
(1960) 09 MAD CK 0019
In the Madras High Court

The Vasudeva Pillai Trust

APPELLANT

Vs

Neelavathy Ammal

RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : (1961) ILR (Mad) 507 : (1961) 74 LW 101 : (1962) 1 MLJ 116

Hon'ble Judges : Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.—The vacant site bearing door No. 45, Sundaram Pillai Street, Purasawalkam, Madras, belongs to an institution called the Vasudeva Pillai Trust, Madras. The Trust let out the property on lease to one Shiyala Chetti on a monthly rent of Re. 1. The Trust wanted to recover possession of the property and filed Ejectment M.P. No. 2369 of 1951 against the lessee, Shiyala Chetti in the Court of Small Causes, Madras, for eviction. On 23rd January, 1952, the Court ordered Shiyala Chetti to vacate the land on or before 31st July, 1952. Shiyala Chetti's daughter, Neelavathi Ammal thereupon filed O.S. No. 271 of 1952 on the file of the City Civil Court, Madras, against the Trust for a declaration that the ejectment order, dated 23rd January, 1952 against her father was null and void, and for an injunction restraining the Trust from executing the said order. Her case was that her mother Muthammal was the tenant of the property and that she had put up some superstructure on the land and that after her death in 1939 she became the lessee, and that she was entitled to the protection and the benefits of the Madras City Tenants Protection Act of 1921. On 10th December, 1954 the Trust and Neelavathi entered into a compromise the terms whereof are as follows:

Defendants 1 to 5 (the Trust) as trustees of the Vasudeva Pillai Trust, Purasawalkam, Madras, do hereby recognise the plaintiff (Neelavathi Ammal) as tenant of the suit plot of land not entitled to claim rights and privileges under the Madras City Tenants Protection Act of 1921, and that under these circumstances

the plaintiff (Neelavathi Ammal) hereby withdraws the suit.

Neelavathi Ammal was recognised as the tenant of the property under the Trust and she continued to be in possession as such. The Trust filed O.S. No. 845 of 1955 on the file of the City Civil Court, Madras, for recovery of possession of the plot of land from Neelavathi Ammal alleging "that the Trust required it for its own use. A notice, dated 4th March, 1955, calling upon the, defendant to vacate on the expiry of 31st March, 1955, was issued by the Trust prior to the institution of the suit.

2. This suit was resisted by the tenant Neelavathi Ammal mainly on the ground that she was entitled to the benefits of the Madras City Tenants Protection Act as amended by Madras Act (XIX of 1955). The tenant offered in terms of that Act to purchase the plot of land from the Trust on a value to be fixed by the Court. The Trust while agreeing to pay compensation to the tenant for the value of the superstructure on the land contended that the Trust cannot be compelled to sell the property to the tenant.

3. The learned VI Assistant Judge, City Civil Court, who tried the suit upheld the contention of the plaintiff-Trust and decreed the suit as prayed for with costs, subject to the Trust paying the compensation to the defendant for the value of the superstructure on the land. The defendant-tenant preferred an appeal, A.S. No. 104 of 1957 which was heard and disposed of by the learned Additional Judge, City Civil Court, Madras. The learned Additional Judge held that the tenant was entitled to the benefits of the Act and accordingly granted her the relief for purchasing the land from the Trust in accordance with the provisions of the Act. This Second Appeal has been preferred by the Trust challenging the correctness of the decision of the lower appellate Court.

4. The only point that arises for consideration is whether the Trust can be compelled to sell the suit land to the tenant in terms of Section 9 of the City Tenants Protection Act. Section 9(1) of the Act is as follows:

Any tenant who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted or proceeding u/s 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may, within one month of the date of the Madras City Tenants Protection (Amendment) Act, 1935, coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the land is situate, or within one month after the service on him of summons, apply to the Court for an order that the landlord shall be directed to sell the land for a price to be fixed by the Court. The Court shall fix the price according to the lowest market value prevalent within seven years preceding the date of the order and shall order that, within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.

The Explanation to Section 9 as it stood prior to the amendment in 1926 was as follows:

Explanation: Land means the interest of the landlord in the land and all other interests which he can convey under any power.

5. The question whether the language of the Act was wide enough to enable a tenant in occupation of land belonging to a temple, mosque or Trust to obtain the benefits of the Act by compelling the landlord to sell the land where he was sought to be evicted came up for consideration in *Parthasarathy Iyengar v. Doraiswami Naicker* (1922) 44 M.L.J. 91 : ILR 46 Mad. 823. Spencer and Venkatasubba Rao, JJ., held:

A tenant in occupation of land belonging to a temple or mosque cannot enforce a compulsory sale of the land u/s 9 of the Madras City Tenants Protection Act and require the temple or mosque to deliver the land to him on a valuation to be made by the Court.

6. The learned Judges took the view that the Explanation to Section 9 did not permit the tenant to compel the trustee to do something which it would be incompetent for him to do. Venkatasubba Rao, J., at page 834 observed thus:

Are we to assume that the Legislature intended that the trustee should be compelled to sell the land and that he should in lieu of it receive money which should be thenceforward at, his absolute disposal? If the lands in possession of trustees were intended to be included, certainly we should expect to find some provision in the Act dealing with the investment of pie funds. To adopt the construction suggested on behalf of the tenants would be in effect to hold that the Legislature intended the conversion of the trust lands into money without providing for the protection of the money so obtained.

7. The correctness of this decision was challenged in *Doraivelu Mudaliar v. Natesa Gramani* (1925) 47 M.L.J. 211 : ILR 47 Mad. 761. The following question was referred to a Full Bench:

Does the Madras Act III of 1922 apply to landlords who hold their land as trustees of a religious institution?.

8. The Full Bench consisted of Coutts Trotter, G.J., and Ramesam and Wallace, JJ. and their opinion was Section 9 of Act III of 1922 applies to landlords who hold their lands as trustees of a religious institution. Coutts Trotter, C.J., took the view that it was wrong to control a statute by general considerations imported from the Hindu Law. The learned Chief Justice was of the opinion that the provisions of Act III of 1922 added to the powers of the trustees to sell trust land, a third category of power, the first two categories being the power to sell for necessity and the power to sell for benefit of the Trust. Ramesam, J., based his decision on the ground that temple properties really belonged to the idol installed in the temple which was a juristic entity and as the tenant was only purchasing the property of the idol under the terms of the Act the question whether a trustee

with limited powers of sale can be compelled to sell or not cannot arise for consideration. Wallace, J., decided the matter on yet another ground. He stated his view in the following words:

It is admitted that the trustee of trust land comes within the definition of the term "landlord". When the Court has made that order and not earlier, as I conceive it, can a trustee landlord come in to object that such an order cannot be valid because he is not entitled in law to sell the land or to alienate it permanently except for necessity. To that the Court rejoins that the order itself has just provided the necessity required and it seems to me that on that the objection of the trustee landlord must vanish, as it cannot be argued that such an order of the Court directing him to sell the land is not a necessity justifying his conveyance of the land.

9. The result was that the decision in *Parthasarathy Iyengar v. Doraiswami Naicker* (1922) 44 M.L.J. 91 : ILR 46 Mad. 823, was overruled.

10. The Legislature came in with an amendment of the Act by Madras Act (VI of 1926). In Section 9 of the Act for the Explanation as it stood the following was substituted, namely:

Land means the interest of the landlord in the land and all other interests which he can convey under any power and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust.

The words commencing from "includes" upto "trust" were newly added to the Explanation as it stood before the amendment.

11. The problem now before me is whether in view of the language of the Explanation trustees-landlords are in no way different from other landlords with absolute rights of ownership in respect of the demised land and with no limitation of their powers of disposal or alienation. The Full Bench decision in *Doraivelu Mudaliar v. Natesa Gramani* (1925) 47 M.L.J. 211 : ILR 47 Mad 761, undoubtedly held that the provisions of the Act as it then stood did not place any impediment in the way of tenants holding under trustees to obtain the benefit of the Act just as if they had been tenants under any other person with rights of full ownership. The Full Bench decision is certainly binding upon me and but for the amendment introduced by Madras Act (VI of 1926) this question need not have been considered at any great length.

12. In a recent decision of this Court in *Sivananda Gramani v. Mohomed Ismail* (1959) 1 M.L.J. 263, *Ramachandra Iyer, J.*, considered the question whether the Act was applicable so as to enable a tenant under a trust to acquire even property which is inalienable or *res extra commercium*. In that case the tenant had put up huts on bits of property forming part of a Muslim burial-ground. When they were sought to be evicted by the landlord-trustee they claimed the benefit

of the Act. The learned Judge referred to the Full Bench decision already referred to and observed as follows:

By reason of this Explanation it is clear that Section 9 was intended to apply and could apply only to a case where a trustee could lawfully dispose of the property. If a property is such that even a trustee could not dispose of, like a mosque, temple, etc., then Section 9 could not be invoked for a sale to the tenant of the property.... There will therefore be no jurisdiction in the Court to direct a sale to the tenant of the property.

This decision is authority for the position that the provisions of the Act are not so overriding as to bring about a conversion of inalienable properties into alienable properties capable of acquisition or purchase. The exact scope of the newly amended Explanation however was not the subject-matter of that decision.

13. I am of opinion that the amendment of the Explanation under the 1926 Act introducing the words describing the trustee's power to convey significantly point out that the tenant under a trustee cannot exercise the statutory right to purchase the demised land if the trustee could not have sold the land under a private sale there being neither necessity nor benefit to the trust. If the object of the amendment was to replace the trustee-landlords in the same position as other landlords owning property the language of the Explanation is to say the least inappropriate to bring about that object. Even before the amendment the decision in *Doraivelu Mudaliar v. Matesa Gramani* (1925) 47 M.L.J. 211 : ILR 47 Mad. 761, has been rendered. If the Legislature had approved of that decision and had thought that that decision correctly interpreted the meaning of the enactment there was no necessity to introduce an amendment by adding words to the then existing Explanation.

14. By way of analogy reference may be made to a father's power to sell the son's property in respect of his own antecedent debts under the Hindu Law. On the insolvency of the father in cases governed by the Provincial Insolvency Act prior to the introduction of Section 28-A of the Act, it was held by a Full Bench of this Court in *Nori Ramasastrulu Vs. Teluguntla Balakrishna Rao and Another*, , that the father's power to sell did not vest in the Official Receiver or the Assignee. But the position was different in cases governed by the Presidency Towns Insolvency Act. But the Official Receiver or the Assignee in insolvency can in exercising the power of the father do only what the father could have done. The sons's share cannot be sold by the father in respect of his antecedent debts which are illegal or immoral. The Official Receiver stepping into the shoes of the father cannot transgress that power and bring about an omnibus sale to discharge all the debts of the father whatever their character may be. No man can convey to another any higher right than he himself possesses.

15. I am of opinion that the tenant holding under a trustee a leasehold property and claiming the benefit of the Madras City Tenants Protection Act can only obtain the benefit where such purchase is a matter of necessity for the trust or

will result in a benefit to the trust. The tenant cannot have an absolute right in the matter in view of the specific provisions of the Explanation to Section 9.

16. The Courts below have not considered the question from this point of view. The suit, O.S. No. 845 of 1955 on the file of the VI Assistant Judge, City Civil Court, Madras, has therefore to be remitted to that Court for fresh disposal in the light of the observations contained in this judgment. The parties will be at liberty to adduce fresh evidence at the enquiry to be held in pursuance of this order of remand. The decision of the learned Additional City Civil Judge in A.S. No. 104 of 1957 is therefore set aside, and the suit, O.S. No. 845 of 1955 on the file of the VI Assistant Judge, City Civil Court, Madras, is restored to its file to be heard and disposed of in accordance with law. The appellant will be entitled to a refund of the Court-fee paid on the memorandum of appeal. Costs will abide and follow the result. No leave.