

(2008) 03 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No's. 2509 and 2510 of 2005

V. Babu and E. Manokaran

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowment Board, Nungambakkam, Chennai 34 and The
Executive Officer, Arulmigu Sundarraja Perumal and Anjaneya
Swamy Tirukoil Alathur, Subramaniam Street, Choolai,
Chennai 600112

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 03 MAD CK 0195

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : M. Kalyanasundaram for Mr. G. Sethuraman, for the Appellant; G. Sugumaran for R.1 and Mr. T. Chandrasekaran, Spl. G.P. for R.2, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—These writ petitions are filed by the respective petitioners against the order of the first respondent, the Commissioner, Hindu Religious and Charitable Endowment Board in Na.Ka.No.63806/03/R.2 dated 13.02.2004 and in Na.Ka.84424/03/R.2 dated 24.01.2004 and the consequential order of the second respondent, the Executive Officer of Arulmighu Sundararaja Perumal Thirukoil, Alathur, Choolai, Chennai dated 23.03.2004 and also for directions to respondents to execute and register sale deed in favour of the petitioner in WP.No.2509 of 2005 in respect of the land measuring 881 sq.ft. in door No.73/32, Arimuthu Maistry Street, Choolai, Chennai 102, as per the decree in CMA.No.212 of 1983 dated 31.10.1985 on the file of VII Additional Judge, City Civil Court, Chennai and in favour of the Writ petitioner in W.P.No.2510 of 2005 in respect of land measuring 1383 sq.ft in door No.70/30 Arimuthu Maistry Street, Choolai, Chennai 102, as per the decree in CMA.No.209 of 1983 dated 31.10.2005 on the file of VII Additional Judge, City Civil Court, Chennai. In

WP.No.2509 of 2005, the petitioner's father's elder sister Chellammal, became a tenant under the second respondent Temple in respect of 881 sq.ft. in Door No.73/32 Arimuthu Maistry Street also called Sundararaja Perumal Street, Choolai, Chennai 600102. The second respondent, Temple has filed an ejectment suit in O.S.No.4072 of 1979 on the file of Third Assistant Judge, City Civil Court, Madras. After receiving the summons in the suit, the said Chellammal filed I. A.No.13647 of 1979 u/s 9 of the Chennai City Tenants Protection Act, 1921 (in short, "the Act") to convey the property in her name for a sum to be determined. The Commissioner appointed has determined the amount at Rs. 5,506.25, which was paid before the Court as per the instalments permitted. As against the said order in the interlocutory application, the second respondent, Executive Officer of the Temple has filed CMA.No.212 of 1983 on the file of VII Additional Judge, City Civil Court, Chennai. In the appeal stage, the extent was determined as 881 sq.ft. and according to the petitioner, he was directed to deposit a sum of Rs. 6422.49 and he has paid the difference in amount of Rs. 916.24 before the date fixed by the Court, which was 30.03.1986.

1(a). According to the petitioner, the said Chellamal has received money from the petitioner's father Vallal and entered into an agreement on 20.04.1985, pursuant to which the petitioner was put in possession of the property ultimately and the petitioner's father approached the second respondent to execute sale deed and there was no response. In the meantime Chellammal died in 1992, and the petitioner's father also died in 2002. Thereafter, the petitioner has made representation to the respondents to execute sale deed and as there was no reply, the petitioner filed WP.No.19675 of 2003. By order dated 21.08.2003, the said writ petition was disposed of with direction to the respondents to dispose of the representation of the petitioner within a period of 12 weeks.

1(b). It is the case of the petitioner that when the said writ petition was argued it was referred to by the learned Government Pleader that under Tamil Nadu Amendment Act 2 of 1996, the Temple lands have been exempted from the purview of the Act and in those circumstances, the direction as stated above was passed. The first respondent passed an order on 24.01.2004 addressed to the second respondent that in view of the Amendment Act 2 of 1996, since the Temple has been exempted from the purview of the City Tenants Protection Act, no sale deed can be executed.

2. Likewise, in W.P.No.2510 of 2005, one Rajammal, the petitioner's mother's elder sister was a tenant in respect of the land measuring 1383 sq.ft. at door No.70/30 Arimuthu Maistry Street also called Sundararaja Perumal Street, Choolai, Chennai 600 102. The second respondent has filed an ejectment suit in O.S.No.4074 of 1979 on the file of Third Assistant Judge, City Civil Court, Madras. Pending the suit, Rajammal has filed I.A.No.19523 of 1979 u/s 9 of the Act to convey the land and the said application was ordered on 27.01.1983, directing the said Rajammal to pay a sum of Rs. 8,643.75 in 25 equal instalments. On appeal in CMA.No.209 of 1983 filed by the second respondent

against the order in the said application, the VII Additional Judge, City Civil Court, Madras disposed the appeal on 31.10.1985, increasing the amount payable to Rs. 10,084.40 and permitted to pay the said amount on or before 30.03.1986. According to the petitioner, in the meantime the said Rajammal died. The petitioner made the payments, last of which was on 16.03.1986, to the credit of the suit. Despite several representations, there was no response and a legal notice was also issued.

2(a). The two sons of Rajammal, viz., Natraj and Moorthy, by agreement have put the petitioner in possession. The petitioner also filed W.P.No.19284 of 2003 and an injunction was granted restraining the respondents from interfering with the petitioner's possession and ultimately by order dated 21.08.2003, the writ petition was disposed of directing the respondents to dispose of the representation of the petitioner, even though the learned Government Advocate has raised the plea that by that time, Act 2 of 1996 came into effect exempting the Temple land from the purview of the City Tenants Protection Act.

3. The main contention raised by Mr. M. Kalyanasundaram, learned senior counsel for the petitioners in these cases is that while Act 2 of 1996 came into existence much after the orders passed in the appeals filed by the second respondent against the order in the interlocutory applications, passing of the Amendment Act 2 of 1996, exempting the Temples from the purview of the City Tenants Protection is not applicable; that as per proviso to Section 3 of the Amendment Act 2 of 1996, the proceedings instituted by the tenant in respect of the lands owned by the Temple are saved, when the decree or order passed in the proceedings are executed or satisfied in full before the publication of the Amendment Act.

3(a). According to him, even before the Amendment Act came into force which was on 11.01.1996, in these cases the petitioners have deposited the entire amount as directed by the Court. In WP.No.2509 of 2005, the petitioner has deposited the amount as per the decree in the appeal on 09.04.1985 and the petitioner in WP.No.2510 of 2005 has deposited the entire amount by December, 1984 and therefore, when the deposit has been effected, execution of sale deed is only consequential and therefore, according to the learned senior counsel, the meaning "satisfied" in the Amendment Act is the payment or deposit in the Court as per the final order passed u/s 9 of the Act. He would also rely upon the judgment of the Full Bench of this Court in Arulmigu Kasi Viswanathaswamy Devasthanam by Fit person Vs. Kasthuriammal, to substantiate his contention that the word "satisfied" means the deposit into the Court by the tenant and thereafter, there is no option to the Court than directing execution of the sale deed.

3(b). The further contention of the learned senior counsel is that while the Civil Miscellaneous Appeal in both the cases were disposed of directing the enhanced amount to be deposited by the tenants respectively, the appellate Court has clearly passed a decree stating that on payment of the entire sum, the appellant

(plaintiff) shall execute and register the sale deed in favour of the tenants and when the tenants have paid the amount to the Court, the decree should be deemed to have been fully satisfied.

4. On the other hand, Mr. P. Sukumar, learned Special Government Pleader appearing for the respondents would submit that first of all, the writ petitions are not maintainable. His submission is that Section 9 of the Act confers right on the tenant to get the portion in his occupation purchased from the landlord on the price to be fixed. This right is a personal right of the tenant, who is in physical possession as tenant. According to the learned counsel, the petitioners are not the tenants under the second respondent at all and this fact has been admitted by the petitioners. Admittedly, in respect of WP.No.2509 of 2005, the tenant was one Chellammal and in respect of WP.No.2510 of 2005 the tenant was one Rajammal and the petitioners are not even the legal heirs of the tenants and the petitioners are only claiming to be the relatives of the tenants based on the agreement stated to have been executed by the tenant in one case and by the legal heirs of the tenant in the other case.

4(a). The learned counsel would also submit that secondly the judgment of the Full Bench relied upon by the learned senior counsel for the petitioners has been overruled by the Supreme Court in S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, , wherein the Supreme Court has held that till conveyance by way of document is executed, the proceedings are deemed to continue and therefore, mere payment or deposit of amount as directed by the Court will not amount to bringing the proceedings to an end and according to the learned counsel, the proceedings are still pending, since conveyance has not been effected and therefore, it is hit by the Amendment Act 2 of 1996. According to the learned counsel, the personal right of the tenants cannot be transferred and consequently the petitioners have no right to have the benefit of the Chennai City Tenants Protection Act, 1921.

5. I have heard learned counsel for the petitioners and respondents and perused the records and I have given my anxious thoughts to the facts and circumstances of the case.

6. In these two cases, on reference to the facts, it is clear that in the suits for ejectment filed by the second respondent Temple, Chellammal and Rajammal were the defendants and admittedly, they were the tenants under the Temple. In respect of Chellammal, who is the defendant in O.S.No.4072 of 1979, she claimed 881 sq.ft. to be in her possession and that was confirmed in the appeal in CMA.No.212 of 1983.

7. Likewise, the suit in O.S.No.4074 of 1979 was filed by the Temple against Rajammal, who is the defendant, and she claimed to have been in possession of 1383 sq.ft. and in fact, in the interlocutory application filed u/s 9 of the Act, a direction has been given to the effect that the Rajammal was entitled to purchase the said land, fixing the amount at Rs. 8,643.75. It is seen that when the plaintiff

Temple filed appeal in CMA.No.209 of 1983, the original tenant Rajammal died and her legal heirs, viz., Moorthy, Natraj and Manohar were impleaded as parties and the decree in the appeal is that on payment of the amount of Rs. 10,084.40, the Temple/plaintiff has to execute and register sale deed in favour of the tenant. The writ petitioner in this writ petition claims right under an agreement with the legal heirs of Rajammal to have the benefit of sale deed executed in his favour. Therefore, on facts, it is clear that the writ petitioners are not tenants under the Temple.

8. Under the Chennai City Tenants Protection Act, 1921, the term "Tenant" is defined u/s 2(4), which is as follows:

2(4). "Tenant" in relation to any land-

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes-

(a) any such person as is referred to in sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that-

(1) such person was not entitled to the rights under this Act by reason of the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972), or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to section 12 of this Act as it stood before the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972) disentitled such person from claiming the rights under this Act, and

(c) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii) (a) or (ii) (b),

but does not include a sub-tenant or his heirs;

A reference to the above term makes it clear that a tenant is a person, who is liable to pay rent and it includes a tenant who continues to be in possession after determination of tenancy. It also includes a person who or any of whose predecessors in interest have erected the building and who continuous in actual physical possession of such land. The right conferred u/s 9 of the Act is for the benefit of the tenant, who is in occupation and possession against whom a suit

for ejectment has been instituted and who is entitled for compensation u/s 3 of the Act.

9. While Section 9 of the Act empowers a tenant in occupation of a land under a tenancy agreement to have the right of purchasing the whole or a part of the land in possession, on the landlord filing a suit for ejectment, Section 3 empowers a tenant, on ejectment, to claim compensation on the value of any building which has been put up by him on the land which has been rented out to him. Therefore, a combined reading of the above Sections, more particularly Section 9 makes it clear that the object of the said Section is to protect a tenant, who is in occupation by putting up a superstructure and the principle is based on equity, since it is not equitable to eject a tenant in certain circumstances without compensation and as per Section 9, under the circumstances stated therein it is not equitable to eject a tenant without giving him an opportunity of acquiring the land for himself for convenient enjoyment on payment. Thus the essential ingredient for a tenant to have the benefit of Section 9 of the Act is that he must be entitled to compensation as per Section 3 of the Act in respect of the superstructure put up by him as a tenant.

10. Even though the constitutional validity of the said section has been upheld, inasmuch as the right conferred on a tenant u/s 9 would certainly be a set back to the right of landlord in respect of his property, since under the said provision, against his volition, he is compelled to sell the property to the tenant, who is in occupation, while conferring the benefit of Section 9, certain strict principles have to be followed. It is no doubt true that considering the background of the provisions of the said Act, right conferred u/s 9 is only a personal right of a tenant which is beneficial nature conferred on the tenant personally, such right cannot be transferred and that right is based on the tenancy and the land lord filing a suit for ejectment against a tenant. Therefore, considering the requirements for obtaining the benefit u/s 9 of the Act, I am of the view that in the first instance, the petitioners who are not the tenants under the second respondent, especially in the circumstance that the suits filed by the second respondent Temple are not against the petitioners herein, particularly when the petitioners themselves admitted that they are not the legal heirs of the original tenants, but claimed rights under agreements, the petitioners are not entitled for the benefit of Section 9 of the Act. It is in that view of the matter, there is no difficulty to come to the conclusion that the orders passed by the appellate Court u/s 9 of the Act are not in favour of the petitioners at all.

11. Considering the next contention raised by the learned senior counsel for the petitioners by placing reliance on the Full Bench judgment of this Court in Arulmigu Kasi Viswanathaswamy Devasthanam by Fit person Vs. Kasthuriammal,], it is true that the Full Bench has construed the provisions of the Chennai City Tenants Protection Act, 1921 in the light of the Tamil Nadu Amendment Act 2 of 1996 and held that for a tenant to have the benefit contemplated under the said provision, it is sufficient when he satisfies the

demand as fixed by the Court either by making payment or depositing the same in the Court and thereafter, execution of the conveyance is only consequential, and therefore, the meaning of the word "satisfied in full" is completed, the moment when the tenant pays the price determined or deposits the amount in full. However, the Full Bench while construing the necessary ingredients by way of various steps for the purpose of availing the benefit u/s 9 of the Act, has held that the first step contemplated is that the Court must decide the minimum extent of land required for the convenient enjoyment of the land by the tenant; the second step is to fix the price of the minimum extent on the average market value; the third step is the order of the Court in directing the tenant to make payment; the fourth step is that on intimation to the Court about the payment stipulated within time the Court shall pass orders directing conveyance by the landlord to the tenant and it was thereafter, the proceedings stand automatically dismissed and no further judicial order is contemplated. The operative portion of the judgment is as follows:

33. As indicated above, when a tenant is found to be entitled to the protection u/s 9 of the Act, the procedure contemplated in Secs. 9(1)(b) and Sec. 9(2) and Sec. 9(3) has to be followed. The first step contemplated under Sec. 9(1)(b) of the Act is that the Court must decide the minimum extent of the land required for the convenient enjoyment of the land. The second step is that the Court shall fix the price of the minimum extent on the average market value. The third steps is that the Court shall order payment into Court by tenant. Then the fourth step is that on intimation about the payment within the stipulated time, the Court shall pass an order directing conveyance by the landlord to the tenant. The moment such an order is passed, the suit or proceedings shall stand automatically dismissed. Thereafter, no further judicial order is contemplated.

12. Further, the Full Bench, while dealing with the word "satisfied in full" held as follows:

39. The expression "satisfied in full" which is referred to in the proviso., would relate to the order passed under Sec. 9(1)(a) directing the tenant to pay the price determined. The moment tenant deposited the amount the order is fully satisfied. Having being satisfied, the trial Court made a further order directing the landlord to execute the sale deed.

13. It is by virtue of the said portion of the order of the Full Bench, the contention of the learned senior counsel for the petitioners is that the word "satisfied in full" means the payment or deposit of the price made by the tenant as per the direction of the Court and therefore, the last step for completing the judicial process in directing the landlord to execute sale deed is only consequential, since on such deposit the Court has no other option but to direct the landlord to execute sale deed. According to the learned senior counsel for the petitioner, as per the Full Bench judgment cited supra, on the facts and circumstances of this case, the petitioners having deposited the full amount much before the Tamil Nadu Amendment Act 2 of 1996 has come into existence,

the adjudication is deemed to have been completed and therefore, the Amendment will have no effect.

14. It is not in dispute that the Tamil Nadu Amendment Act 2 of 1996 to the Chennai City Tenants Protection Act, 1921 has come into force from 11.01.1996 and in this case, on record, it is seen that the amounts have been deposited into Court as directed in the appeals, by the tenants in their names much before the Amendment came into effect. The said judgment of the Full Bench of this Court came to be considered by the Supreme Court and the Supreme Court has held that u/s 9(3)(a) of the Act, on payment of the price fixed as per clause (b) of Sub-section (1) of Section 9, the Court has to pass an order directing the conveyance by the landlord to the tenant in respect of the land for which price was fixed and paid. The Supreme Court further held that the term, "conveyance" means that till the landlord conveys the title in respect of the property by necessary document to the tenant, the proceedings is kept pending. It is made clear that till the conveyance is effected by document, it cannot be said that the fruits of the decree have been realised fully. Thus saying, the Supreme Court held that--before execution of such sale deed, if the Amendment Act 2 of 1996 which has come into effect on 11.1.1996, the proceedings are deemed to be pending and the view expressed by the Full Bench runs counter to the language used in the Chennai City Tenants Protection Act, thereby refusing to accept the view taken by the Three Judge Bench of this Court reported in Arulmigu Kasi Viswanathaswamy Devasthanam by Fit person Vs. Kasthuriammal, .

15. That was a case in S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, wherein their Lordships B.N. Agrawal, P.P. Naolekar and P. Sathasivam, JJ. have decided the case. The operative portion of the judgment is as follows:

11. Finally, Mr. M.N. Krishnamani placing reliance on the Full Bench decision of the Madras High Court rendered in CRP (NPD) No.2758 of 1996 titled Arulmigu Kasi Viswanathaswamy Devasthanam vs. Kasthuriammal (2006 (2) CTC 452, submitted that the moment tenant deposited the amount the order is fully satisfied. He further pointed out that as per the said decision the moment the order u/s 9(3)(a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9(3)(b) of the Act. We are unable to accept the said proposition.

The relevant provisions are as follows:

9(3)(a). On payment of the price fixed under Clause (b) of sub-section (1) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any, the stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b). On the order referred to in Clause (a) being made, the Suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been

passed therein but which has not been executed shall be vacated.

It is clear that if the tenant complies with the order passed u/s 9(1)(b) and deposits the amount within the time as fixed, the Court has to pass an order directing the conveyance by the landlord to the tenant. It is true that as per Section 9(3)(b) on passing an order under Clause (a) the Suit or proceeding shall stand dismissed. In the light of the language used in Clause (a) i.e. "conveyance" to be made by the landlord to the tenant, till the proper document conveying title to the tenant it is presumed that the proceeding is kept pending. To put it clear that unless the sale deed is executed by the landlord in favour of the tenant or in the alternative by the Court on behalf of the landlord the fruits of the decree can not be realised. The suit or proceeding will come to an end immediately on execution of sale deed either by the landlord or by the Court on behalf of the landlord. In our case, as said earlier, the sale deed was executed only on 28.10.1996, however the amended Act 2/96 came into force on 11.1.1996 much earlier to the execution of sale deed. The view expressed in the Full Bench decision runs counter to the language used in the statute and we are unable to accept the same.

Therefore, it cannot be said as if the said portion of the judgment is an obiter dictum and not a decision on issue. The contention of the learned senior counsel for the petitioners that by the said judgment of the Supreme Court, the Supreme Court has not actually reversed the judgment of the Full Bench of the Madras High Court, is not at all sustainable.

16. Inasmuch as by the categorical wordings the Supreme Court has clearly laid down that the Full Bench judgment runs contrary to the language used in the Chennai City Tenants Protection Act, it can never be contended that such a decision is only an obiter dictum and not a ratio decidendi. The Supreme Court has expressly made it clear that it is not merely by deposit of the amount or payment of the amount as directed by the Court, but ultimately it is by the execution of conveyance only the adjudication process come to an end and that is the characteristic of the decision, and therefore, there is no difficulty to come to the conclusion that as per the judgment of the Hon"ble Apex Court, it is only after the conveyance is effected the proceedings can be deemed to have come to an end. In the present writ petitions, apart from the fact that the petitioners are not tenants, who are not eligible for the benefit u/s 9 of the Act, even on the factual situation, the amounts have been deposited in the name, of the tenants, but there is no conveyance effected in the name of the tenants and applying the law laid down by the Supreme Court in *S. Bagirathi Ammal Vs. Palani Roman Catholic Mission*, , and for the above said reasons the writ petitioners are not entitled to the relief claimed and accordingly, the writ petitions are dismissed. No costs.