

**SUPREME COURT OF INDIA**

V. Sanjeevaraya Mudaliar

Vs.

N. A. Raghavachari

C.A.No.776 of 1966

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

19.09.1968

**JUDGEMENT**

**BACHAWAT, J.:-**

1. The respondent is the owner of premises No.8, Brahmin Street, Saidapet, Madras. By a registered lease dated November 21, 1952 he let to the appellant the backyard of the premises for a term of 5 years. The backyard consisted of vacant land. The lease deed authorised the appellant to use land for boiling and drying paddy, to use the gate in the western compound wall for ingress and egress, to erect an opening in the wall for bringing in and taking out the paddy, and to erect a temporary shed or keeping the paddy on condition that while vacating the land he would dismantle the same. The deed specifically provided that the appellant "should not erect any kind of permanent super-structures on the said vacant site so as to entitle him to claim in future the value thereof," except such facilities as were necessary for drying paddy at his own expense. In contravention of this stipulation and without any authority from the respondent, the appellant erected permanent super-structures on the land. On the expiry of the lease the appellant refused to vacate the land. On March 12, 1959 the respondent filed a suit for his eviction. The appellant claimed protection under the Madras City Tenants Protection Act, 1921 (Act III of 1922). Before filing his written statement on February 15, 1960, he filed an application under Section 9 of the Act asking for an order that the

respondent be directed to sell the land for a price to be fixed by the Court. The trial Court decreed the suit on August 25, 1960. The first appellate Court reversed the decree and dismissed the suit. The High Court on second appeal restored the decree of the trial Court. The present appeal has been filed after obtaining special leave.

2. The Courts below concurrently found that the appellant had constructed permanent super-structures on the vacant land after November 21, 1952 without any authority from the respondent and in contravention of the stipulation in the registered lease. This finding is not challenged before us. In view of the fact that the construction was in contravention of the stipulation in the lease, the trial Court and the High Court held that the appellant was not entitled to the protection of S. 9 of the Act; but the first appellate Court held that the appellant was nevertheless entitled to such protection. The trial Court and the High Court held that the vacant site in the backyard being appurtenant to a house was building and not land, and the appellant not being a tenant of land was not protected by the Act; but the first appellate Court held that the vacant site was land and the tenancy was within the purview of the Act. The appellant challenges the findings of the High Court on both points. The following two questions arise for determination in this appeal: (1) Is the tenant of a vacant site in the backyard of a residential house a tenant of and within the purview of the Madras City Tenants Protection Act, 1921? (2) Having regard to the proviso to Section 12 is such a tenant entitled to the protection of Ss. 3 and 9 of the Act in a case where he has erected buildings on the land in contravention of an express stipulation in a registered lease ?

3. To appreciate the points arising in this case it is necessary to refer to the relevant provisions of the Madras City Tenants Protection Act, 1921. The Act was passed with a view to give protection to tenants who in certain areas had constructed buildings on others' lands in the hope that they would not be evicted so long as they paid fair rent for the land. The Act was amended from time to time. It extends to the city of Madras and other notified areas and applies only to tenancies of land created before certain specified dates. (S. 1). It is common case before us that the Act extends to the area where the disputed land is situated. Section 2 is the definition section. "Building" is defined in S. 2 (1) to include any building, hut or other structure whether of masonry, bricks, wood, metal or any other material whatsoever used (i) for residential or non-residential purposes in certain specified areas and (ii) for residential purposes only; in any other area and includes the appurtenances thereto. It may be mentioned that "building" was not defined to include the appurtenances thereto in any area under Section 2 (1) before its amendment on July 27, 1960 by Madras Act XIII of 1960. "Land" does not include buildings, [S. 2 (2) ]. "Landlord" means any person owning any land, [S. 2 (3) ]. "Tenant" in relation to any and means a person liable to pay rent in respect of such land under a tenancy express or implied and includes any such person who continues in possession of the land after the determination of the tenancy agreement. [S. 2 (4) ]. Section 3 provides that every tenant shall on ejection be entitled to be paid as compensation the value of any building, which may have been erected by him and for which compensation has not already been paid. Section 9 (1) provides that a tenant who is entitled to compensation under Section 3 and against whom a suit in ejection has been instituted may within the prescribed time apply to the Court for an order that the landlord should be directed to sell the whole or part of the land for a price to be fixed by the Court. Section 10 provides that Section 9 shall apply to suits in ejection which are pending before certain specified dates. Section 11 requires 3 months notice in writing before the institution of a suit in ejection against a tenant. Section 12 provides that "nothing in any contract made by a tenant shall

take away or limit his rights under this Act, provided that nothing herein contained shall affect any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they relate to buildings erected after the date of the contract". Section 18 provides that in its application to the city of Madras and to other notified areas the Transfer of Property Act shall to the extent necessary to live effect to the provisions of the Act be deemed to have been repealed or modified.

4. The first question is whether the appellant is a tenant of land as contemplated by the Madras City Tenants Protection Act, 1921. Before the execution of the lease deed dated November 21, 1952 the land in the backyard was occupied with and was appurtenant to the residential house at No. 8, Brahmin Street. It may be conceded that if the respondent had let the residential building together with its appurtenant land, the tenancy would not be a tenancy of land within the purview of the Act. But the respondent did not let the building with the land appurtenant thereto. He retained the building and let the land separately. The letting was of land and nothing else. The appellant is not a tenant of a building as defined in Section 2 (1) either before or after its amendment by Madras Act XIII of 1960. He is a tenant of land as defined in S. 2 (2). The High Court was in error in holding that he was a tenant of building.

5. The next question is whether having regard to the proviso to Section 12, the appellant is entitled to the benefits of Sections 3 and 9 in view of the fact that he constructed building in contravention of the express stipulation in the registered lease. Under Section 8 a tenant on ejection is entitled to be paid as compensation the value of any building erected by him. A tenant entitled to compensation under Section 3 and against whom a suit for ejection has been instituted is entitled to purchase the whole or part of the land by invoking the procedure under Section 9. The effect of the main part of Section 12 is that nothing in any contract made by a tenant takes away or limits his rights under Sections 3 and 9. The proviso to Section 12 saves stipulations as to the erection of buildings made by a tenant in a registered writing. But a stipulation as to the erection of buildings made orally or in an unregistered writing is not protected by the proviso and a tenant erecting a building in breach of the covenant is entitled the benefits of Sections 3 and 9. In *R. V. Naidu v. Naraindas*, (1966) 1 SCR 110 = (AIR 1968 SC 361) a piece of vacant land was let under an unregistered instrument of lease which provided that the tenants would not raise any building in the vacant site. The tenants erected a building on the land in breach of the covenant. This Court held reversing the decision of the High Court in *Naraindas v. V. Naidu*, (1963) 1 Mad LJ 140 that the tenants against whom a suit for ejection had been instituted were entitled to the benefits of Sections 3 and 9. The Court pointed out that as the covenant not to build was contained in an unregistered lease, the proviso to Section 12 had no application and the landlord could not rely on the covenant

6. In the present case a registered lease contains a stipulation by the tenant that he would not build any permanent structure on the land so as to entitle him to claim in future the value thereof. The point in issue is whether this is a stipulation as to the erection of building within the proviso to Section 12. In *Vajrapuri v. New. Theatres Carnatic Talkies Ltd.*, (1959) 2 Mad LJ 469 at pp. 477-8 = (AIR 1960 Mad 108 at p. 115) the tenants obtained a lease of land for constructing a building suitable for use as a theatre. The registered lease deed provided that on the expiry of the lease the tenants would surrender possession of the land after dismantling and removing the building

constructed by him. The Madras High Court held that this stipulation was not one as to the erection of buildings and was not protected by the proviso to Section 12 and that the tenants against whom a suit for ejection had been instituted could claim the protection of Sections 3 and 9. Ganapatia Pillai J. observed:

"In our opinion, the application of the Proviso should be limited to those cases where the stipulations in the contract relate to erection of the building, such as the size of the building, the cost of the building and the design of the building or other cognate matters." He added:

"We are not concerned here with a case of erection of buildings contrary to the stipulations contained in the written contract, to which the tenant was a party. How far, in such a case, the tenant would be protected from foregoing his rights under the impugned Act does not arise for our consideration. . . ."

This decision was affirmed by this Court by a majority decision in *Vajrajani Naidu v. New Theatres Carnatic Talkies*, (1964) 6 SCR 1015 = (AIR 1964 SC 1440); Shah J. speaking for the majority said at pp. 1022-23 (of SCR) = (at p. 1443 of AIR):-

"A covenant in a lease which is duly registered that the tenant shall on expiry of the lease remove the building constructed by him and deliver vacant possession, is undoubtedly a stipulation relating to the building, but it is not a stipulation as to the erection of building. . . . Having regard to the object of the Act, and the language used by the legislature, the exception must be strictly construed, and a stipulation as to the erection of buildings would not, according to the ordinary meaning of the words used, encompass a stipulation to vacate and deliver possession of the land on the expiry of the lease without claiming to enforce the statutory rights conferred upon the tenant by S. 9. The stipulations not protected in S. 12 are only those in writing registered and relate to erection of buildings such as restrictions about the size and nature of the building constructed, the building materials to be used therein and the purchase for which the building is to be utilised."

The minority was of the opinion that the stipulation was protected by the proviso to Section 12. Ayyangar J. speaking for the minority said at p. 1032 (of SCR) = (at p. 1447 of AIR):

"If a stipulation forbidding erection of buildings and requiring their removal before surrendering possession of the site is conceded to be one in respect of erection of buildings-as has to be conceded-it is not possible to accept the construction that a stipulation for the removal of buildings which the lessee is permitted to erect and keep in the site only for the duration of the tenancy is any the less one in respect of erection of buildings."

Having regard to this decision it must be held that a stipulation for giving vacant possession of the land after demolition of the building which the tenant has been authorised to construct thereon is not one as to the erection of buildings within the proviso to Section 12. In the present case the registered lease deed authorised the appellant to erect a temporary shed on condition that while vacating the land he would dismantle the same. The stipulation for vacating the land after dismantling the temporary shed is not protected by the proviso to Section 12. Had the appellant constructed a temporary shed he could in spite of the stipulation claim the protection of Sections 3 and 9. The registered lease deed also contained an express stipulation that the appellant would not erect permanent structures of any kind on the land so as to entitle him to claim in future the value thereof. This stipulation is clearly one as to the erection of buildings. In common parlance a stipulation forbidding erection of building is understood to be one in respect of the erection of building. The popular meaning furnishes the key to the interpretation of the proviso to Section 12. If a stipulation concerning the size and nature of the building to be erected on the land is one as to erection of buildings, a fortiori a stipulation forbidding the erection of buildings of a particular kind altogether is one as to the erection of buildings within the proviso to Section 12.

7. In contravention of the stipulation, as to the erection of buildings, in the registered lease deed the appellant erected permanent structures on the land after the date of the lease. The question is whether the appellant is entitled to compensation for the structures under Sec. 3 and to the benefits of Section 9. The effect of the proviso to Section 12 is that nothing in the Act affects the stipulation. Sections 3 and 9 are subject to and controlled by the proviso to Section 12. Section 3 provides that a tenant shall on ejection be entitled to be paid as compensation the value of any building erected by him. The right conferred on the tenant by Section 3 is controlled by the stipulation in the registered lease deed that he shall not erect permanent structures of any kind on the land so as to entitle him to claim in future the value thereof. The stipulation overrides the tenant's rights under S. 3. If the tenant erects a permanent structure in contravention of the stipulation he is not entitled to any compensation under Section 3. As he is not entitled to any compensation under Section 3, he cannot claim the benefit of Section 9. The High Court rightly held that the appellant was not entitled to the protection of Section 9.

8. In the result, the appeal is dismissed with costs.

Appeal dismissed.