
(1980) 06 MAD CK 0012
In the Madras High Court

Srinivasan Chettiar

APPELLANT

Vs

R.M. Kalyani Ammal

RESPONDENT

Date of Decision : 27-06-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14(1)(b), 23, 23(1)(a), 23(1)(b), 23(2)

Citation : (1981) ILR (Mad) 94 : (1981) 94 LW 108 : (1981) 1 MLJ 408

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

V. Ratnam, J.—The point debated in this civil revision petition at the instance of the tenant who figures as the petitioner herein is, whether the Appellate Authority functioning u/s 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act XVIII of 1960, as amended by Act XXIII of 1973(hereinafter referred to as the Act) and the Rules framed thereunder has powers to grant permission to raise additional grounds in a pending appeal. The respondent herein filed an application in R. C. O. P. No. 655 of 1977 against the petitioner u/s 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act on the ground that she required the building in the occupation of the petitioner for the purpose of demolition and reconstruction. The building, according to the respondent, is an old one and consists of several tenements. Claiming that she had the means to put up the construction and had also submitted a plan for the proposed building and that she required the building in the occupation of the petitioner for the immediate purpose of demolition and reconstruction of a new and a modern building in accordance with the plan submitted, the respondent prayed for an order of eviction against the petitioner giving an undertaking that the entire building will be demolished within three months from the date on which possession is taken.

2. That application was resisted by the petitioner on the ground that since the building consists of several tenements some of which had already been sold to

the tenants in occupation, it is not possible to demolish the building and to construct a new building in the site. It was also the further case of the petitioner that the respondent negotiated for the sale of the respective tenements to the tenants including the petitioner and since the respondent wanted a very high price and the petitioner was unable to pay that amount, there was a demand for payment of higher rent which was not agreed to by the petitioner and hence the petitioner claimed that the application for eviction was filed with the oblique motive of securing an order for eviction against the petitioner. The petitioner further set up an agreement, dated 9th April, 1976, entered into between himself and the respondent by which he claimed that he had agreed to purchase the portion in his occupation wherein he is carrying on business and had also paid an advance of Rs. 3,000. The building was also stated by the petitioner to be a strong one which does not require immediate demolition and reconstruction.

3. The learned Rent Controller (District Munsif) Madurai Town, held on a consideration of the evidence of the Kariasthar of the respondent examined as P. W. 1, the submission of the plan and the undisputed means of the respondent and other circumstances, that the respondent bona fide required the premises in the occupation of the petitioner for the purpose of demolition and reconstruction. On this conclusion, an order for eviction was passed against the petitioner granting him two months' time to vacate the premises. Aggrieved by this, the petitioner preferred an appeal before the Appellate Authority (Principal Subordinate Judge), Madurai, u/s 23 of the Act. In the Memorandum of appeal, the petitioner had set out (he grounds of attack against the order of the Rent Controller. Realising that the plea that the sale agreement between the petitioner and the respondent had brought about a change in the jural relationship of landlord and tenant which existed before and that therefore the respondent is not entitled to file an application for eviction, had not been specifically put forth, the petitioner filed an interlocutory application purporting to be under Rule 15 of the Tamil Nadu Buildings (Leave and Rest Control) Rules, 1974, praying to receive certain additional grounds of appeal in this regard filled by the petitioner. The Appellate Authority (Principal Subordinate Judge), Madurai, by its order, dated 11th June, 1979, held that there is no provision in the Act to receive additional grounds in an appeal and that Rule 16(2) brought to its notice by the petitioner has no application whatever to this case and consequently, rejected the petition filed by the petitioner. It is the correctness of this order that is challenged in this revision.

4. The learned Counsel for the petitioner contends that the Appellate Authority constituted u/s 23 of the Act, though designated as such, is exercising quasi-judicial functions and consequently, it has an inherent power to permit the raising of additional grounds of appeal. Support for this argument is sought to be draws on the analogy of the power of the Appellate Authority to rectify mistakes made by inadvertence so long as the exercise of such a power does not amount to a review of adjudication already made. In addition, it is also contended that though the Appellate Authority is a statutory functionary under the provisions of

the Act, nevertheless it is not divested of its inherent power to permit such proceedings as are rendered imperative by the principles of natural justice, even though there may be no explicit reference to such a procedure either in the Act or in the Rules.

5. Section 23(1) (a) empowers the Government by notification to confer on such officers and authorities as it thinks fit, the powers of Appellate Authorities for the purposes of the Act in such areas and in such classes of cases as may be specified in the order. The right of appeal on an aggrieved person is conferred u/s 23(1)(b) of the Act. The power to stay further proceedings pending the decision on the appeal is conferred on the Appellate Authority u/s 23(2) of the Act. Section 23(2) provides for the manner of disposal of the appeal. That contemplates the calling for the records of the case from the Controller and the giving of an opportunity to the parties of being heard and after such enquiry as may be thought fit either personally or through the Controller rendering a decision in the appeal. Rule 15 prescribes the procedure for the filing of appeals and Rule 16 makes provision for the disposal of appeals u/s 23 of the Act. Neither Rule 15 nor Rule 16 throws any light on the power of the Appellate Authority to permit the raising of additional grounds in the appeal before the Appellate Authority. It must be noticed that the Act itself does not contain any provision regarding the application of the provisions of the CPC and indeed, the Act is a self-contained Code as regards the matters provision for which has been made. There are instances which indicate that there is a clear manifestation that the provisions of the CPC are not intended to apply to the proceedings under the Act. The provision for bringing on record the legal representatives within one month from the date of death or the date of knowledge, as the case may be is one such. Where the provisions of the CPC are made applicable, then if is so stated. For instance in relation to the provision for the execution of orders of eviction, specific provision is made that the order shall be executed as an order of a civil Court, and that for that purpose the Controller shall have all the powers of the civil Court. It would be thus obvious that but for this such a power would not be available in the Controller. These instances indicate that generally there is an exclusion of the applicability of the provisions of the CPC and where it is either made applicable or intended to apply, provision is made to that effect. It cannot therefore be readily assumed that a provision like Order 41, Rule 2, Civil Procedure Code, which prohibits an appellant from urging or putting forth any ground of objection not set out in the memorandum of appeal without leave of Court, applies to an appeal before the Appellate Authority constituted u/s 23 of the Act, From the language of Section 23 of the Act, it is clear that the Appellate Authority constituted u/s 23 of the Act is not a Court as normally understood and accepted and consequently, the procedures of a civil Court cannot be applied to those authorities. But then the question still remains whether in the absence of any specific provision either in the Act or in the Rules, a litigant who has by inadvertence omitted to raise a ground of objection against the order of the Rent Controller should be precluded from doing so. To negative the pulsing forth of

such a ground would be to bar a party from setting out what might be a vital objection to the order appealed against and in my view, so long as the appeal has not been disposed of, the granting of permission to raise additional grounds if appeal would be part of the power to decide the appeal itself. This would be so, because u/s 23(3) of the Act, it is not as if the hearing of the appeal is confined only to those grounds of appeal raised against the order of the Rent Controller but the decision is on appeal against the order of the Controller as a whole and not limited to only those grounds upon which an appeal had actually been preferred. Though the Appellate Authority constituted under the Act is not a Court and consequently it had no inherent powers as such to permit the raising of additional grounds of appeal, yet Section 23(3) would enable the Appellate Authority in the process of hearing the appeal to decide the appeal not only on grounds which have been raised before, but also on other grounds which may be raised later. In the absence of any bar on a litigant analogous to Order 41, Rule 2, Civil Procedure Code, such a power in the Appellate Authority is available. The conduct of the appeal so long as it is pending is entirely in the hands of the Appellate Authority, that Authority being statutorily vested with the authority to decide. If the appeal had not been disposed of, then the hearing of the appeal is well within the jurisdiction of the Appellate Authority. Therefore, when a party for good and sufficient reasons is able to convince the Appellate Authority that he could not raise a point earlier, it would certainly be open to the Appellate Authority to consider those points and objections as well, as long as the appeal remains undisposed of. Such a power is really part of the power of the Authority to decide the correctness or otherwise of the order of the Rent Controller statutorily committed to it and not an independent inherent power. In the present case, if the petitioner is permitted to raise the additional points sought to be raised by him, no prejudice will be caused to the respondent because the necessary facts have already been pleaded before the Rent Controller and the respondent has not been in any manner taken by surprise. For the aforesaid reasons, the Appellate Authority was in error when it declined to permit the petitioner to raise the additional grounds in support of his appeal now pending before it. Consequently, the order of the Appellate Authority rejecting the application filed by the petitioner is set aside and it is directed to entertain the application and permit the petitioner to put forth additional grounds in support of the appeal. The civil revision petition is allowed accordingly. No costs.