

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
20~03~2019	10~04~2019

CORAM :THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR**

C.R.P.(NPD).Nos.880 of 2009 and
M.P.No.1 of 2009

Mrs. Zaimunnisa ... Revision Petitioner/Respondent/Petitioner

Versus

1.Mr.M. Babulal

2.Mr.M.Chanderial

3.Mrs.M.Lakshmi Bhai

4.Mr.S.Thangaraj

... Respondents/Appellants/Respondents

Civil Revision Petition filed under Section 115 of C.P.C.,to set aside the order and decreetal order made in C.M.A.No.82 of 2006 dated 19.06.2008 on the file of the VI Additional Judge, City Civil Court, Chennai, reversing the order and decreetal order passed by the XIV Assistant Judge, City Civil Court, Chennai in I.A.No.2695 of 1987 in O.S.No.9570 of 1986 dated 01.02.2002 and allow the revision.

For Revision Petitioner .. Mr.R.Abdul Mubeen

For Respondents .. Mr.S. Thirukkumaran[for R1 & R3]
 Mr.N. Nagu Sah [for R2]

ORDER

Aggrieved over the judgment of the First Appellate Court in C.M.A.No.82 of 2006 setting aside the decretal order passed in I.A.No.2695 of 1987 in O.S.No.9570 of 1986 the present Revision has been filed.

2. The brief facts leading to file this Revision Petition is as follows:

2(a) The suit was originally filed by the First Plaintiff for ejecting the defendant from the suit property. The suit was filed *inter-alia* contending that the tenant is in possession of 375 sq.ft. in R.S.No.2599/72 at Door No.23, Syed Ahamed Hussain Sahib Street, Mylapore, Chennai-4.

2(b) Written statement was filed by the Defendant stating that he is occupation of 624 sq.ft., and not 375 sq.ft. as alleged by the Plaintiff. During the pendency of the above suit the defendant/tenant has filed Application under Section 9 of the Tamilnadu City Tenants Protection Act, claiming benefit under the said Act as such he is entitled to buy the land in his occupation. Counter was filed by the

Respondents/legal heirs of the First Plaintiff that they have no objection for selling the area land in the occupation of the Petitioner/tenant. Whereas it is specifically contended by the Respondents/landlords that the petitioner is occupying only 375 sq.ft. Accordingly, they have no objection to appoint Advocate Commissioner to find out the exact area. The trial Court fixed the market value of Rs.9,204/- for 624 sq.ft., as against which, an appeal was filed before the I Appellate Court. The First Appellate Court has set aside the order, as against which the present Revision is filed.

3. Learned counsel appearing for the Revision Petitioner would vehemently contend that though the suit was filed on 8.12.1986, the tenant filed application under Section 9 of the Tamilnadu City Tenants Protection Act, on 23.1.1987 wherein the Plaintiff has admitted for selling the land to the Revision Petitioner in his Counter. Accordingly, Advocate Commissioner was appointed on 18.01.1988 to enquire into the exact land in occupation of the Revision Petitioner and to determine the land value. Subsequently, a Memo was filed in the month of December 1989 stating that the Plaintiff had died. Therefore, the suit was dismissed as abated as against the 1st Plaintiff. However, Advocate Commissioner has filed a Report in I.A.No.2695 of

1987 fixing the market value and 624 sq.ft. is in occupation of the tenant. Despite the matter has been adjourned for filing objection to the Commissioner Report, till 7.8.1990 no objection was filed. Accordingly on 7.8.1990, the trial Court has fixed the market value as Rs.9,204/- for an extent of 624 sq.ft. Thereafter, the Revision Petitioner again filed an application against the Respondent to execute sale deed. In the above application, the original plaintiff's Legal Representatives were brought on record. Challenging the same, C.R.P.No.1063 of 2002 was filed. This Court by order dated 12.08.2003 dismissed the C.R.P. by holding that since L.Rs.have brought on record in subsequent proceedings, there is no illegality in decree. Thereafter, Section 9 of the Tamilnadu City Tenants Protection Act application once again taken for disposal and the Respondent set exparte on 6.8.1999. The trial court directed the Revision Petitioner to deposit the sum within one month and finally on 4.3.2002 payment was recorded. Thereafter, on 5.3.2002 order passed in I.A. directing the respondent to execute the sale deed. Hence, it is the contention of the learned counsel that on 1.2.2002 order is only a consequential order to earlier order passed fixing market value on 7.8.1990. The above order has not been challenged by the respondent. Therefore, the consequential order cannot be challenged.

4. However, it is the contention of the learned counsel for the Revision Petitioner that the Commissioner has arrived the market value taking note of the registered sale deed and also he took note of the average value for three years preceding to the date of order. Hence, it is the contention of the learned counsel that the First Appellate court without assessing all these facts has simply allowed the appeal setting aside the order of the trial court fixing the market value for the extent of land in occupation of the tenant. Hence, submitted that the order of the First appellate court is required to be interfered.

5. Learned counsel for the Respondent submits that though the Plaintiff's death was not brought to the notice of the Court, the suit was dismissed on 21.12.1989. Thereafter, Commissioner was appointed at the request of the respondent to fix the market value of the specific extent of 624 sq.ft. The matter kept on adjourning for filing objection by the other side. It is the contention of the learned counsel that in the above application, the L.Rs of the original Plaintiff have not been impleaded. The order has been passed fixing the market value as arrived by the commissioner, on 07.08.1990. In the above application also L.Rs.of the original Plaintiff were not impleaded.

Only when the application filed for directing the execution of sale deed, L.Rs. were brought on record. At any event, it is the contention of the learned counsel for the Respondent that the extent of land in the occupation of tenant itself is the contentious issue. The plaintiff has pleaded that the tenant is in occupation of only 375 sq.ft. Whereas tenant has pleaded that he is in occupation of 624 sq.ft. The Commissioner has been appointed directly by the lower court to fix the market value for the 624 sq.ft. without determining the extent which is necessary for convenient enjoyment of the tenant. The contention of the learned counsel for the respondent that on 7.8.1990 the order was passed based on the commissioner's report fixing the market value at Rs.9,204/-. The same report has been accepted even after earlier round of litigation by the trial Court on 1.2.2002 and fixed the market value at Rs.9,204/- for 624 sq.ft. Hence it is the contention of the learned counsel for the respondent that the trial court has not followed the mandatory provisions of Section 9 of the Tamilnadu City Tenants Protection Act. Hence, submitted that the First Appellate court has rightly set aside the order and directed the trial Court to fix the market value after applying the provisions of the Act and the same does not require any interference. In support of his submissions he has also relied upon the judgment reported in the Division Bench of this Court

in ***M. Arasan Chettiar and Ors. v. S.P.Narasimhalu Naidu's Estate Trust, Coimbatore [AIR 1980 Madras 305]***

6. In the light of the above submissions I have to proceed whether the market value fixed by the trial Court for an extent of 624 sq.ft. is legally correct.

7. Chronological list of events are necessary before going to the merits of the case. The suit in O.S.No.9570 of 1986 was filed by the original plaintiff against the defendants, for eviction from the suit property for an extent of 375 sq.ft. said to be in occupation of the Defendant/tenant. Whereas the tenant has contended that he is in occupation of 624 sq.ft. When the suit was pending, the Defendant filed an Application in I.A.No.2695 of 1987 seeking benefit under section 9 of the Tamilnadu City Tenants Protection Act for 624 sq.ft. The Plaintiff has filed counter and taken a specific stand that the tenant is in occupation of only 375 sq.ft. However, he has no objection to appoint Commissioner to fix the market value of the above extent i.e., 375 sq.ft. to the tenant for sale. On 18.1.1988 it appears that the Commissioner has been appointed and warrant has been issued to enquire and to fix the market value of 624 sq.ft. which is in

the occupation of petitioner/tenant and fix the value on the basis of documentary evidence if any. The commissioner had filed preliminary report stating that he was not able to measure the petition premises since the petitioner has requested to adjourn the proceedings into some other date. Thereafter, he filed a final report on 24.04.1990 taking note of the sale deed dated 15.12.1980 and adding 10 percent appreciation and fixed the value at Rs.9,204/- for 624 sq.ft. The court has fixed the value and passed order on 07.08.1990.

8. From the records it could be seen that while the court passing order on 07.08.1990 original plaintiff was already died and legal heirs have not been impleaded. Subsequently, only when the sale deed sought to be executed, the legal heirs were brought on record, which was challenged in the revision petition in C.R.P.No.1063 of 2002 and 456 of 2003 and this Court held that it is only procedural irregularity. However, it also observed that the later order which was challenged before the Appellate Court, its correctness cannot be gone into in the above revisions. Now the order challenged is ordered dated 1.2.2002.

9. The trial Court passed an order under Section 9 of the

Tamilnadu City Tenants Protection Act and fixing the value as Rs.9,204/-. The sale value which was originally fixed by order dated 7.8.1990. The trial court has mainly relied upon the Commissioner originally appointed and passed order on the ground that no objection were filed for the Commissioner Report at the relevant time and accordingly adopted the same value and fixed the market value. In fact the trial Court has failed to notice that at the time of filing the Commissioner Report the legal heirs were not brought on record. Therefore, possibility of filing any objection by the legal heirs would not have been there. The Legal heirs were brought on record only in the year 1996 which has not taken note of by the trial Court.

10. Be that as it may. In this regard it is useful to refer Section 9 of the Tamilnadu City Tenants Protection Act. Section 9 of the Act reads as follows:

"9. Application to Court for directing the landlord to sell land.

(1) [(a)(i)] Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 taken by the landlord may Substituted by Tamil Nadu Act 11 of 1980 [Within one month of the date of the publication of Madras City Tenants Protection

(Amendment) Act, 1979, in the Tamil Nadu Government Gazetted or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situated [or within Substituted by Madras Act VI of 1926. [one month] after the service on him of summons, apply to the Court for an order that the landlord shall be directed [to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application.]

[(iii) Notwithstanding anything contained in clause (a) (i) of this sub-section, any such tenant as is referred to in sub-clause (ii) (b) of clause (4) of section 2 or his heirs , may within a period of two months from the date of publication of the Madras City Tenants' Protection (Amendment) Act, 1973 apply to the court [whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending] having jurisdiction to entertain a suit for ejectment or in the City of Madras either to such court or to the Presidency Small Causes Courts, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the whole or part of the extent of land specified in the application."]

[(b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause

(a) which ever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court 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.]"

11. Section 9(b) makes it mandatory that trial court shall first decide minimum extent of land which may be necessary for the convenient enjoyment by the tenant. Thereafter, the Court shall fix the price of the minimum extent of land as decided. The price shall be the average market value of the three years immediately preceding the date of order. Admittedly, in this case while the interim report filed in the year 1989, the Commissioner has not measured the property. The second report also does not indicate he has measured the property. He has fixed the value only on the basis of the sale deed produced by the tenant. It is curious to note that the suit has been filed for ejectment of tenant in respect of 375 sq.ft. Whereas the tenant has contended that he is in possession of 624 sq.ft. When the application has filed under Section 9 of the Tamilnadu City Tenants Protection Act, The court has to decide the minimum extent of land which may be necessary for the convenient enjoyment of the tenant.

In this case, the extent said to have been enjoyed by the tenant itself is a contentious issue. The trial Court ought to have decided the extent which is in occupation of the tenant which may be necessary for his convenient enjoyment. Without adopting the proper procedure, the trial Court has simply adopted the earlier commissioner report of the year 1990. The Commissioner Report clearly indicate that the commissioner himself was appointed to fix the market value of 624 sq.ft. The commissioner was appointed on the basis of the petition filed by the Defendant. Warrant has been issued directly to fix the market value of the 624 sq.ft. Preliminary Report has indicated above clearly show that the property has not measured by the commissioner. The final report also does not indicate the extent in occupation was measured by the commissioner. Therefore, the trial court without deciding the nature of the extent of the land in occupation of tenant of the tenant, which is required for his convenient enjoyment and merely appointed a commissioner on earlier occasion to fix the market value of the extent claimed by the tenant is *per se* illegal.

12. Though, earlier order dated 7.8.1990 has not challenged and new Order has been passed on 1.2.2002 after the disposal of the C.R.P., at that stage also the trial court ought to have followed the

mandatory procedure set out in Section 9 of the Tamilnadu City Tenants Protection Act which has not been done so. Therefore, the revision petitioner cannot contend that since order dated 7.8.1990 has not challenged the consequential order cannot be challenged. It is to be noted that the original order dated 7.8.1990 passed against the dead person. Only after impleading of L.Rs., the order passed in respect of fixing of the land value binds the parties. Therefore, the contention of the Revision Petitioner in that regard cannot be countenanced. The trial Court has in fact failed to follow the mandatory provisions contemplated under Section 9 of the Tamilnadu City Tenants Protection Act for fixing the extent and market value.

13. In the judgment reported in ***M. Arasan Chettiar and Ors. v. S.P.Narasimhalu Naidu's Estate Trust, Coimbatore [AIR 1980 Madras 305]*** the Division Bench of this court is held as follows:

"13. From the above conclusion of ours on the interpretation and scope of [Section 9](#), the following consequences will follow:

- 1. If a controversy arises whether a particular tenant is entitled to the benefits of the Act or not in the sense that he is a tenant complying with the definition of the term "tenant" in [Section 2](#) (4), that question has necessarily to be considered by the Court, because, an affirmative decision in favour of the ,tenant alone will enable the Court to*

proceed further with the application made under Section 9 (1) (a) of the Act and a negative decision against the tenant will render any application filed by the tenant, under Section 9 (1) (a) as not maintainable and such an order is not an order, under Section 9, and the date of that order has no relevancy to the fixation of the price of the land to be sold by the landlord to the tenant;

2. When once the Court has decided that the tenant is entitled to the benefits of the Act or there is no controversy that the tenant is entitled to the benefits of the Act, the Court will have to dispose of the application filed by the tenant under Section 9 (1) (a);

3. For the purpose of disposing of this application, the Court, must first decide upon the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant Any such decision of the Court, from the very nature of the case, can only be by means of an order and the date of that order will be the relevant date for the purpose of fixing the price mentioned in the third sentence in Section 9 (1) (b). If the decision of the Court on the minimum extent is, taken up further by way of appeal or revision and that decision is either affirmed or modified and if there had been a stay of further proceedings during the pendency of such appeal or revision, naturally, the date of the order contemplated in the third sentence in Section 9 (1) (b) will be the date of the order of the appellate or revisional Court;

4. After having determined the minimum extent of the land or if such determination had been the subject matter of further proceedings and those proceedings have concluded the Court will then proceed to fix the price of the land;

5. For the purpose of deciding upon the minimum extent of the land or for the purpose of fixing the price of the land certainly it is open to the Court to appoint a Commissioner to record evidence and submit a report to the Court;

6. After the price to be paid by the tenant to the landlord for the purchase the land has been determined, the Court will have to pass an order directing the tenant, 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 such order, to Pay into Court or otherwise as directed by it, the price so fixed in one or more instalments with or without interest,

7. If the tenant complies with such a direction, then the Court will pass a final order under Section R (3) (a) of the Act directing the landlord to convey the extent of the land decided to the tenant for the price so fixed and in the same order directing the tenant to put the landlord into possession of the remaining extent of the land, if any;

8. If on the other hand the tenant commits default in the payment of the amount as directed and the Court itself had not excused the delay by giving further opportunity, the

application filed by the tenant under Section 9 (1) (a) shall stand dismissed; and

9. If the tenant has fulfilled the directions given by the Court and the Court has passed the order under Sec. 9 (3) (a), then the suit or proceeding shall stand dismissed and any decree or order in ejectment that might have been passed therein but which has not been executed shall be vacated. If, on the other hand, the tenant has committed default and the application filed by him under Section 9 (1) (a) stands dismissed under Section 9 (2), then the suit or proceedings will proceed or any decree or order in ejectment that may have been passed therein shall stand."

14. The above judgment makes it clear that the Court must first decide the minimum extent of land, then shall proceed to fix the price of minimum extent prevailed at the relevant time as indicated under Section 9(b) of the Tamilnadu City Tenants Protection Act. In this case the trial court has failed to follow the procedure, simply adopted the earlier Commissioner's Report in the year 1990 and hence the order of the trial court certainly not legal. Though the First Appellate Court directed the trial court fix the market value, such order is also required to be modified. In fact the trial court required to do the re-exercise and fix the extent of the land first, since it was contentious issue, then proceed to fix the market value. While fixing the market

value the trial court shall also follow the the guidelines set out in the judgment of the Division Bench of this Court reported in **M.Arasan Chettiar case** (supra). With the above observation, the trial court shall consider the fact that the matter is pending from the year 1986 and conclude the proceedings within eight (8) months from the date of receipt of copy of this order.

15. In the result, the Revision is dismissed. consequently connected M.P.is closed. No costs.

10.04.2019

Index:Yes/No
Internet:Yes
Speaking order/Non-speaking order
ggs.

To

1. The VI Additional Judge, City Civil Court, Chennai.
2. The XIV Assistant Judge, City Civil Court, Chennai,

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N. SATHISH KUMAR, J.

ggs.



Pre-delivery order in:
C.R.P.(NPD)No.880 of 2009

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10.04.2019