N. M. Ponniah Nadar

Vs

Smt. Kamalaksmi Ammal

Civil Appeals Nos. 1618-19 of 1978

(CJI R. S. Pathak, M. N. Venkatachaliah, S. Natarajan JJ)

22.09.1988

JUDGMENT

NATARAJAN, J. –

1. A common Judgment rendered by the High Court of Madras in a second appeal and memorandum of cross-objections preferred by a lessor and lessee respectively and two connected civil revision petitions have given rise to this appeal by special leave by special leave by the tenant. The controversy in the appeal relates to the question whether the appellant is entitled to an order of court directing the sale of the leased site to him under the Madras City Tenants' Protection Act (hereinafter 'the Act') at a value fixed by the court. The answer to this question is dependent upon the court finding whether the appellant's tenancy rights are referable to the original lease in his favour or to an alleged new tenancy which is claimed by the respondent to have cone into existence between the parties on June 15, 1966.

2. We may now set out the facts of the case about which there is no controversy, and take history of the litigation between the Parties. About 40 years prior to the institution of the suit O.S. No. 370 of 1971 in the Court of District Munsif of Sattur the appellant had taken vacant sit on an oral lease from the vendor of the respondent on a rent of Rs. 60 p.a. The appellant put up super structures on the leased site and was using the major portion of it for his residence and the smaller portion for his business of running a Soda Factory. The respondent purchased the vacant site from the previous owner on February 9, 1958 and the appellant attorney his tenancy to him. About 7 years later, the respondent filed petition HRC No. 52 of 1965, in the Court of the Rent Controller, Sattur, under the Madras Buildings (Lease and Rent) Control Act, 1960 for fixation of fair rent for the leased property. Though the said Act is not applicable to leases of vacant lands and sites, the petition was entertained by the Rent Controller and no objection was raised by the appellant also. The parties however did not go for trial and instead they entered into a settlement and jointly endorsed on the petition that the fair rent may be fixed at Rs. 45 per month with effect from the date of the petition viz. May 24, 1965. In terms of the joint endorsement the Rent Controller passed an order on May 18, 1966 fixing the rent for the leased sit at Rs. 45 per month with effect from May 24, 1965.

3. Six years later, the appellant (sic respondent) filed a suit O.S. No. 370 of 1971 in the Court of the District Munsif, Sattur to seek the ejectment of the appellant from the leased site. The respondent's case was that when the terms of tenancy were revised pursuant to the proceedings before the Rent Controller, a new tenancy had cone into existence between the parties and on that basis he had terminated the tenancy by due notice of the leased site to him after removing the superstructures on the land. The appellant's defence was that the old tenancy continued to be in force and there was only an increase of the rent and no new tenancy had ever been created. His further case was that

since he had been a lessee of the vacant site before the government extended the Madras City Tenants' Protection Acts to Sivasaki Municipality by G.O. Ms. No. 2736 Revenue dated July 19, 1956, he was entitle to the benefits conferred by the Act and retain his possession without being ejected. Consistent with such a defence he filed a petition O.P. No. 8 of 1971 under Section 9(1) of the Act praying for the court to fix the value of the site and to direct the respondent to sell the same to him at the said value.

4. It is relevant to mention here that the government extended the Madras City Tenants' Protection Act to Sivasaki Municipality within the limits of which the suit site is situate, by a Government Order G.O. Ms. No. 2736 Revenue dated July 19, 1956. This Act was enacted in 1922 in order "to give protection to certain classes of tenants in municipal towns and adjoining areas in the State of Tamil Nadu". The Act was originally made applicable to the City of Madras and certain municipal towns alone but in cause of time it came to be extended to other areas by appropriate notifications by the government in exercise of its powers under the Act. Insofar as the areas originally notified in the Act itself, protection was afforded to tenants in respect of residential as well as non-residential buildings put up by them on the vacant lands or sites leased out to them before the Act came into force. In the case of other areas the protection was restricted to only those lessees who had put up buildings for residential purposes unless the government expressly specified in the notification that protection would be afforded even to lessees who had put up non-residential buildings. Section 3 of the Act provided that every tenant would on ejectment be entitled 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 and also compensation for the trees planted by him. Section 9 of the Act provided that any tenant entitled to compensation under Section 3 for the superstructures put up on the land may apply to the court with in one month from the date of the coming into force of the Act or the extension of it to the area concerned or within one month from the date of receipt of service in a suit for ejectment filed by the land owner and seek an order of court for sale of the leased site or land to him for the convenient enjoyment of the superstructure built up by him. On such application being made the court has to determine the minimum extent of land that would be required for the convenient enjoyment of the superstructure put up by the tenant and should then fix the price for the said extent of land call upon the tenant to pay the said price within such period as may be determined by the court, the said period not being less than 3 months and not being more than 3 years from the date of the order. It is common ground that when the Act was extended to the Sivasaki Municipality in 1956 the Act was made applicable only to sites on which residential buildings had been put up by the tenants. It was only in 1975 the government extended the benefit of the Act to tenants who had put up non-residential buildings also within the limits of Sivasaki Municipality. Consequently the position was that when the suit for ejectment was filed by the respondent in 1971, the appellant was entitled to ask for a sale of only that portion of the site over which his residential building stood besides such additional extent of land that would be required for the convenient enjoyment of the house. This was, however, subject to the condition that his possession of the site was referable to the original lease entered into before the Act came into force in Sivasaki Municipal area and not to any new tenancy entered into after the Act had come into force.

5. The District Munsif who tried the suit alone with the OP No. 8 of 1971 dismissed the suit and allowed the appellant's petition and directed him to pay a sum of Rs. 3000 towards the cost of the leased site. The District Munsif held that he oral lease between the appellant and the previous owner of the land continued to be in force and no new lease had come into existence when the rent was increased from Rs. 60 p.a. to Rs. 45 p.m. On the respondent preferring appeal to the Subordinate Judge of Ramanathapuram, the suit and petition were remitted for fresh disposal. After further trial and enquiry the District Munsif once again dismissed the respondent's suit and allowed OP No. 8 of

1971 but, however, fixed the value of the site at Rs. 6000 instead of Rs. 3000 as was done earlier. The respondent appealed to the appellate court once again. The Subordinate Judge concurred with the finding of the trial court that the original lease had not been extinguished and the increase of rent had not brought about a new tenancy in substitution of the original lease. The Subordinate Judge, however, was of the view that the value fixed by the trial court for the site was too low and the site should have been valued at Rs. 12,000. Another factor noticed by the appellate Judge was that the respondent was entitled to the benefit of the Act only insofar as the land covered buy his residential building was concerned, and not to the area where his Soda Factory was functioning. The Subordinate Judge, therefore, rendered judgment remitting the suit and the original petition for fresh disposal in the light of the directions given by him viz., (1) to fix the value of the site at Rs. 12,000, (2) to determine the extent of land covered by the residential building and the additional extent that would be required for the convenient enjoyment of the house and to fix the value for the convenient enjoyment of the house and to fix the value for the said extent at the revised rate, and (3) to pass a decree for ejectment in respect of remaining area of the leased site made use of by the tenant for running his Soda Factory.

6. Against the judgment of the Subordinate Judge, the respondent preferred a second appeal to the High Court and the appellant filed a memorandum of cross-objections insofar as he was denied relief in respect of the land on which the Soda Factory had been put up. Two civil revisions were also filed by the parties, one by the respondent to assail the allowance of OP No. 8 of 1971 and the other by the appellant to question the increase in the value of take site from Rs. 6000 to Rs. 12,000. The High Court considered all these matters together and by a common judgment and order dated April 26, 1978 allowed the second appeal and decreed in toto the suit for ejectment filed by the respondent and dismissed the memorandum of Cross-objections and the civil revision petitions. The High Court took the view that when the parties had increased the rent in 1965 by mutual agreement, it was not a case of continuance of the old lease on payment of higher rent but it was a case of conversion of an annual lease into a monthly tenancy and consequently a new tenancy had come into existence and the appellant's rights were therefore to be determined with reference to the new tenancy and consequently he was not entitled to claim benefits under the Act and Seek the sale of the leased site to him. One of the contentions before the High Court was that the order of the Rent Controller marked as "Ex. A-3" was a null and void order because the Rent Controller had no jurisdiction to entertain the petition for fixation of fair rent in as much as the Madras Buildings (Lease and Rent) Control Act had no application to leases pertaining to vacant lands and sites. The High Court has discountenanced this argument by holding that even though the order of the Rent Controller had been passed without jurisdiction, the parties were nevertheless bound by the agreement entered into between them and the terms of the agreement provided adequate material for holding that a new tenancy had cone into existence in 1965.

7. What falls for determination now is whether in spite of the increase in rent, the appellant's tenancy is referable to the lease entered into by him with the vendor of the respondent and whether the High Court was right in taking the view that the increase in rent in 1965 would not, in the eye of law, be a mere increase of rent but would have the effect of extinguishing the old lease and bringing about a new tenancy so as to deprive the appellant of his rights under the Act.

8. A relevant factor to be borne in mind is that as the original lease was an oral one, no attempt was made by the respondent when the rent was increased in 1965 to have the terms of the lease reduced to writing. If in fact a new tenancy in supersession of the old lease had been created with drastic changes in the terms, one would legitimately expect the parties to have entered into a written contract instead of contenting themselves to be bound by an oral agreement. Be that as it may, in the

absence of a written lease deed, the question whether the parties had consciously and with full intent agreed to put and end to the original lease and enter into a new lease has to be determined Solely with reference to two factors viz. (1) increase of rent from Rs. 60 per annum to Rs. 540 per annum and (2) payment of the rent on monthly basis instead of on annual basis. According to the High Court the change from annual payment to monthly payment of the rent would clearly spell out that what was agreed to was not merely an increase of rent but also a change of the tenancy from an annual lease to a monthly tenancy and, as such, a new lease in place of the old one had sprung up by act of parties as such, a new lease in place of the old one had sprung up by act of parties as well as by operation of law. By way of judicial authority for this view, the High Court has referred to then decision in A. Ranganatham v. M. Ethirajulu (ILR 1940 Mad 172 : AIR 1940 PC 17 : 67 IA 25). Learned counsel for the respondent in seeking sustain the judgment of the High Court also invited out attention to the decisions in A. Ganesa Mudaliar v. Chellammal ((1961) 2 Mad LJ 107 (Mad HC)), M. Devasakayam v. Thiruveedi Amman Koil Devasthanam ((1968) 2 Mad LJ (NRC) 57(1)) and Natesa v. Arumugha (ILR (1968) 3 Mad 776). We will consider these decisions is detail a little later.

9. Examining the materials in the case, we are clearly of the view that neither the reasoning of the High Court nor the conclusion reached by it can be sustained. In the first place, the High Court has failed to see that what the respondent had sought for before the Rent Controller was only enhancement of rent for the site leased to the appellant. In the very nature of things whenever a landlord seeks the fixation of fair rent, it necessarily means that the landlord accepts the continuance of the original lease and only wants enhancement of the tent to a just and fair level. Therefore, by filing an application for fixation of fair rent the respondent had only wanted a revision of the quantum of rent and not the revision of any of the other terms of the lease. The desired result was achieved when the appellant consented to pay rent at the increased rate of Rs. 45 per month instead of at the rate of Rs. 60 per annum. Even though the Rent Controller had no jurisdiction to entertain the petition or adjudicate upon there question of fair rent, the parties had invited the Rent Controller to pass an order in terms of their joint endorsement. This prayer was granted by the Rent Controller and he passed and order fixing the rent at the revised rate of Rs. 540 per annum instead of Rs. 60 per annum and directed the said rent to be paid every month at the rate of Rs. 45. The change in the mode of payment of rent must obviously have been made because of the steep increase in the rate of rent from Rs. 5 per month to Rs. 45 per month. By effecting this change in the period of payment of rent, the parties cannot be deemed to have intended to put an end to the original lease and bring about a new lease so as to convert the annual lease into a monthly tenancy. If the parties had rely intended to bring about a new tenancy, the would not have invited the Rent Controller to pass an order in terms of the joint endorsement made by them. It is, therefore, reasonable to conclude that the parties should have only proceeded on the footing that the old lease was to continue but insofar as the rent was concerned, it should be paid at the enhanced rate of Rs. 45 per month. In such circumstances, it is impossible to hold that solely because there was a change in the periodicity of payment of rent at the enhanced rate, the parties had intended that the appellant should surrender his rights under the old lease and be granted leasehold rights afresh under a new tenancy; nor can it be said that de hors the intention of the parties, a new tenancy had come into existence by operation of law.

10. We may now refer to Halsbury's laws of England and Hill and Redman's Laws of Landlord and Tenant and a decision of this Court for the exposition of law on the question whether a mere increase of rent would affect the terms of an existing tenancy so as to conclude a surrender of existing rights and re-grant of fresh rights. The following passage occurs in Halsbury's laws of England in para 448, page 354 (4th edn.) Volume 27 :

> 448. Variation of Terms of Leases. - Where the terms of the relationship between the landlord and the tenant are altered by agreement, it is necessary to decide whether the alteration amounts to the creation of a new tenancy upon the altered terms, and thus of necessity the surrender by operation of law of the previous tenancy, or whether the alteration merely continues the previous tenancy in a varied form. Certain agreed alterations necessarily involve the surrender of the previous tenancy and its replacement by a new tenancy. The only way in which new land may be added to the demised premises is by this process of surrender by operation of law of the old lease and the grant of a new lease to include both the old and the new premises. Equally the duration of lease can only be extended by the surrender of the existing lease and its replacement by a new lease for the longer term. As a matter of law the parties can only achieve this intention by the fiction of a surrender and re-grant.

Other agreed alterations do not necessarily involve a surrender and re-grant. If the parties wish they may increase the rent payable under a tenancy without creating a new tenancy; the old tenancy continues at the increased rent. The rent may be reduced in the same way. Other minor variations may be effected without a surrender and re-grant. Where the agreement between the parties does not affect the terms of an existing tenancy there is no reason to imply a surrender and re-grant. However, where the parties intend that their altered relationship is to amount to a new tenancy there will be a surrender of the previous tenancy.

In Hill and Redman's Law of Landlord and Tenant Vol. 1, 17th edn. the following passage occurs at para 374, page 435 :

> But a surrender does not follow from a mere agreement made during the tenancy for the reduction or increase of rent, or other variation of its terms, unless there is some special reason to infer a new tenancy, where for instance, the parties make the change in the rent in the belief that the old tenancy is at an end.

In Goppulal v. Dwarkadeeshji ((1969) 1 SCC 792, 794, PARA 5 : (1969) 3 SCR 989) this Court had to consider a case where for shops were let out to the defendant in 1944 on a rent of Rs. 150 per month and two more shops were let out to him in 1945 on a rent of Rs. 65 per month. In 1953 the defend and agreed to pay a consolidated rent of Rs. 251/8/- per month for all the six shops and to vacate them by July 31, 1957. The plaintiff contended that by reason of the change in the quantum of rent a new tenancy had come into existence. This Court rejected the contention and held that "a mere increase of reduction of rent does not necessarily import the surrender of the existing lease and the grant of a new tenancy".

11. The textual passages extracted above and the decision of this Court in Goppulal case ((1969) 1 SCC 792, 794, para 5 : (1969) 3 SCR 989) set out lucidly that a mere increase or reduction of rent will not necessarily import a surrender of a existing lease and the grant of a new tenancy. We may add that if on account of the variation in the quantum of rent any consequential change is made regarding the time and manner of the payment of the rent it cannot have the effect of graver consequences being imported into the change of rent than what the parties had intended and warrant a finding by the court, that the parties had intended to create a new tenancy in supersession of the earlier one or that by operation of law a new tenancy had come into existence.

12. We may now look at the decisions cited before us by the counsel for the respondent. In Ranganatham v. Ethirajulu (ILR 1940 Mad 172 : AIR 1940 PC 17 : 67 IA 25) decided by the Privy

Council it was noticed that a tenant whose lease expired on September 13, 1922 continued to be in possession of the lease property and on February 1, 1923 he obtained a new lease for ten years from the time the old lease came to and end i.e. October 1, 1922 and the lease deed provided for payment of rent at a higher rate. It was in that context the Privy Council held that "though that physical possession was continuous, the possession from October 1 was attributable to a new tenancy, which was formally embodied in the lease dated February 1, 1923, the increased rent thereby provided having been paid by the tenant from October 1, 1922, in terms of the verbal agreement for a lease". It was not therefore a case of a mere increase in the rent but it was a case of a new lease by means of a written instrument for a period of ten years with an increase in the rate; of rent. In Ganesh Mudaliar v. Chellammal ((1961) 2 Mad LJ 107 (Mad HC))the position was that a tenant who was running a tea shop in the plaintiff's land has closed the tea shop on receipt of a notice from the plaintiff but after ten days he reopened the shop after executing a lease deed and continued to be a lessee on the same terms as before. In such circumstances, the High Court held that notwithstanding the execution of a fresh lease deed, the tenant continued to be a lessee under the original lease inasmuch as he had continued to be in possession even after closing the tea shop and there was no variation in the terms of the tenancy in the subsequent lease deed executed by him. In M. Devasakayam v. Thiruveedi Amman Koil Devasthanam ((1968) 2 Mad LJ (NRC) 57(1)) the facts were that a trustee of a temple had obtained a lease of temple property for himself from all the trustees of the temple, which itself was not lawful and in addition he had entered into a fresh lease deed where under there was not only an increase of the rent but there was also a limitation of the period of lease to one year. The High Court held that the lease deed subsequently entered into created a new tenancy because there was not only an enhancement of rent, but also the imposition of other conditions such as the period of lease etc. The last of the decisions Natesa v. Arumugha (ILR (1968) 3 Mad 776) was also a case where the earlier tenancy which was an oral one was from month to month but subsequently the tenant had entered into a new agreement under a registered instrument fixing the period of tenancy to a period of the three years and containing prohibitive clauses forbidding the tenant from subletting or assigning his tenancy and also from gathering cattle on the land. Having regard to all these factors, the court held that there were substantial alterations in the terms of the tenancy and hence there was adequate justification to hold that the parties had entered into a new tenancy. None of these decisions lend support to the contention of the respondent that by the appellant merely agreeing to pay rent at Rs. 45 per month instead of Rs. 60 per annum, and as consequence thereof changing the time of payment from year to year to month to month, the appellant and the Respondent had knowingly and intentionally brought about a new tenancy in place of the old one and, as such, the appellant's possession of the leased site after June 18, 1965 was attributable to a new tenancy and consequently the appellant is not entitled to claim benefits under the Act.

13. One important factor which the High Court has failed to notice is that the City Tenants' Protection Act is a beneficial legislation and was enacted for the purpose of affording protection to tenants who had put up buildings on lands of others taken on lease by them. In order to ensure the protection afforded to tenants by the Act is not lost, it has been provided under Section 12 that "nothing in any contract made by the tenant shall take away or limit the rights under this Acts". By reason of this provision an obligation is cast on the courts to scrutinize the materials very carefully whenever a lessee entitled to the benefits of the Act is sought to be deprived of them by a plea that there was a surrender of rights under the old lease and re-grant of tenancy rights under a new lease and to give acceptance to such a plea only when the evidence is clear and of a compulsive nature. Other wise, the benefit conferred on tenants by the Act would be rendered nugatory by the manipulations of scheming lessors.

14. For the aforesaid reasons, the judgment of the High Court has to be set aside and the appeal allowed. The learned counsel for the appellant submitted that during the pendency of the appeal, the government has notified that the benefits of the Act would also be afforded to tenants in Sivasaki Municipal area who had put up non-residential buildings. He therefore argued that the judgment and decree of the trial court in the suit and the order passed in OP No. 8 of 1971 should be restored and the judgment and order of the Subordinate Judge should be suitable modified so as to affirm in full the judgment and order of the trial court in the suit and the original petition.

15. There is force and merit in the prayer of the appellant's counsel. It is true that on the date the appellant filed his petition OP No. 8 of 1971 under Section 9(1) of the Act, he was entitled to seek and order of sale in his favour only in respect of that portion of the leased site whereon his residential house stood and he was not entitled to seek a sale of the site over which he had put up the Soda Factory. In spite of this position, the trial court granted him relief in respect of the entire site on both the occasions i.e. before remand and after remand. The appellate court noticed the error contained in the order and, therefore, while enhancing the value of the site to Rs. 12.000 from Rs. 6000 it remanded the suit and the petition and directed the trial court to restrict there relief in OP No. 8 of 1971 to that portion of the site where the residential house stood and pass a decree for ejectment in the suit in respect of the remaining portion of the site. The appellant however, kept the issue alive by preferring a memorandum of cross-objections and a civil revision petition to the High Court. It was during the pendency of the proceedings the government has extended the benefit of the Act even to those tenants who had put up non-residential buildings on leased lands in Sivasaki Municipality. In such circumstances, the full benefit of the Act has to the given to the appellant. The appellant is, therefore, entitled to an order of sale in respect of the entire site leased to him. However, the appellant is not justified in contending that the value of the site should be at the rate fixed by the trial court viz. Rs. 6000 and not at the rate of Rs. 12,000 fixed by the Subordinate Judge.

16. In the result, the appeal is allowed and the Judgment and order of the High Court is et aside. The judgment and decree of the trial court in the suit will stand restored and the respondent's suit will stand dismissed. Insofar as OP No. 8 of 1971 is concerned, the order of the trial court is restored but with the modifications that the appellant should pay a sum of Rs. 12,000 towards the cost of the leased site instead of Rs. 6000 fixed by the trial court. The appellant is directed to pay the sum of Rs. 12,000 to the respondent in 20 monthly installments of Rs. 600 each the first of such instalments to commence from a date four months hence from the date of Pronouncement of this judgment. In the facts and circumstances of the case, the parties are directed to pay and bear their respective costs.

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