
(1979) 08 MAD CK 0041
In the Madras High Court

Suryaprakash Gupta and Others

APPELLANT

Vs

The Madras Piece-goods Merchants Charitable Trust

RESPONDENT

Date of Decision : 23-08-1979

Acts Referred:

Citation : (1980) ILR (Mad) 151 : (1980) 93 LW 132 : (1980) 2 MLJ 57

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—This is an appeal against the order of N. S. Ramaswami, J., dated 20th July, 1976 made in Appln. No. 3419 of 1975 in E. P. No. 11 of 1975 in C.S. No. 163 of 1962. The facts lie within a very narrow compass and they are not in controversy. The appellants are the tenants and the respondent herein is the landlord. C.S. No. 163 of 1962 was instituted by the respondent herein for recovery of possession of the suit property from the first defendant, whose legal representatives are the appellants herein, and in that suit a decree for recovery of possession was passed in 1963 on the basis of a compromise entered into between the parties. At the time when the suit was instituted and the decree was passed, the building in question was outside the scope of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960(Tamil Nadu Act XVIII of 1960) hereinafter referred to as the Act (sic) by virtue of the provisions contained in the Act shall apply to any non-residential building or part thereof occupied by any one tenant, if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees, per mensem. Subsequently the Tamil Nadu Act XI of 1964 was passed deleting Section 30(iii) from the principal Act. Meanwhile the respondent herein filed E.P. No. 35 of 1974 for delivery of possession. But that execution petition was ultimately dismissed by order, dated 31st July, 1974 made in O.S. A. No. 93 of 1966, on the ground that by virtue of the amending Act XI of 1964, the decree could not be executed. Thereafter the Government passed an order in G.O. Ms. No. 1998, Home, dated 12th August, 1974, in exercise of its powers on u/s 29 of the Act. By this order, the Government exempted "all the buildings owned by Hindu, Christian and Muslim religious Trusts and Charitable

institutions" from all the provisions of the Act. After the issue of this Government Order the respondent herein filed the present execution petition namely, E. P. No 11 of 1975, for recovery of possession of the property. When the execution petition came up before the Master of this Court, the Master dismissed the same holding that the said Government Order would not cover the case of the respondent herein. Against the order of the Master the respondent preferred an appeal before the Court and it was that appeal which was disposed of by N.S. Ramaswami, J., by the impugned order. The learned Judge allowed the appeal holding that the Government order in question applied to the case of the respondent herein and that Section 3 of the amending Act XI of 1964 did not nullify the decree as such and it merely suspended the executability of the decree during the period when the building in question was within the purview of the Act. It is against this order that the present appeal has been filed.

2. Before us the two grounds on which the learned Judge allowed the appeal against the order of the Master were challenged-the first ground on the basis of the construction of the Government Order referred to above and the second on the construction of Section 3 of the amending Act XI of 1964.

3. As far as the first ground is concerned, the contention that would appear to have been put forward before the learned Judge was that the expressions "Hindu, Christian and Muslim" occurring in the G.O. referred to above qualified not only the religious trusts but also the charitable institutions and that in the present case the respondent herein not being a Hindu, Christian or a Muslim charitable institution, the said Government Order would not apply. This contention of the appellants was repelled by the learned Judge by pointing out that the religions of Hinduism, Christianity and Islam would be relevant with regard to the expression "religious trusts" and would have no relevancy to the expression "charitable institutions, and that therefore the argument advanced on behalf of the appellants was not valid. The learned Judge pointed out:

The reasoning for holding that the exemption is not available to the suit building which is undoubtedly owned by a charitable institution is that the expression "charitable institution" occurring in the Government Order must be read in conjunction with the expression "Hindu, Christian and Muslim". I am quite clear that the expression "Hindu, Christian and Muslim" is attracted only to "religious trusts" and not to "charitable institutions". Only in respect of religious trusts, the question whether the trust is "Hindu" "Christian" or "Muslim" would arise. In respect of a charitable institution religion does not come into the picture. The view of the learned Master that the expression "charitable institution" must be read in conjunction with the expression "Hindu" "Christian or "Muslim" is not warranted

We are in entire agreement with the above reasoning of the learned Judge for the simple reason that religion does not come into the picture with regard to charitable institutions as provided for in the Government Order and in the context of the Government Order religion will have relevance only, in relation to

religious trusts and that consequently the expression "Hindu" "Christian" and "Muslim" will not qualify the expression "charitable institutions" and will qualify only the expression "religious trusts". Therefore, the first ground on the basis of which the learned Judge reversed the conclusion of the Master was correct.

4. The second ground, as we have pointed out already, is based on Section 3 of the amending Act XI of 1964. That section reads as follows:

Every proceeding in respect of any non-residential building or part thereof pending before any Court or other authority or officer on the date of the publication of this Act in the Fort St. George Gazette and instituted on the ground that such building or part was exempt from the provisions of the principal Act by virtue of Clause (iii) of Section 30 of the principal Act, shall abate in so far as the proceeding relates to such building or part. All rights and privileges which may have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of Clause (in) of Section 30 of the principal Act, shall cease and determine and shall not be enforceable;

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which the decree or order passed has been executed or satisfied in full before the date mentioned in this section.

5. Thus it will be seen that the main limb of the section consists of two sentences, the former providing for abatement of proceedings pending on the date of the publication of the amending Act in the Fort St. George Gazette and the latter providing for cessation and determination of all rights and privileges which may have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of Clause (iii) of Section 30 of the Act. As far as the present case is concerned admittedly the former part of the limb does not, apply because no proceeding was pending on the date when the amending Act was published in the Fort St. George Gazette. The proviso also does not have any application because the decree had not been executed or satisfied in full before the date of the publication of the amending Act in the Gazette. If at all, the provision that applies to the present case will be the one contained in the second sentence of the main limb of the said Section 3, namely, all rights and privileges which may have accrued before such date to any landlord in respect of any non-residential building or part thereof by virtue of Clause (in) of Section 30 of the principal Act, shall cease and determine and shall not be enforceable. Before the learned Judge the argument that was advanced on behalf of the appellants was that the effect of Section 3 of the amending Act XI of 1964 was to nullify the decree itself. The learned Judge declined to accept this argument in view of several weighty considerations. It has been repeatedly held by this Court that the Rent Control legislation does not prevent a landlord from filing a suit for recovery of possession and obtaining a decree, in the suit and all that it bars is the execution of the decree, seeking to recover possession of the property.

6. A Bench of this Court in *Theruvath Vittil Muhammadunny Vs. Melepurakkal Unniri and Another*, stand-

Before dealing with the several decisions on the effect of this Clause (clause 6 of the Madras Non-Residential Buildings Rent Control Order, 1942, corresponding to Section 10 of the Act) let us examine its plain language. Sub-clause (1) lays down that a tenant shall not be evicted from a non-residential building of which he is in possession. "Evict" literally means "expel by legal process. Eviction consists in the physical act of throwing out the tenant from the building which he is occupying. This sub-clause therefore prevents the tenants from being thrown out. One of the methods of such eviction is by the process of execution of a decree for possession. The sub-clause makes it clear that even this method is prohibited. The eviction can only be in accordance with the provisions of Clause 8 : There is nothing in this clause, or in any of the other clauses of the Order expressly prohibiting the institution of a suit for possession, or prohibiting a civil Court from passing a decree for possession. No doubt, even though a decree for possession is passed, it may (sic) not be capable of execution by the civil Court. But the passing of the decree itself is not in terms prohibited.

Is there any such prohibition which can be necessarily implied? Is there anything in this clause which takes away, by necessary intendment, the ordinary jurisdiction of a civil Court to entertain a suit by a landlord for recovery of possession of his property in the occupation of a tenant?

The Bench after referring to the decision of the Judicial Committee of the Privy Council in *Secretary of State rep. by the AIR 1940 105 (Privy Council)* and also to certain earlier decisions of this Court on the Rent Control legislation, stated--

There are certain general considerations which, in our opinion such support this view namely, that the order does not take away the jurisdiction of a civil Court to entertain a suit by a landlord against the tenant and pass a decree therein for possession. Many of these considerations are found set out in the unreported decisions of Wads-worth, J. in *Sanidhi Veeraraghavalu v. Fathima Bibi Saheba S.A. Mo. 80 of 1946*. These are such considerations : (1) The cause of action for an application to the Controller would be quite different from the cause of action for a suit in civil Court; (2) The grounds on which the Controller can order an eviction may be quite different from those on the strength of which the civil Court would grant a decree; (3) The failure is by the plaintiff to claim a decree for eviction in the civil Court on grounds which would not justify eviction by the Controller might result in grave complications by way of limitation for a suit filed after the Control Order ceases to operate; (4) The period during which execution of a decree is prohibited is limited. The Order itself is only for a short duration and when it is repealed on it expires, a decree of a civil Court can be executed in the ordinary way immediately thereafter.

Having regard to all these considerations and to the language of Clause (8) of the Order, I am of opinion that the jurisdiction of a civil Court to entertain and

pass a decree in a suit for eviction by a landlord against his tenant is not expressly or impliedly taken away by the provisions of the Rent Control order.

Ever since the date of that decision, this Court has been consistently taking the view that there is nothing in the provisions of the Rent Control Act prohibiting the passing of a decree for eviction by a civil Court in a suit instituted by a landlord. If the main Act itself did not bar the passing of a decree by a civil Court in a suit instituted by a landlord, can it be said that the provisions contained in Section 3 of the amending Act XI of 1964 intended to produce a contrary result by nullifying the decree of a civil Court? We are clearly of the opinion that that could not have been the intention; nor does the language of the said section support such a contention.

7. It may be noticed that the Rent Control legislation in this State was a temporary legislation till the Tamil Nadu Act XXIII of 1973 came into force and consequently the Tamil Nadu Act XI of 1964 could not have intended to nullify a decree by enacting Section 3 therein, Hence we agree with the learned Judge that the decree in the present case was not nullified and it continued to exist and that what was prohibited by the second sentence in the main limb of Section 3 of the amending Act XI of 1964 was the execution of the decree, because the right to execute could be comprehended by the expression "all rights and privileges which may have accrued before such date to any landlord" as has been held by the learned Judge in the present case. Consequently we agree with the learned Judge that Section 3 of the amending Act XI of 1964 did not wipe out or nullify the decree itself and it only suspended the executability or the enforceability of the decree.

8. The moment the building in question was exempted from the provisions of the Act by G.O. Ms. No. 1998, Home, dated 12th August, 1974, the decree which continued to exist became executable, and therefore, the respondent was justified in applying for execution of the decree in the present proceedings. That is the view the learned Judge has taken and we entirely agree with that view for the reasons indicated above.

9. Under these circumstances, the appeal fails and is dismissed. There will be no order as to costs.