides for the determination of the fair rent which alone the cultivating tenant need pay.

Tribunals are constituted for the determination of the fair rent. Judicial decisions have held that the fair rent fixed will take effect from the date of the

application made under the Act, and Section 6 of the Act provides that it shall continue in force for five years.

9. The Public Trusts Act is an Act for regulating the administration either by personal cultivation or lease of agricultural lands, held by public trusts

and for regulating the relationship of public trusts and the cultivating tenants. In relation to lands belonging to Public Trusts it contains in a single Act

provisions corresponding to the provisions in Act XXV of 1955 and Act XXIV of 1956. Under the Act, the trustee of every public trust seeking

to evict the cultivating tenant shall, whether or not there is an order or decree of a Court for eviction of the cultivating tenant make an application to

the authorised officer under the Act. There is a ceiling on lands that could be had for personal cultivation by public trusts. Also there is provision for

reverter to the trusts of the lands in the possession of a cultivating tenant in excess of his ceiling area. Section 58 of the Act bars the jurisdiction of

the Civil Court. It runs thus:

Except as otherwise provided in this Act, no civil Court, shall have jurisdiction to decide or deal with any question which is by or under this Act

required to be decided or dealt with by the authorised officer, the Registrar, the Rent Court, the Rent Tribunal or other authority.

Section 62 of the Act effects a partial repeal of Madras Act XXV of 1955 and Madras Act XXIV of 1956; taking over lands belonging to public

trusts from the operation of the two Acts. This section runs thus ::

On and from the date of the commencement of this Act, the Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955) and

the Madras Cultivating Tenants (Payment of Fair Rent Act, 1956 (Madras Act XXIV of 1956) shall stand repealed in their application to a

cultivating tenant in respect of any land held by him under a public trust.

The Public Trusts Act, as stated earlier, came into force on 2nd October, 1962 and in the cases before us while in some cases the cultivating

tenant would contend that Act LVII of 1961 should be applied to pending proceedings, in some cases the public trust would contend for its

application. Though there are corresponding provisions in the new Act, initiation of proceedings under the existing Acts before the new Act came

into force has placed one or other of the parties in an advantageous position. To take for instance the Fair Rent Act XXIV of 1956, the fair rent

fixed under the Act is payable from the date of the application. The application would have been pending from long prior to the new Act and the

application might have been made by the landlord or the tenant. One or other of them would be prejudicially affected if the pending proceedings

should be declared infructuous on the coming into force of the new Act. If a fresh application under the new Act for the fixation of fair rent is

commenced one or other of them may be a loser by that. We heard no sustained argument from Counsel to maintain a stand that the new Act

affected even pending proceedings. Much of the discussion related to consequential orders.

10. It is a well recognised principle in the interpretation of statutes that every statute is prima facie prospective in its operation unless it is expressly

or by necessary implication made to have retrospective effect. Particularly statutes which would affect vested rights, impose new burdens or impair

existing obligations are presumed to be prospective. Even where retrospective operation is intended, it is not construed so as to have a larger

retrospective operation than is necessarily required by its language. On this principle a retrospective statute which affects rights in existence is not

prima facie taken to affect adjudication of pending proceedings. It is to this very limited extent that retrospectivity is denied in these cases to the

new Act.

11. Section 8 of the Madras General Clauses Act, 1891 dealing with the effect of repealing an Act and which applies unless as reserved by

Section 4 of the Act a contrary intention appears, provides that where an Act repeals any other enactment the repeal shall not

(a) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the

repealing Act; or

(c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(f) affect any investigation, legal proceedings or remedy in respect of any such right, privilege; obligation, liability, fine, penalty, forfeiture or

punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine,

penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

It follows that unless a contrary intention appears in the Act under consideration the partial repeal of Act XXV of 1955 and Act XXIV of 1956

shall not affect any proceedings begun before the commencement of the repealing Act or affect rights and privileges acquired or accrued or

obligation or liability incurred under the Acts repealed.

12. Now while repealing partially with reference to Public Trusts Act XXV of 1955 and Act XXIV of 1956, corresponding rights and remedies

are provided under Act LVII of 1961. The repeal is followed by a simultaneous re-enactment which contains corresponding provisions, with

certain necessary variations having regard to the object and scheme of the new Act. Does the fact that the repeal is simultaneously followed by

corresponding legislation and constitution of equivalent tribunals make a difference? An important fact to be taken into consideration here is that the

existing tribunals where proceedings are pending are not abolished. In the State of Punjab Vs. Mohar Singh, , the principle is thus set out:

Whenever there is a repeal of an enactment, the consequence laid down in Section 6 of the General Clauses Act (Central) will follow unless, as the

section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But

when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only

for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps

alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that

Section 6 of the General Clauses Act (Central) is ruled out when there is repeal of an enactment followed by fresh legislation. Section 6 would be

applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such

incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving

clause is by itself not material.

Examining the relevant section of the Act, we are unable to find any provision therein either expressly or by necessary intendment making the

application of Section 8 of the Madras General Clauses Act in respect of pending proceedings incompatible with or introducing contrariety with the

provisions of the Public Trusts Act. Section 3 which sets out the overriding effect of the Act runs thus:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or

any custom, usage or contract or decree or order of a Court or other authority.

Chapter III contains the provisions relating to tenancies. Section 9 in the Chapter sets out the circumstances in which a public trust may evict any

cultivating tenant. Chapter IV dealing with fair rent provides that every cultivating tenant under any public trust shall be bound to pay to the public

trust and every public trust shall be entitled to collect from the cultivating tenant fair rent payable under the Chapter. The other relevant Sections 58

and 62 have already been set out. When we bear in mind a settled principle that a party has a vested right to have his action tried in the forum in

which it has commenced, we find it difficult to read the new Act as if it were abating the pending proceedings. Here it is not a case where the

Tribunals before which proceedings are pending are asked to apply the new Act. The Act has constituted its own tribunals. But it does not provide

for the abatement of pending proceedings or for transfer of those proceedings to the tribunals under the Act. In contrast reference may be made to

Section 6-A of Madras Act XXV of 1955 which provides for transfer of proceedings in civil Courts to the tribunals constituted under that Act.

Reference may also be made to Section 3 of Madras Act II of 1962 an Act to amend the Madras Buildings (Lease and Rent Control) Act of

1960, which provided for abatement of pending proceedings instituted on the ground that such buildings was exempt from the provisions of the

Rent Contra, Act. In the absence of a provision for transfer, a Tribunal of limited jurisdiction constituted under the special Act with a procedure of

its own cannot be compelled by another Tribunal or Court to accept or transfer a matter and proceed with it as an application made under the Act

by which the Tribunal is constituted. If the intention of the Legislature was to affect pending proceedings under other enactments or under the

common law in the civil Court, one may expect the Legislature to have provided for it. Section 62 simply repeals the then existing Acts relating to

cultivating tenants in respect of any land held by them under a public trust. The bar of jurisdiction of civil Courts provided for u/s 58 may also quite

properly be read as applicable to future proceedings. The Act provides for transfer of proceedings under the Act from one authorised officer a

functionary under the Act to another and makes no mention of proceedings relating to cultivating tenants pending either in the civil Courts or under

Tribunals constituted by Act XXV of 1955 or Act XXIV of 1956. The language of the new enactment not necessarily requiring retrospective

operation so as to affect prejudicially action taken and pending under the existing laws it ought not to be so construed. For the inference that the

new Act does not affect pending proceedings, Venkatadri, J., in his order of reference relies upon the memorandum issued by the Government on

14th February, 1963, which is as follows ::

In the circumstances reported the Government agree with the Board of Revenue and direct that all pending proceedings under the Madras

Cultivating Tenants Protection Act, 1955 and the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 be continued before the existing

authorities and be disposed of under the provisions of the said Acts as if the Madras Public Trusts (Regulation of Administration of Agricultural

Land) Act, 1961, had not been passed. There is no need for transfer of these proceedings to the authorities under the Trust Act.

But clearly Courts cannot take note of this Memorandum of the Government when interpreting a statute, Administrative interpretations upon a

statute have to be wholly eschewed when statutes are being considered. They cannot have even a persuasive value. Ramamurti, J., points out that

the repeal of Act XXV of 1955 and Act XXIV of 1956 is only to a limited extent concerning the cultivating tenants held under public trusts and

therefore the prior legislation being a general legislation while the latter deals with a special category that is lands held under a public trust, the latter

has overriding operation. It is observed by the learned Judge that to preserve or keep alive the operation of the provisions of the Cultivating

Tenants Protection" Act and the Fair Rent Act in regard to lands belonging to a public trust would completely defeat and frustrate the object of the

latter enactment Act LVII of 1961. The learned Judge sums up the discussion with the observation : ____

I am clearly of the opinion that the necessary intendment of the later Act is that its provisions should be applied to all lands held under a public

trust, and that the rights and obligations of the landlord and the tenant should be governed by and worked out only under the new Act even though

the relationship might have arisen long anterior.

We are in entire agreement with this observation. As a special Act with reference

to lands belonging to public trusts the later Act has to prevail.

The only question is whether the later Act affects pending proceedings. The learned Judge, we find, has not specifically addressed himself to this

aspect of the question, though the case actually related to a fair rent application filed prior to the coming into force of the Public Trusts Act. In that

case the tenant's application for fair rent was filed on 10th May, 1961. The Rent Tribunal under the Act on 29th April, 1964, dismissed the

application. In the view that the Public Trusts Act had meanwhile come into force repealing the Fair Rent Act with reference to the lands in

question, the Rent Tribunal held that the proceedings for fixation of fair rent under the old Act automatically abated and could not be continued.

The tenant subsequently filed a petition for review and the Rent Tribunal allowed the same by order dated 27th July, 1964, taking the view that the

Madras Public Trusts Act which came into force in October, 1962 cannot affect the proceedings already commence under the Fair Rent Act for

fixation of fair rent. The Civil Revision Petition which the learned Judge dealt with was directed against this order of the Rent Tribunal entertaining

the fair rent application. The connected case which the learned Judge dealt with, was filed as a matter of caution and related to the same matter.

The learned Judge allowed the revisions and thereby affirmed the earlier order holding that the fair rent application had abated with the passing of

the Public Trusts Act. Though the learned Judge has not discussed the question whether the Act will affect pending proceedings the actual decision

must rest on the view that it terminates also pending proceedings. In our view, the Act does not affect pending proceedings.

13. In AIR 1941 16 (Federal Court) Sulaiman, J., observed ::

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect

pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does

not compel them to do so. It is a well recognised rule that statutes should, as far as possible be so interpreted, as not to affect vested rights

adversely, particularly when they are being litigated.

In Colonial Sugar Refining Company v. Irving L.R. (1905) A.C. 369, the leading decision on the subject by the Judicial Committee, at the date of

the institution of the action in the Supreme Court of Queensland there was a right of appeal to the Privy Council from the judgment of the Supreme

Court. About ten days before judgment was delivered by the Supreme Court, the Judiciary Act of 1903 came into force and the Privy Council

ceased to be a Court of Appeal from the decision of the Supreme Court. The only appeal from the Supreme Court lay to the High Court of

Australia. But despite the Judiciary Act of 1903, the matter was taken up in appeal to the Privy Council on leave granted by the Supreme Court of

Queensland. On this the respondent moved for dismissal of the appeal contending that the Judiciary Act of 1903 had taken away the right of

appeal to the Privy Council and appeal lay only to the High Court of Australia. Overruling the objection of the respondent to the maintainability of

the appeal before the Privy Council, their Lordships of the Judicial Committee observed :--?

The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His

Majesty in Council a right vested in the appellants at the date of the passing of the Act,, or was it a mere matter of procedure? It seems to their

Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to

him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal

altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well known general

principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, , the Supreme Court affirmed the aforesaid principle as firmly established and remarked:

The golden rule of construction is that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so

construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

The Supreme Court quoted with approval the observation of Rankin, C.J., in *Sader Ali v. Dalimuddin* ILR (1929) Cal. 512.

Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right.

In the same case, Ranking, C.J. at another place remarked:

The principle must, I think, involve that an admixture of different systems, is not to be applied to a single case.

The aforesaid observation, we should say, is apposite and applicable to the question now under consideration unless the new law constrains suitors

to change horses at midstream. As we pointed out above, there is nothing in the language of the new enactment to evidence such an intention. The

litigant is normally entitled to ask the Courts to apply the law applicable to his claim at the time he commenced his litigation. The contention in this

case pressed by one side or the other is that the action must be pursued in the new forum whether an action be pending in the Civil Court or in the

Revenue Court constituted under Act XXV of 1955 that is a statutory termination of the proceedings though the Act does not say so, as there is.

no provision for a transfer of the proceedings to the tribunal constituted under the Act. The Privy Council in Colonial Sugar Refining Company v.

Irwing L.R. (1905) A.C. 369, equated the transferring of the appeal to a new Tribunal to the abolition of an appeal altogether and observed that in

either case there is interference with existing rights. To contend for the automatic termination of the pending proceedings, if accepted, involves

interference with rights acquired under existing laws. It is a drastic requirement, and words of sufficient amplitude to infer such legislative intent is

wanting in the new Act. "If any other construction is possible, the Act should not be construed so as to affect rights which have vested under the

old law, or as requiring the abatement of actions instituted for the enforcement of such rights"--Statutory Construction by Crawford. A pending

application for fixation of fair rent under Act XXIV of 1956, if terminated, may cause considerable pecuniary loss to one or other of the parties as

a proceeding under the new Act will not secure to the party entitled, to fair rent prior to the commencement of proceedings under the new Act.

The new Act in our view neither expressly nor by necessary intendment takes away such accrued rights of litigants.

14. The decision in Hutchinson v. Jauncey (1950) 1 K.B. 574, where the principle that the law applicable to an action is the law in force at the

date of issue of the plaint was not applied, to which our attention is drawn, does not apply to cases like these now under consideration. In that case

when notice to quit was served on the tenant and the plaint claiming possession was issued under the then existing Rent Restriction Acts, the tenant was not protected. It was a case of sharing of accommodation outside the protection of the Rent Restriction Acts. Before the action came on for hearing, the new Act came in to force which extended protection to cases where a tenant shared accommodation with others. The case proceeded on the true construction of Section 10-B of the Act there considered. That section was construed as applying to pending actions. Evershed, M.R., observed:

We have to look at the statute and if my view of it is right, it is saying plainly that it has retrospective effect.

15. It is also manifest that while the Act will not affect pending proceedings in Courts and Tribunals under Act XXV of 1955 or under Act XXIV

of 1956, the applicability of the provisions of the Public Trusts Act to secure eviction or any other relief available under the Act cannot be avoided

merely on the basis of decrees or orders of Courts or other authority. Pending proceedings are no doubt saved, but the effect of the substantive

provisions of the new Act may tell thereafter. There is no vested right for the continuance of a law however beneficial the law may be to a

particular person, or class of persons. Subject to constitutional limitations the Legislature can abrogate its laws. Section 3 of Act LVII of 1961

gives the Act overriding powers. For instance, a trust cannot seek to get possession from a tenant in execution of a decree or order of a Court or

an order of eviction obtained under Act XXV of 1955 outside the provisions of the Public Trusts Act in respect of lands governed by the

provisions of the said Act. On this aspect, we may usefully refer to the decision of this Court under the Madras Buildings (Lease and Rent Control)

Act XXV of 1947, *Thalai Vadivu Anandar Vs. Venugopala Chettiar*, which held that the prohibition of Section 7 of Madras Buildings (Lease and

Rent Control) Act against eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of the

section, was not limited to cases of decrees in ejectment passed after the coming into force of the Act. It was pointed out that the section

prohibited eviction of tenants in execution of decrees obtained whether before or after the Act and that a tenant could invoke protection u/s 7 of

the Act against an execution petition filed after the coming into force of the Act on a decree for eviction obtained before the Act.

16. It follows that the learned Subordinate Judge of Nagapattinam erred in directing the plaintiffs in O.S. Nos. 167 and 168 of 1961, District

Munsif's Court, Thiruthuraipundi, the subject of C.M.A. Nos. 98 and 99 of 1963 to be returned to the plaintiffs for presentation to the authorised

officer under Act LVII of 1961. Having held that Section 6-A applied to the cases, he should have ordered the transfer of the proceedings to the

Revenue Court, Thanjavur, for disposal by it in accordance with law. C.M.A. Nos. 98 and 99 of 1963 are therefore allowed.

17. The cases shall be transferred by the District Munsif to the Revenue Divisional Officer, Thanjavur.

18. With reference to C.R.P. Nos. 1077 and 1078 of 1963, the Revenue Divisional Officer, Sankari, had jurisdiction when the petitions u/s 3 (4)

(a) of Act XXV of 1955 were filed before him. He did not lose his jurisdiction on the coming into force of the Public Trusts Act. The civil revision

petitions are therefore allowed. The Revenue Divisional Officer shall entertain and dispose of the applications transferred to him u/s 6-A of Act

XXV of 1955, according to law.

19. In the view we take, C.R.P. Nos. 576 of 1963 and 1372 and 1373 of 1963 fail and are dismissed.

20. C.R.P. No. 411 of 1965 arising out of an application for fixation of fair rent under Madras Act XXIV of 1956 was pending in the Rent Court

after remand on appeal, when the Public Trusts Act came into force. While the Rent Court at the instance of the petitioner proceeded to fix the fair

rent applying the Public Trusts Act, the appellate Court considered the matter under both the Acts and so no difference. Before the Rent Tribunal,

a point was taken that the Rent Court erred in considering the matter under Act LVII of 1961. Questions were also raised as to the quantum of

rent and as to the character of the tenancy. Neither of these two points were argued before us. This revision also therefore fails.

21. There was some discussion as to the scope of the proceedings before the Revenue Court when the Rent Court is called upon to entertain

applications under Act XXV of 1955 on orders of transfer by the civil Court after the coming into force of the Public Trusts Act. It is unnecessary

for us to examine the question. Parties are free to raise all such questions of law or fact as are available to them before the Tribunals. We may

however emphasise the overriding provision of the Public Trusts Act over decrees and orders whether obtained before or after the commencement

of the Act. There the Act is retrospective. Only it does not affect pending proceedings and terminate their enquiry by the Tribunals before which

they were pending when the Act came into force. It will be for the parties who are arbiter Litis to decide whether they should better abandon the

proceedings under other Acts and pursue remedies under Act LVII of 1961.

22. All the cases are disposed of accordingly. There will be no order as to costs.