
(1976) 07 MAD CK 0059
In the Madras High Court

Vellaiki Konar

APPELLANT

Vs

Kamala Devi, through her Power-of-Attorney Agent
Subramania Pillai

RESPONDENT

Date of Decision : 02-07-1976

Acts Referred:

Citation : (1977) ILR (Mad) 27 : (1977) 90 LW 296 : (1977) 1 MLJ 353

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—The unsuccessful tenant before the Authorised Officer (Land Reforms), Madurai, is the petitioner before me.

2. Before the facts which touch upon this civil revision petition are set out, it is convenient to refer, in brief, to the events which happened prior to it. On 21st July, 1971, the landowner (respondent herein) filed an application T.C.T.P. No. 38 of 1971 under the Tamil Nadu Cultivating Tenants Protection Act for recovery of possession of the demised land on the ground that the tenant (petitioner herein) was in arrears of rent. An ex parte order was passed on 17th January, 1972. The petitioner tenant attempted to set aside the ex parte order. He was not successful. He filed a second application to set aside the same. Equally he could not succeed. Thereafter he preferred C.R.P. No. 2191 of 1972 in this Court against the order refusing to set aside the ex parte order. When it came up, a conditional order of stay was passed by this Court. The tenant did not comply with the condition, imposed for the grant of stay. Ultimately on. 19th April, 1975, C.R.F. No, 2191 of 1972 was dismissed. It appears that the landowner took possession of the property pursuant to the order of eviction passed earlier in the above proceedings. She took such possession on 29th August, 1974.

3. During the pendency of the above proceedings, Tamil Nadu Act XXI of 1972 was passed. This Act was published in the Gazette on the 11th August, 1972. This Act is the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1972, which provided relief to cultivating tenants in respect of certain arrears of rent.

The main intendment of the Act was, as part of agrarian reform, particularly to give relief to cultivating tenants from the burden of discharging arrears of rent. The Act gave an entitlement, which is purely statutory, to the tenant, whereunder on payment of the current rent for the fasli commencing on the 1st July, 1971 and ending with the 30th June, 1972, commonly known as fasli 1381, cultivating tenants would be relieved from the further obligation and responsibility of paying any more arrears even if such arrears were found to be due, or admittedly due, or has been the subject-matter of a decree or order of Courts. In order to obtain such a relief, a cultivating tenant, u/s 3 (1) (a) of the Act, was enabled to pay or deposit the rent for the prescribed current fasli within six months from the date of the publication of the Act or he should prove that prior to the date of the publication of the Act he has so paid the rent for the fasli 1381 to the landowner or deposited the same in any competent Court or before the competent authority prescribed under the Act.

4. Section 3 (1) (b) provides the methodology by which the tenant can wipe out the arrears by paying the rent for the prescribed current fasli. He may either pay it to the landlord or deposit the same in Court or before the competent authority. In such cases, the Court in which, or the competent authority before which, the deposit is made, shall issue notice of such deposit to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of the current rent due from the cultivating tenant. This is provided for u/s 3 (1) (c).

5. What is important is that the Court or the competent authority is enjoined to adjudicate on the question whether the payment claimed by the tenant is true, or the deposit made in the Court or before the competent authority correctly represents the rent for fasli 1381. If the amount deposited is the correct amount, then, Section 3 (1) (a) works itself for the benefit of the tenant and the tenant will gain an automatic statutory relief thereunder. But, if there is any deficiency found by the Court or the competent authority, in the course of the adjudication proceedings contemplated u/s 3 (1) (c) then, the Court or the competent authority shall give such time as is reasonable to the tenant to deposit the amount in deficiency, and in such circumstances, when the deficiency is made up by the tenant, he shall be deemed to have paid the "current rent" for the purpose of this Act.

6. It is also singular to note that the statute has used the words "paid", "pays" and "deemed to have paid" while granting the statutory relief, as contemplated above. On a fair reading of Section 3 (1) of Act XXI of 1972, it is clear that it contemplates an adjudication on the question whether the tenant has paid, or after the publication of the Act paid, the current rent to the landlord, or deposited the same in a Court or before the competent authority. I have already referred to the result of such payment or deposit, which is rather automatic.

7. Section 3 (3) runs as follows:

If, before the date of the publication of this Act, any decree or order has been passed in any suit or proceeding:

(i) for the recovery of any arrears of rent; or

(ii) for the eviction of a cultivating tenant for non-payment of any arrears of rent;

the Court or the competent authority shall, if the cultivating tenant pays or deposits or has paid or deposited or is deemed to have paid or deposited, under this Act, the whole of the current rent and on the application, of any person affected by such decree or order whether or not he was a party thereto, vacate the decree or order in so far as such decree or order relates to such recovery or eviction.

This section is another enabling section, which is intended to benefit a cultivating tenant. If an adjudication has already taken place, as contemplated u/s 3 (1) (c) then, the cultivating tenant can follow up the relief by making an application u/s 3 (3) and seek for vacating a decree or order, whereby he was directed earlier by a Court or the competent authority to vacate and deliver possession of the demised land.

8. With this background, the facts touching upon this civil revision petition can now be stated. During the course of the eviction proceeding already referred to, the petitioner filed an application u/s 3 (1) (a), (b) and (c), which was numbered as T.C.T.P. No. 94 of 1973. He sought relief by making a deposit of the rent, which amount, according to him, was the only amount due by him as and towards the rent for fasli 1381. Though he took such prompt steps to avail himself of the statutory entitlement, yet, on 29th August, 1973 when T.C.T.P. No. 94 of 1973 was set for hearing before the competent authority, he failed to appear. As no sufficient cause was shown for his non-appearance, the said application was dismissed and the amount deposited was directed to be refunded. The petitioner has not challenged the correctness of this order or the alleged inequity in this order, in a manner known to law.

9. But, a year and two months later, he filed an application u/s 3 (3) before the competent authority seeking for vacating the order of eviction passed in the earlier proceedings referred to already. In the application so filed he urged certain contentions, which were repeated before me by Mr. Varadarajulu Nayudu. I shall therefore state these objections hereafter and at the appropriate place. The competent authority felt that there was no prior adjudication, which is the sine qua non for the entertaining of an application under section. 3 (3) and which would compel the competent authority or the Court to vacate an order of eviction or restore possession, in case possession has already been delivered pursuant to such order of eviction, and dismissed the application of the tenant u/s 2 (3), numbered, in his Court as T.G.T. P. No. 38 of 1971. It is against this order of dismissal, the present civil revision petition has been filed.

10. Mr. Nayudu raised before me the following contentions: According to him,

though there was no enquiry under section. 3 (i) (c) in T.C.T.P. No. 94 of 1973, yet, the competent authority had jurisdiction to suo moto enquire whether the deposit made by the tenant was correct or not and in that sense there was an avoidance of duty on the part of the competent authority, and notwithstanding the fact that the said application was dismissed for the unexplained absence of the petitioner, in the present application u/s 3 (3) it was the statutory duty ...and said to be a salutary duty ... on the part of the competent authority to enquire contemporaneously whether the earlier deposit made, did represent the correct current rent payable for fasli 1381. Nextly it is said that in an enquiry under section. 3 (3) is telescoped the enquiry u/s 3 (1) (c) also and therefore the order of the competent authority suffers from an error of jurisdiction, in the the avoided to exercise the jurisdiction u/s 3 (1) (c) while hearing an application u/s 3 (3). Strong reliance is placed, upon the forms which are appended to the Rules framed under Act XXI of 1972. Lastly, and as a follow-up argument, it is said that if an enquiry was undertaken by the competent authority dealing with an application u/s 3 (3) about the correctness of the quantum of the deposit made as well, then, he would be entitled to the relief under the Act, which is guaranteed to all defaulting cultivating tenants.

11. No doubt, the object of agrarian reform is to benefit the ryot who is burdened all round with much of suffering either due to his inability to pay the arrears of rent which has grown to a considerable extent or for some similar reason. But if privileges are granted by statutes on account of certain policies and for the reason that they should benefit a ryot or a cultivating tenant, then, the persons seeking such a benefit should not only be alert, but certainly not be guilty of laches and negligence. It is common ground that the petitioner applied correctly u/s 3 (a), (b) and (c) for relief. According to him, he deposited the correct amount. The land owner appearing on notice given by the competent authority disclaimed that the quantum of the deposit was correct. There was no adjudication on that question, though under the prescriptions in Section 3(1) (c), such an adjudication is imperative and mandatory. In the absence of any such adjudication, it cannot be said that the tenant has paid, or deposited into Court or before the competent authority such amount which he is obliged in law to pay or deposit. The accent is on the word "adjudge" in Section 3 (1) (c). The section says that "if the Court or competent authority adjudges that no further sum is due" The word "adjudge" appearing in Section 3 (1) (c) cannot be lightly brushed aside and treated. When the Legislature contemplates an adjudication of certain facts and a decision thereon, then, it is normal to expect that such adjudication should be done in the manner suggested by the statute itself.

12. But Mr. Nayudu says that such an adjudication can be undertaken even in an enquiry into an application u/s 3 (3). "There is a fallacy in this argument. The language of Section 3 (3) is that in the cultivating tenant pays or deposits or has paid or deposited or is deemed to have paid or deposited under the Act, then, the Court, on an application by any person affected by a decree or order of eviction, shall vacate the same in so far as such decree or order relates to such

recovery or eviction. Therefore, the condition precedent for the Court or the competent authority to act and decide u/s 3(3) is that there must have been an earlier pronouncement or adjudication on the question whether the cultivating tenant has paid or deposited or is deemed to have paid or deposited the correct amount, as contemplated in Section 3 (1) (c) of the Act. As already stated, such an enquiry or adjudication into the question whether the tenant has paid or deposited the correct amount is specifically provided for in Section 3 (1) (c), whereas such a "delve" into the matter is conspicuously absent in Section 3 (3) of the Act. This differential treatment which is so apparent, has to be given its fullest significance. I am unable, therefore, to accept the contention of Mr. Nayudu that in an enquiry u/s 3 (3) is telescoped, an enquiry u/s 3 (1) (c) as well. If such was the intendment, the statute would have made it more plain and clear. Even otherwise the provision as to limitation for payment of current rent, does not permit of such an interpretation.

13. The stage at which the question as to the correctness of the deposit or the form of payment has to be adjudicated upon is when the tenant applies for relief u/s 3 (1) (a), (b) and (c), and not u/s 3 (3) of the Act. The purpose of Section 3 (3) is obvious. It may be that the tenant can ask for the consequential relief even in an application u/s 3 (1) (e), since the relief u/s 3 (3) follows the adjudication u/s 3 (1) (c). But, when he independently applies u/s 3 (3), and asks for an enquiry as to whether he has paid or deposited the correct amount of current rent, then, there is no scope for the contention that in an enquiry u/s 3 (3) such as adjudication on the correctness of the deposit or payment is also possible. What has to be done u/s 3 (3) appears to be that the Court or the competent authority should be satisfied that there was a quantum or prior adjudication on the question whether the current rent has been paid or deposited in accordance with Section 3 (1) (c). If proof of such adjudication is made available to the Court or the competent authority, then, it has to, automatically, if I can use that expression, allow the application u/s 3 (3) and grant the guaranteed relief to the cultivating tenant.

14. In the instant case, the petitioner would not appear before the competent authority in T.C.T.P. No. 94 of 1973; and for his own default, the application was dismissed. As pointed out by the Authorised Officer, the petitioner did not even take the precaution of filing an application to set aside that order by explaining his absence. In these circumstances, the Authorised Officer rightly said that the petitioner was careless and indifferent towards Court proceedings.

15. Mr. Nayudu, however, raised a very curious contention that even though the petitioner was absent, either with or without reason, yet the authority below had the jurisdiction to look into the records and adjudicate on the matter. Adjudication is possible when there is only a difference of opinion between two persons who appear before a third party for a decision. But if the complaining party himself does not process his complaint and he feels satisfied that he could keep himself out of the area of enquiry, then, I am afraid the Court or the

competent authority is not obliged, in such circumstances, to exercise, its jurisdiction, much less is there a duty cast on it to take up the matter suo motu and enquire the same in an inchoate manner with reference to the records, which, at that stage, cannot be said to be full. It is not in dispute that the landowner would not agree that the deposit was correct. There was, therefore, a dispute in the instant case about the correctness of the quantum of the deposit. Such dispute can be adjudicated upon after hearing the parties in full. The parties in such cases are the landowner and the tenant. The tenant is the primary party, who moved the Authorised Officer for an enquiry, in this case. If, at a particular stage, he thought that it was unnecessary for him to trouble the Authorised Officer, the Authorised Officer need not trouble himself. I am unable, therefore, to agree with the contention of Mr. Nayudu.

16. As, u/s 3 (3), there is no legal obligation on the part of the competent authority or the Court to enquire into the question whether the payment has been made or the deposit made was correct, the Authorised Officer rightly dismissed the application of the tenant on the ground that there was no proof of adjudication on the question whether the current rent for fasli 1381 has been paid or deposited in a manner known to law. There is no error of jurisdiction in the order of the Court below.

17. The Civil Revision Petition fails and is dismissed. There will be no order as to costs.