

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2020

Pronounced on : 07 .02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.16263 of 2018

and

W.M.P.Nos.19363 and 19364 of 2018

1.K.Krishnan,
2.K.Renganathan,
3.K.Jamuna,
4.K.Jeyalakshmi

... Petitioners

...Vs...

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam,
Chennai - 600 034.

2.Executive Officer,
Shri Arulmighu Bhasyakara
Adhi Chennakesava Perumal Temple,
West Mambalam, Chennai - 600 033.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the entire records pertaining to the issuance of the impugned notice dated 01.03.2018 issued by the 2nd respondent and quash the same and further direct them to execute the sale deed in favour of the petitioners by virtue of the order dated 15.09.1981 passed in I.A.No.5917 of 1979 in O.S.No.8575 of 1978 on the file of V Assistant Judge, City Civil Court, Chennai, within the stipulated period.

For Petitioners : Mr.C.Umashankar

For R2 : Mr.A.K.Sriram,
for Kailasam Associates.

ORDER

This Writ Petition has been filed in the nature Writ of Certiorarified Mandamus, calling for the records relating to the notice dated 01.03.2018 issued by the 2nd respondent and quash the same and further direct the 2nd respondent to execute the sale deed in favour of the petitioners by virtue of order dated 15.09.1981 in I.A.No.5917 of 1979 in O.S.No.8575 of 1978 on the file of the V Assistant City Civil Court, Chennai, within the stipulated period.

2. In the affidavit filed in support of the writ petition, it is stated that the property at Door No.24, Madley Second Street, West Mambalam, Chennai - 600 033, to an extent of 3607 sq.ft. belongs to Shri Arulmighu Bhasyakara Adhi Chennakesava Perumal Temple, West Mambalam, Chennai. It is stated that the forefathers of the petitioners was residing by putting up house construction. They were all paying rents regularly. The Temple Authorities filed O.S.No.8575 of 1978 against the grand mother of the petitioners, Salammal in the V Assistant City Civil Court, Chennai, for eviction and possession.

3. The defendant, Salammal filed I.A.No.5917 of 1979 in O.S.No.8575 of 1978 under Section 9 of the City Tenants Protection Act, 1921. After contest, the Interlocutory Application was allowed on condition that the defendant Salammal should deposit a sum of Rs.81,529.50/-. It is claimed that the said amount was also paid on 14.02.1986. The Temple Authorities filed Civil Miscellaneous Appeal and it is claimed that it was dismissed.

4. The defendant, Salammal died on 11.06.1986. The petitioners claim to be her legal heirs and it was stated that their mother Radhabai died on 31.07.2014. Thereafter, the trial commenced and proceeded in O.S.No.8575 of 1978. However, it is claimed that the Trial Court, citing a provision of the Act II of 1996, decreed the suit for recovery of possession. The petitioners herein filed A.S.No.521 of 2005 before the Fast Track Court - V, Chennai. The appeal was allowed by judgment dated 09.02.2007. It is claimed that the judgment had reached finality. It is also claimed that notice had been issued by the 2nd respondent demanding rents to be paid and a reply was sent that the rights of the petitioners have been crystallized and acknowledged by the Civil Court under the provisions of the City Tenants Protection Act, 1921. However, the impugned notice dated 01.03.2018 had again been issued stating that Salammal, Perumal Reddy and Bhakthavatchalam Reddy have to pay a sum of Rs.47,91,730/- towards rental arrears. This notice was issued

under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The petitioners claimed that the notice had been sent without application of mind ignoring, the order passed in I.A.No.5917 of 1979 in O.S.No.8575 of 1978 and also the fact that the judgment in A.S.No.521 of 2005 had attained finality and therefore had filed the present writ petition in the nature of Certiorarified Mandamus seeking to quash impugned order.

5. A counter affidavit had been filed on behalf of the 2nd respondent, the Executive Officer, Shri Arulmighu Bhasyakara Adhi Chennakesava Perumal Temple, West Mambalam, Chennai. It was admitted that Salammal had deposited the amount as specified in I.A.No.5917 of 1979 in O.S.No.8575 of 1978. It was however, stated that by the judgment in A.S.No.521 of 2005, her right of possession alone was granted, but her entitlement was not stated. It was stated that the 2nd respondent had not challenged the judgment in A.S.No.521 of 2005, since Act II of 1996 had come into effect amending the provisions of the City Tenants Protection Act, 1921 by which the rights of the tenant abated if it has not been duly executed or satisfied. It was stated that the impugned notice was not a notice under Section 78 of the HR & CE., Act 1959. It was a demand for payment of fair rent. It was stated that the petitioners are seeking specific performance of a right that was available prior to the enactment of Act II of 1996 and was not available after promulgation of Act II of 1996. It was stated that the petitioners have not taken any steps from 1986 onwards to get the sale deed registered in their favour. It was stated that the writ petition should be dismissed.

6. Heard arguments advanced by Mr.C.Umashankar learned counsel for the petitioners and Mr.A.K.Sriram learned counsel for the 2nd respondent.

7. The learned counsel for the petitioners stressed on the fact that the rights of the petitioners have been crystallized by the order in I.A.No.5917 of 1979 in O.S.No.8575 of 1978 which had been filed under Section 9 of the City Tenants Protection Act, 1921 and the then defendant, Salammal had also deposited a sum of Rs.81,529.50/- and therefore stated that the writ petition seeking to direct the petitioners to execute sale deed is maintainable. The learned counsel also stated that since, the rights of the petitioners had been crystallized by the said order, they can no longer can be termed as tenants and therefore, there was no obligation to pay rent, much less, fair rent. The learned counsel in this regard relied on the Full Bench Judgment of this Court in 2006 2 LW 283, Arulmigu Kasi Viswanathaswamy Devasthanam V. Kasthuriammal.

8. Mr.A.K.Sriram, learned counsel for the 2nd respondent, on the other hand contested the statement made by the learned counsel for the petitioners and stated that the petitioners had slept over the issue from the year 1986 and owing to the promulgation of the Act II of 1996, the learned counsel stated that the petitioners have no right to seek refuge under the said order in I.A.No.5917 of 1979 and in O.S.No.8575 of 1978. The learned counsel also stated that the Full Bench judgment of this Court referred above, had been specifically over ruled by the Honourable Supreme Court by the judgment reported in 2009 10 SCC 464, S.Bagirathi Ammal V. Palani Roman Catholic Mission.

9. I have carefully considered the arguments advanced.

10. It is a fact that the grand mother and forefathers of the petitioners were in a possession of the property at Door No.24, Madley Second Street, West Mambalam, Chennai - 600 033, to an extent of 3607 sq.ft. It is also a fact that the property belongs to Shri Arulmighu Bhasyakara Adhi Chennakesava Perumal Temple, West Mambalam, Chennai. It is also a fact that the Temple filed O.S.No.8575 of 1978, seeking eviction and possession of the property. It is also a fact that the then defendant, Salammal had filed I.A.No.5917 of 1979 seeking protection under Section 9 of the City Tenants Protection Act, 1921. It is also a fact that the V Assistant City Civil Court, Chennai, passed an order on condition that the defendant, Salammal should deposit a sum of Rs.81,529.50/- and it is a further fact that the said amount was actually deposited on 14.02.1986. It is also a fact that, however, the trial commenced and conducted in O.S.No.8575 of 1978 and the suit was also decreed, by judgment dated 28.01.2005. It is further fact that the petitioners herein filed A.S.No.521 of 2005 before the V Fast Track Court, Chennai and by judgment dated 09.02.2007, the appeal suit was allowed. The 2nd respondent had issued the impugned notice on 01.03.2018 demanding fair rent of Rs.47,91,730/- which was due as on 28.02.2018. This notice is under challenge before this Court.

11. Section 9 of the City Tenants Protection Act, 1921, gives the right to the tenant, who has put up a superstructure to purchase such part or extent of the land, as may be reasonably required for his enjoyment. The Amendment Act II of 1996 received the assent of the President on 5-1-1996 and was published in the Tamil Nadu Government Gazette Extraordinary, Part IV, Section 2 dated 11-1-1996. By the Amendment Act, the Tamil Nadu Legislature has amended Section 1 of the Principal Act and added certain provisions in sub-section (3). The amendment provisions are as follows:

"Madras City Tenants' Protection (Amendment) Act, 1994

"Amendment of Section 1.—In Section 1 of the Madras City Tenants' Protection Act, 1921 (Tamil Nadu Act 3 of 1922), (hereinafter referred to as the principal Act), in sub-section (3), in the first proviso; after clause (e), the following clause shall be added, namely:

(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.

Explanation.—For the purposes of this clause,—

(A) 'religious institution' means any

(i) temple;

(ii) math;

(iii) mosque;

(iv) church; or

(v) other place by whatever name known

which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

(B) 'religious charity' means a public charity associated with a religious festival or observance of religious character (including a wakf associated with a religious festival or observance of religious character), whether it be connected with any religious institution or not;"

"3. Certain pending proceedings to abate.—Every proceeding instituted by a tenant in respect of any land owned by any religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall insofar as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall insofar as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, 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 a decree or order passed has been executed or satisfied in full before the said date."

12. Reliance had been placed by the learned counsel for the petitioners on the Full Bench judgment reported in 2006 2 LW 283, Arulmigu Kasi Viswanathaswamy Devasthanam V. Kasthuriammal. The question posted before the Full Bench was;

"Whether Section 3 of the Amendment Act II of 1996 giving exemption to the religious institutions from the purview of the Tamilnadu City Tenants Protection Act takes away the vested rights of the tenant who obtained an order in his/her favour in an Application under Section 9 of the Tamilnadu City Tenants Protection Act, 1921?".

13. The Full Bench answered, the said question as follows:

"50. To sum up: The Amendment Act 2 of 1996 would apply when the two conditions exist:

(i) The proceedings initiated by the tenant in respect of any land owned by the religious institution must be pending before any Court on the date of publication of the Act.

(ii) The decree or order has not been executed or not satisfied in full."

14. In 2009 10 SCC 464, S.Bagirathi Ammal V. Palani Roman Catholic Mission, the facts were as follows:

"The respondent was the owner of the vacant suit land and the appellant was the tenant. The respondent filed a suit for the recovery of the land, which ended in a compromise. The appellant did not vacate the suit property in spite of repeated demands by the respondent and therefore, the respondent filed a fresh suit for delivery of possession. The said suit was decreed while an application filed by the appellant in terms of Section 9 of the Madras City Tenants Protection Act, 1921 for purchase of the land by her was erroneously dismissed. However, the appellate court allowed the appeals of the appellant and directed the respondent to sell the land to the appellant for the amount specified. That order was upheld by the High Court and by the Supreme Court. The appellant then deposited the full value of the site. Thereafter, the appellant filed a petition for execution of the sale deed of the land in her favour by the respondent. On the other hand, the respondent filed a petition for executing the compromise decree passed in the earlier

suit. The executing court allowed the execution petition of the appellant and dismissed that the respondent. The respondent then filed a revision petition against the dismissal of its execution petition and a petition against the order passed in the appellant's execution petition. Both the said petitions were dismissed by the High Court. SLPs there against filed by the respondent were dismissed.

On 28.10.1996, the sale deed in favour of the appellant was executed by the Court and was later registered. The respondent then filed review applications in the High Court against the order passed by the High Court in the respondent's revision petition and the other petition on the same grounds as were taken in SLPs. The said review applications were dismissed as not maintainable after the dismissal of the SLPs. Against that order, the respondent filed SLPs which culminated in an order of remand of the review applications. Meanwhile the appellant had initiated proceedings in the executing court for return of the duly registered sale deed. Pursuant to the order of the remand passed by the Supreme Court, the respondent filed an application in the review applications for producing additional documents which was allowed by the High Court. Consequently, the proceedings for return of the registered sale deed to the appellant were dismissed by the executing court. On evidence, the High Court upheld the respondent's contention that it was a religious institution within the meaning of provisions of the Madras City Tenants' Protection Act, 1921 as amended by Act 2 of 1996 and was entitled to the benefits of the amended Act. The appellant then filed the present appeals.

Before the Supreme Court, the question was whether the High Court was justified in allowing the said review applications. The contention of the appellant was that in view of the orders/decisions of various courts including the Supreme Court, the issue could not be agitated once again by way of review application. That moreover, the proviso to

Section 3 of the Madras City Tenants' Protection (Amendment) Act, 1994 was applicable to the tenant's case.

On the other hand, the respondent submitted that by virtue of the remand order passed by the Supreme Court, the High Court was directed to decide the review applications on merits."

15. The Honourable Supreme Court, held as follows:

"21. We have already concluded that pleadings of the respondent herein, the review petitioner and various orders/judgments show that it is a "religious institution". As rightly observed by the High Court, the claim that the Mission is a "religious institution" is apparent from the materials without any further investigation. In such circumstances, as per Section 1(f) of the amended Act, all proceedings instituted by a tenant would abate. The amended Act came into force from 11-1-1996 and on the question whether on the date of coming into force of the amended Act, giving certain benefits to the religious institutions and taking away the right of the tenant under Section 9, the High Court concluded as under:

"... The transfer CMA which was a continuation of the application under Section 9 of the Tamil Nadu City Tenants' Protection Act filed by the respondent who is the tenant was still pending. The proceedings had not attained finality. Therefore, they terminated and they became unenforceable. On the date when the first appeal and the CMA were disposed of, tenancy granted by religious institutions were still governed by the provisions of the Act. Now, by the introduction of Act 2 of 1996, they cease to apply, ergo, all proceedings instituted by the tenant shall abate. All rights and privileges that may have accrued to her cease. They come to an end and they shall not be enforceable. The jurisdiction of the Court to decide the tenant's claim ceased."

22. It is clear that on the date when the amended Act came into force, the application under Section 9 of the principal Act filed by the tenant, the appellant herein was still pending. Though Mr

M.N. Krishnamani, learned Senior Counsel appearing for the appellant, submitted that all formalities were completed before coming into force of the amended Act, as pointed out earlier, pursuant to the order of the High Court, the sale deed was executed only on 28-10-1996 whereas the amendment Act (Act 2 of 1996) came into force on 11-1-1996, much earlier to the execution of the sale deed, hence, the contention of learned Senior Counsel for the appellant is not acceptable and we are in agreement with the conclusion arrived at by the High Court. As rightly concluded by the High Court, the decree in OP No. 4 of 1977 became a nullity on and from 11-1-1996, the executing court committed an error in executing the sale deed after coming into force of the amended Act. Further, as rightly observed by the High Court, unless the sale deed is executed either by the Mission or by the Court, the fruits of the decree will not be realised by the tenants and the proceedings will come to an end only upon execution of the sale deed. Therefore, the tenant cannot be heard to say that the proviso applies to him and that the proceedings are not invalidated. The High Court is right in holding that the decree not having been executed by means of a sale deed, the proceedings are deemed to be pending and, therefore, were determined with the coming into force of the Amendment Act.

23. 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 v. Kasthuriammal [(2006) 2 CTC 452 (Mad)] 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 under Section 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.

24. 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 under Section 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 cannot 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 of 1996 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."

16. As seen from the dictum of the Honourable Supreme Court, the view expressed by the Full Bench of this Court in Arulmigu Kasi Viswanathaswamy Devasthanam V. Kasthuriammal, referred supra, had been held to run counter to the language used in the statute and has been over ruled. In the case before the Honourable Supreme Court in S.Bagirathi Ammal V. Palani Roman Catholic Mission, referred supra, sale deed had been executed but still, the Honourable Supreme Court, had held that since, the Amendment Act II of 1996 had come into force on

11.01.1996 and the sale deed was executed only on 28.10.1996, the fruits of the decree cannot be realized. In the instant case, the sale deed had not been executed. The writ petitioners herein stand on worse footing than the appellant S.Bagirathi Ammal in 2009 10 SCC 464. Therefore the petitioners cannot claim any relief, in view of the amendment brought by Act II of 1996 in Section 9 of the City Tenants Protection Act, 1921. Therefore, the Writ Petition stands dismissed. No order as to costs. Consequently, connected Writ Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Nungambakkam,
Chennai - 600 034.

2.Executive Officer,
Shri Arulmighu Bhasyakara
Adhi Chennakesava Perumal Temple,
West Mambalam, Chennai - 600 033.

+1 cc to Mr.G. Umashankar, Advocate sr 9852.

W.P.No.16263 of 2018

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SP(07/02/2020)

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