
(1961) 03 MAD CK 0030

In the Madras High Court

Case No : Appeal No. 3 of 1960 and Civil Revision Petition No. 55 of 1960

V.N. Swaminathan represented by T.S. Subramania Pillai **APPELLANT**

Vs

G.S. Sundara Vandayar and Another **RESPONDENT**

Date of Decision : 03-03-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31
Madras City Tenants Protection (Amendment) Act, 1955 — Section 1
Madras City Tenants Protection (Amendment) Act, 1960 — Section 4, 9
Madras City Tenants Protection Act, 1922 — Section 11, 2(1), 9
Transfer of Property Act, 1882 — Section 106, 107

Citation : (1961) ILR (Mad) 976

Hon'ble Judges : Kailasam, J; Jagadisan, J

Bench : Division Bench

Advocate : V.P. Raman, for the Appellant; R. Gopalaswami Ayyangar, K.N. Balasubramaniam, V.K. Thiruvengkatachari, General and A. Alagiriswami, Government Pleader, for the Respondent

Judgement

Jagadisan, J.—The appeal and the civil revision petition arise out of a suit in ejectment filed by the Plaintiff in Original Suit No. 51 of 1958, on the file of the Court of the Subordinate Judge of Thanjavur in respect of a vacant site lying within the municipal limits of Thanjavur town and comprised in Town Survey No. 2862.

2. The Plaintiff was admittedly the owner of the property but the Defendant resisted the suit claiming benefits under the Madras City Tenants Protection Act III of 1922. This Act was extended to the municipal town of Thanjavur by notification of the State Government, dated 28th March 1956, in exercise of its powers under Madras Act XIX of 1955, amending Madras Act III of 1922. The Defendant filed in the Court below two applications, Interlocutory Application No. 637 of 1958, and Original Petition No. 6 of 1959, u/s 9 of the Act, for fixing the price of the suit site and for directing the Plaintiff to convey the site to him on payment of the price that may be fixed by the Court. The Plaintiff disputed the

Defendant's right to obtain the benefit of the Act contending that the Defendant was not a tenant, that the Defendant was estopped by his conduct from asserting any right under the Act and that the Defendant having pleaded a fresh tenancy between himself and the Plaintiff after the date of the notification extending the Act to the Thanjavur town was disentitled to any relief under the Act.

3. The learned Subordinate Judge of Thanjavur found that the Defendant was a tenant entitled to the benefits of the Act and the suit was not maintainable, as the requisite notice under the terms of Section 11 of the Act was not given by the Plaintiff. He accordingly dismissed the suit. The learned Subordinate Judge fixed the market value of the suit site as twelve thousand rupees and gave relief to the Defendant under the Act whereby the Plaintiff was compelled to receive the sum of twelve thousand rupees and to convey the suit site to the Defendant. The Plaintiff has preferred the above appeal against the judgment and decree in the suit non-suited him and has preferred the civil revision petition against the order directing him to convey the property for twelve thousand rupees in Original Petition No. 6 of 1959.

4. During the pendency of the above proceedings in this Court the Madras City Tenants' Protection Act (Madras Act III of 1922) was amended by the Madras Act XIII of 1960. This amending Act was published in Part IV-Section 4 of the Fort St. George Gazette, dated 27th July 1960. The suit site was leased out for non-residential purposes by the predecessors-in-interest of the Plaintiff to the Defendant. Madras Act XIII of 1960, has now confined the operation of the parent Act, Madras Act III of 1922, only to residential buildings in the Thanjavur municipal town. The amending Act has also been made expressly retrospective in operation by Section 9 of the Act. The effect of this legislation is to govern the present proceedings in this Court and to disentitle the Defendant from claiming any relief under the Madras City Tenants' Protection Act. The learned Counsel for the Respondents challenged the relevant provisions under Madras Act XIII of 1960, affecting the rights of the Respondents as being obnoxious to the fundamental rights guaranteed under the Constitution of India, and hence, unconstitutional. We issued notice to the State Government as the virus of a legislative enactment was called in question. The State of Madras filed Civil Miscellaneous Petition No. 210 of 1961, in this Court for being impleaded as a Respondent in the appeal. This application was granted by order of this Court, dated 10th January 1961. We have heard the learned Advocate General on behalf of the State Government on the constitutional issue raised on behalf of the Defendant-Respondent.

5. The suit property originally belonged to a trust called Sri Rama Vilas Dharmam alias Sengammal Bai Trust. This trust was administered by two women, Kaveri Bai and Gopi Bai. On 23rd April 1945, the trustees leased out the property to one Venugopala Chettiar under exhibit B-1, which is a registration copy of the rent-deed, for a period of five years, stipulating a rent of rupees sixty-five per month.

The lessee, Venugopala Chettiar, earned on business running a rice mill and for that purpose erected a superstructure and planted machinery on the suit site. This business appears to have been run in the name and style of Swaminathan Mills by Venugopala Chettiar in partnership with the Defendant in this suit and some others. The Defendant obtained an assignment on 12th November 1949, from Venugopala Chettiar of the entire business as a going concern for valuable consideration. This assignment is evidenced by exhibit B-2 in the case. Thereafter the Defendant became the sole proprietor of the business and he carried it on by obtaining periodical licence from the municipality (vide: exhibit B-23 to exhibit B-26, licences issued by the municipality). The Defendant entered into a rental agreement (exhibit B-3) with the trustees aforesaid on 19th April 1951. This was for a period of three years, and the rent fixed was the sum of rupees sixty-five per month. After the expiry of this lease, there was a further lease for a period of three years between the trustees and the Defendant as evidenced by exhibit A-9, dated 19th April 1954. The period fixed under this lease was also three years and the rent payable was the same as that under the previous lease. The Defendant paid an advance of three months' rent and agreed to surrender vacant possession on 19th April 1957, after removing the superstructure on the land. The lease-deed expressly recites that the lease was for the purpose of carrying on groundnut business. The Defendant did not surrender possession on the expiry of the lease. The persons in management of the trust wanted an enhanced rent and there was correspondence between the Defendant and one Hari Rao who was acting on behalf of the trust as to the rent payable by the Defendant for his continuance as lessee of the land. There is evidence to show that as a result of negotiation between the representative of the trust and the Defendant, the Defendant agreed to pay an enhanced rent of rupees eighty-five per month.

6. The Plaintiff purchased the property from Gopi Bai, the sole surviving trustee of the trust under the registered conveyance, exhibit A-1, dated 2nd March 1958. The Plaintiff issued a notice to the Defendant through his Counsel at Thanjavur demanding surrender of vacant possession of the property on or before 19th June 1958. The notice is exhibit A-5, and is dated 17th May 1958. Under that notice the Defendant was directed to remove all superstructure on the land at his cost. The Defendant acting through his Counsel caused a reply notice to be sent, exhibit A-6, dated 26th May 1958, claiming the benefit of the Madras City Tenants' Protection Act. The Defendant averred in that reply notice that the previous owners of the property had entered into a fresh lease with him by which he was to pay an enhanced rent of rupees eighty-five per month and was to remain in possession as lessee for a period of ten years. The Defendant remitted a sum of rupees two hundred and fifty-five to the Plaintiff by a money-order stating that the amount represented rent due and payable by him for the three months of March, April and May 1958. The Plaintiff received the amount of the money-order and the money-order receipt is exhibit B-17, dated 7th June 1958. The Defendant sent a further sum of rupees eighty-five to the Plaintiff by money

order as and for rent payable by him for the month of June 1958. This time the Plaintiff, as evidenced by exhibit B-19, refused to receive the money order. The Plaintiff next sent a notice through his Counsel at Pattukottai to the Defendant, exhibit A-7, dated 2nd August 1955, wherein he sought to explain his conduct in receiving the amount of rent sent by money order for the three months of March, April and May 1958. The explanation of the Plaintiff was that he was busy with several matters connected with the management of his estate and that it took him some time to ascertain his true position in the matter. The Plaintiff generously offered that he was ready to refund the sum of rupees two hundred and fifty-five to the Defendant. The Plaintiff reiterated his demand for recovery of possession of the land and gave time to the Defendant to surrender vacant possession till 1st September 1958. The Defendant's reply to exhibit A-7, was exhibit A-8, dated 11th August 1958. Therein the Defendant took up the position that he had become a tenant of the Plaintiff in view of the receipt of the rent for three months by the Plaintiff unconditionally and without any protest. He claimed that he was protected from eviction by reason of the provisions of the Madras City Tenants' Protection Act.

7. The parties to the suit also let in oral evidence but we do not think it necessary to refer to it as nothing turns upon such evidence, and as the evidence is not material for the disposal of the appeal.

8. It was contended on behalf of the Plaintiff in the Court below that the Defendant could not claim the benefit of the Act as according to him there was a fresh tenancy agreement between him and the original owners of the property after the Act came to be made applicable to Thanjavur, but the learned Subordinate Judge who tried the suit overruled this contention of the Plaintiff holding that he could not validly set up an oral lease for a period of ten years, as the provisions of Section 107 of the Transfer of Property Act required a registered document where the period of the tenancy fixed is more than a year. He however held that the Defendant was a tenant entitled to the benefits of the Act presumably because either he became a tenant under the Plaintiff, who accepted rent from him for a period of three months, or as he was a tenant holding over in which case also he was entitled to relief under the Act.

9. We do not propose to go into the correctness or otherwise of the findings of the learned Subordinate Judge on the issues raised before him in view of the statutory amendments of the Act brought in by Madras Act XIII of 1960. Mr. R. Gopalaswamy Iyengar, learned Counsel for the Respondent, contended that the suit was not maintainable as there was no proper notice to quit by the Plaintiff to the Defendant, and that the Defendant was entitled to such notice under the provisions of the Transfer of Property Act even if it were to be held that he was not entitled to the benefit of the Madras City Tenants' Protection Act, as a result of the recent amendment. We are unable to agree with this contention. We are clearly of opinion that exhibits A-3 and A-7, notices sent on behalf of the Plaintiff to the Defendant, demanding delivery of vacant possession from the Defendant

constitute valid notices terminating the relationship of landlord and tenant between the parties. Under exhibit A-5, the Plaintiff issued notice to quit to the Defendant on 17th May 1958, calling for surrender of possession on or before 19th June 1958. After the expiry of the three-year period of lease as provided for under exhibit A-9, the Defendant can at best be deemed only to be a monthly tenant from 19th April 1957 onwards. Section 106 of the Transfer of Property Act, provides for fifteen days' notice expiring with the end of a month of the tenancy to terminate a lease from month to month. The receipt of the sum of rupees two hundred and fifty-five representing the rent due for the three months of March, April and May 1958, by the Plaintiff may not have the result of bringing about a fresh tenancy between the Plaintiff and the Defendant. The Defendant had time to surrender possession of the property till 19th June 1958, in accordance with the terms of exhibit A-5, sent by the Plaintiff. The Plaintiff was entitled to receive rent so long as the Defendant continued to occupy the premises. The notice sent by the Plaintiff for the second time under exhibit A-7, was also in conformity with law if it were to be held that the Defendant became a monthly tenant from the first of every month by reason of the alleged fresh tenancy said to have been brought about by the remittance and acceptance of the money order amount of rupees two hundred and fifty-five. The second notice was issued on 2nd August 1958, demanding possession to be surrendered by the Defendant on or before 1st September 1958. There is no substance in the contention urged on behalf of the Respondent that the suit is not maintainable for want of due notice to quit in accordance with the provisions of the Transfer of Property Act.

10. Then it was contended on behalf of the Respondent that the lease as evidenced by exhibit A-9, in the lease between the original owners of the property and the Defendant was a lease for manufacturing purposes and that such a lease should be deemed to be one from year to year and could be terminated only by issuing six months' notice expiring with the end of a year of tenancy. The object of the lease as set out in exhibit A-9, is only for the purpose of carrying on groundnut business. It is plain that the lease is not one for manufacturing purposes, and that the Plaintiff was not obliged to give six months' notice expiring with the end of a year of the tenancy.

Section 9 of Madras Act XIII of 1960 is as follows:

Every proceeding pending before any Court, other than a proceeding relating to any property situated in-

- (i) the City of Madras,
- (ii) the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli, and
- (iii) any village within five miles of the City of Madras or of the municipal towns aforesaid,

on the date of the publication of this Act in the Fort St. George Gazette, and

instituted under the provisions of the principal Act, shall, in so far as such proceeding relates to non-residential buildings, abate, and all rights and privileges which may have accrued immediately before such date to any person in respect of any property situated in any area other than the areas referred to above by virtue of the principal Act, shall, in so far as they relate to non-residential buildings, 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.

11. This provision clearly governs the pending proceedings in this Court as it is not pretended that the decree passed by the Court below has been executed or satisfied in full before the date of commencement of the amending Act. It is also not disputed that the building on the site forming the subject-matter of the appeal is constructed for non-residential purposes. If the amending Act XIII of 1960, were to apply, the Plaintiff will be entitled to a decree for recovery of possession of the suit site and the Defendant will not be entitled to obtain a conveyance of the property from the Plaintiff as directed by the Court below. This result must follow if that Act is not unconstitutional as impugned by the Defendant-Respondent.

12. The following provisions of Madras Act III of 1922, as amended by the Madras Act XIII of 1960, are impugned as unconstitutional:

Section 2(1) Building means any building, hut or other structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever used-

(i) for residential or non-residential purposes, in the City of Madras, in the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli and in any village within five miles of the City of Madras or of the municipal towns aforesaid, and

(ii) for residential purposes only, in any other area, and includes the appurtenance thereto.

13. The previous definition of building as it stood before the amendment was as follows:

Building includes a house, out-house, stable, latrine, shed, hut and any other such structure whether of masonry, bricks, wood, mud, metal or any other material whatsoever.

14. As a result of the amendment made by Madras Act XIX of 1955, Section 1, Clauses (2) and (3), are as follows:

(2) It extends to the City of Madras and the State Government may, by notification in the Fort St. George Gazette extend this Act to any other municipal town and any specified village within five miles of the City of Madras or such municipal town with effect from such date as may be specified in the notification.

(3) This Act shall apply, in the City of Madras, only to tenancies of land created before the commencement of the Madras City Tenants' Protection (Amendment) Act, 1955, and in any municipal town or village to which this Act is extended by notification under Sub-section (2), only to tenancies created before the date with effect from which this Act is extended to such town or village.

15. Prior to the amendment introduced by Madras Act XIII of 1960, the tenant in occupation of a vacant site having a superstructure of his own for residential or non-residential purposes had the benefit of the Act, Madras Act III of 1922, in areas governed by the Act. This benefit accrued to the tenant in Thanjavur town on and from 28th March 1956, when by a notification of the State Government, the Act came to be extended to the municipal town of Thanjavur. Every such tenant was entitled on ejectment to be paid as compensation the value of any building which may have been erected by him or by any of his predecessors-in-interest. He was also entitled to be paid the value of trees planted by him on the land and of any improvements made on the land. In a suit for ejectment against the tenant in which the landlord succeeds, the Court should ascertain the amount of compensation and direct the landlord to pay the amount in Court within three months from the date of the decree as a condition precedent for obtaining delivery of the property. Default on the part of the landlord to carry out this condition will result in the dismissal of the suit and will operate as a bar to institute a fresh suit for ejectment. The tenant could move the Court having jurisdiction to entertain a suit for ejectment for fixation of reasonable rent for the occupation of the land. The tenant facing a suit in ejectment may apply to the Court for an order that the landlord be directed to sell the whole or part of the land for a price to be fixed by the Court. The amount so fixed could be paid by the tenant in instalments spread over a period of three years or less, exceeding three months, from the date of the order of the Court. No suit in ejectment could be instituted against the tenant until the expiration of three months next after notice in writing had been given to him requiring him to surrender possession of the land and building and offering to pay compensation for the building. To the extent necessary to give effect to the provisions of the Act, the Transfer of Property Act, 1882, is deemed to have been repealed or modified. The tenant was thus the recipient of substantial benefits and privileges under the Act. The tenant of a land for non-residential purpose in the municipal area of Thanjavur lost these statutory benefits as he was put outside the Act by the amended definition of building introduced by Madras Act XIII of 1960. The Defendant in the case, who is a tenant in Tanjore, occupying land for non-residential purposes, impugns this statutory alteration of the definition of building as violative of Article 14 of the Constitution and hence unconstitutional. His complaint is that the impugned legislation, Section 2(1)(i) and (ii) of the Act is discriminatory in character, as it is an unequal law affecting different parts of the State differently, the tenants for non-residential purposes in the City of Madras, and in the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli being favoured as against such similar tenants in the other parts of the State. This

discrimination is characterised as unjust, and undisguisedly hostile without a semblance of reasonable classification germane to the objects and purposes of the Act, an essentiality without which no statute with inequality writ large on its face can stand the touchstone of constitutionality prescribed by Article 14 of the Constitution. We have now to examine the soundness of the contention.

16. Article 14 of the Constitution, the equality clause enshrined in our Constitution, is a favourite missile of attack in the armoury of the champions of fundamental rights, guaranteed under the Constitution, who feel dissatisfied or aggrieved by any legislation. Judicial commentaries on the subject are quite many. The aim of the article is not to evolve equality out of inequality. It forbids an evil eye and an unequal hand in dealing with equals and insists that like should be treated as alike. The inhibition is "designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation". *Pembina Mining Co. v. Pennsylvania* 125 U.S. 181, 188. The scope of Article 14 was laid thus by the Supreme Court of India in *Budhan Choudhry and Ors. v. The State of Bihar* [1935] I S.C.R. 1045:

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

17. The preamble to the Act is as follows:

Whereas it is necessary to give protection to tenants who in municipal towns and adjoining areas in the State of Madras have constructed buildings on others' lands, in the hope that they would not be evicted so long as they pay a fair rent for the land.

The following is the statement of objects and reasons attached to Madras Act XIII of 1960:

The Madras City Tenants' Protection Act, 1921, was enacted with the main object of safeguarding the tenants from eviction from residential quarters. In consistence with this object it is proposed to restrict the application of the Madras City Tenants' Protection Act, 1921 (Madras Act III of 1922), to residential buildings only.

18. The distinction between residential and non-residential buildings is now the creature of Madras Act XIII of 1960. It cannot be gainsaid that persons occupying dwelling houses after erecting superstructures on lands belonging to

others stand on a different footing from persons carrying on business having put up their own superstructures on lands of others. The Madras Buildings (Lease and Rent Control) Act makes a distinction between residential and non-residential buildings. The object of the enactment as set out in the preamble is to give protection to tenants from being evicted lest they should find themselves without a roof to shelter them. The classification of residential and nonresidential buildings is, therefore, permissible as it has a reasonable nexus with the object of the enactment and the evil sought to be eradicated by the passing of the enactment. It is to be remembered, however, that tenants in particular areas, namely, the City of Madras and the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli, even in respect of nonresidential quarters, have come in for the benefit of the Act and other tenancy of such description in other areas have been excluded from such benefit. This is a further classification amongst tenants of non-residential buildings and the question for consideration is whether this classification is permissible and proper.

19. The population of the various municipal towns in accordance with the last census report in so far as it is material for the present purpose is as follows:

Madras	1,416,056
Madurai	361,781
Tiruchirappalli	218,921
Salem	202,335
Coimbatore	197,755
Vellore	106,024
Thanjavur	100,680

It is seen that Madras, Madurai, Tiruchirappalli, Salem and Coimbatore, occupy the first five places. The municipal town of Thanjavur ranks only as the seventh in the list. The Legislature took this into consideration in conferring protection to tenants of non-residential buildings in the first five areas referred to above. It is apparent that having regard to the large population in the first five areas and the large scale commercial activities in these areas, the Legislature thought fit that non-residential quarters occupied by tenants on lands belonging to others should also be offered relief from being evicted summarily and arbitrarily. We cannot undertake a search for motive in testing constitutionality of an impugned provision in an enactment. The question is whether it is a type of discrimination which is incompatible with any fair conception of equal protection of the laws.

20. Mathematical nicety and perfect equality are not required. Similarity not identity of treatment, is enough. If any set of facts can reasonably be conceived to sustain a classification the existence of that state of facts must be assumed. (Willis on American Constitution, page 579.)

21. In adopting this test of reasonable basis for differentiation in any enactment we cannot of course satisfy ourselves by vague reference to the wisdom of the Legislature or by indulging in pure speculation as to what might have been at the back of its mind as pointed out by Chandrasekara Iyer J., in the decision of the Supreme Court in *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*,

22. We may usefully refer to the following passage from the decision in *Kotchi v. Board of River Port Pilot Comm*"rs 330 U.S. 552:

The constitutional command for a state to afford "equal protection of the laws" sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task. A law which affects the activities of some groups differently from the way in which it affects the activities of other groups is not necessarily banned by the Fourteenth Amendment. See *Tigner v. Texas* 310 U.S. 141. 147. Otherwise effective regulation in the public interest could not be provided, however, essential that regulation might be. For it is axiomatic that the consequence of regulating by setting apart a classified group is that those in it will be subject to some restrictions or receive certain advantages that do not apply to other groups or to all the public. *Atchinson, T. and S.F.R. Company v. Mathews* 174 U.S. 96, 106. This elective application of a regulation is discrimination in the broad sense, but it may or may not deny equal protection of the laws. Clearly it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to achievement of the regulation's objectives. An example would be a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having no rational relation to the regulated activities.

23. Legislative enactments can be confined to operate within certain territorial limits without offending the rule of equality before the law or equal protection of the laws. The Legislature in determining the reach and scope of particular legislation need not provide abstract symmetry. It may as a matter of fact set apart the class and types of problems according to the needs and as dictated and suggested by experience. (Weaver on American Constitution, page 397.) The Legislature is free to recognise degrees of harm and enact measures to combat such harm and may proceed cautiously by introducing such measures in territories where the evil sought to be checked and controlled is most rampant.

24. The tenants of non-residential buildings in the City of Madras, and in the municipal towns of Coimbatore, Salem, Tiruchirappalli and Madurai have no doubt obtained certain statutory privileges and immunities. But for the grant of such privileges they would be governed by the provisions of the Transfer of Property Act, just as much as a like tenant in other areas. Whether the landlords or owners of lands occupied by tenants for non-residential purposes in the areas to which the Act has been made applicable can complain of any discrimination as against them made by the Legislature, or not, we are unable to understand, how

it will be open to tenants in the excluded areas to complain of any discrimination as against them by reason of the non-applicability of the Act to the areas occupied by them. But it is really unnecessary for us to express any opinion on the question whether the tenants for non-residential purposes occupying lands in the excluded areas have any locus standi to impugn the legislation as we are clearly of opinion that the legislation as such is not hit by Article 14 of the Constitution.

25. Mr. Gopalaswami Iyengar, learned Counsel for the Respondent, relied on a recent decision of the Rajasthan High Court in *Brijmohan v. State of Rajasthan* ILR [1960] 10 Raj. 12. In that case an enactment called the Jaipur Prevention of Un-equal Marriages Act, 1948 (XXX of 1948) was made applicable only to persons living within the geographical limits of the old Jaipur State as it was before its integration with the State of Rajasthan. That enactment was challenged as violative of Article 14 of the Constitution. A Division Bench of the Rajasthan High Court pronounced the enactment to be unconstitutional. The impugned enactment interfered with the right of persons to contract marriages irrespective of the disparity in age of the two spouses. The learned Judges were of the opinion that the legislation was *ex facie* discriminatory in character, and that the confinement of its operation to a particular territory cannot be said to be the result of any reasonable classification. We are unable to see the applicability of that decision in testing the constitutionality of the impugned provisions of the Madras City Tenants' Protection Act.

26. Learned Counsel for the Respondent contended that the Act having been already applied to the municipal town of Thanjavur by a notification of the State Government, dated 28th March 1956, there can be no justification for excluding Thanjavur town from the ambit of the operation of the Act by reason of the amendment introduced under Madras Act XIII of 1960. The classification of buildings into the categories of residential and non-residential buildings was conceived of only at the time when the amending Act was passed, and it cannot be said that the Legislature arbitrarily refrained from conferring the benefits of the Act to non-residential tenants in Thanjavur town. Having made the classification in the light of experience gained by the working of the enactment, the Legislature presumably thought that only the tenants of non-residential buildings in the five areas mentioned in the Act deserved protection and not the tenants in areas outside those territories. We, therefore, hold that Section 2(1), Clauses (ii) and (iii) of Madras Act XIII of 1960 are valid and not unconstitutional.

27. Section 9 of Madras Act XIII of 1960 set out earlier in this judgment was challenged as offending Articles 19(1)(f) and 31 of the Constitution. The contention urged was that deprivation of rights under the Act which ensued in favour of tenants in respect of non-residential buildings in the Thanjavur municipal areas amounted to deprivation of property and that such deprivation cannot be made arbitrarily without providing for adequate compensation as provided for under Article 31 of the Constitution. The Legislature has an

undoubted right to modify, amend or repeal its enactments. Vested rights accruing in favour of the subject under repealed enactment may also be taken away by the Legislature if it so chooses. A deprivation of a statutory right from a subject cannot be said to amount to taking property or deprivation of property. Section 9 of Madras Act XIII of 1960, has only given retrospective operation to the new enactment and is certainly not expropriatory in character. We are clearly of opinion that Section 9 of Madras Act XIII of 1960, is not obnoxious to any of the fundamental rights guaranteed under the Constitution.

28. The appeal and the civil revision petition are allowed: the judgment and decree of the learned Subordinate Judge in Original Suit No. 51 of 1958, and his order in Original Petition No. 6 of 1959, are hereby set aside. The Plaintiff will have a decree for recovery of vacant possession of the suit property as prayed for by him in the plaint. The Defendant will have six months time from to-day to deliver possession of the property and to remove his superstructure from the land. The parties will bear their respective costs both here and in the Court below.