

S. VENKITACHALAM IYER

v.

S. RAMA IYER

SEPTEMBER 12, 1991

[RANGANATH MISRA, CJ, M.H.KANIA AND  
KULDIP SINGH, JJ.]

*Tamil Nadu Tenants' Protection Act, 1921 : Sections 9 and 10—  
Tenant—Eviction of—Decree passed—Compensation for superstructure built  
by tenants predecessor-in-interest and purchased by tenant—Execution  
proceedings pending—Right of tenant to require the landlord to sell the land  
for beneficial enjoyment of the superstructure—Whether affected.*

The lands in question owned by a Trust, of which the appellant was the Managing Trustee, were leased to respondent. On his failure to pay rent the Trust filed a suit for his ejection. The District Munsiff passed the decree on condition that the appellant would pay the respondent, costs of the building or superstructure, which had been built by the respondent's predecessor-in-interest, and which the respondent had purchased from him. The litigation went upto High Court, which ultimately upheld the decree. During the pendency of second appeal, the respondent filed before the District Munsiff an application under Section 9 of the Tamil Nadu Tenants' Protection Act, 1921 as amended by Act XIX of 1955 and Tamil Nadu Adaptation of Laws Order, 1969. The provisions of the said Act were extended to the town in which the lands were situated. In the said application he prayed for the issue of a direction to the appellant to sell to the respondent the said property, the land adjoining the building, as it was necessary for the beneficial enjoyment of the building. The application was rejected on the ground that such a prayer had been rejected earlier. The respondent's first appeal was allowed by the Subordinate Judge. The respondent had not surrendered the possession of the property despite the deposit of the compensation amount by the appellant and the execution proceedings had remained stayed. Hence the appellant filed an appeal in the High Court which, however, held that the respondent was entitled to file the application under Section 9 of the Act during the pendency of the execution proceedings, and the right of the respondent had not been affected by the deposit of the compensation amount.

In the appeal before this Court, on behalf of the appellant Managing Trustee, it was contended that the respondent was not entitled to exercise his right to purchase the land immediately adjoining the superstructure as might be required for the beneficial enjoyment of the said structure as the

**A** said structure had not been put up by him, and that although the respondent might have been in possession at the relevant time, he had lost the possession thereafter and hence he had lost his right under Section 9.

Dismissing the appeal, this Court,

**B** HELD : 1.1 Under Section 9 of the Tamil Nadu Tenants' Protection Act, 1921, any tenant, as defined in Section 2(4)(ii)(a), who is entitled to compensation under Section 3, and against whom a suit in ejectment has been instituted or proceedings under Section 41 of the Presidency Small Causes Court Act, 1882, taken by the landlord may, within one month from the date of the Madras City Tenants' Protection (Amendment) Act, 1955, coming into force, or the date with effect from which this Act is extended to the municipal town or village in which the land is situated, or within one month after the service on him of summons, apply to the Court for an order that the landlord 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.

**C**

**D** Section 10 of the Act makes the provisions under Section 9 applicable to cases where decree for ejectment has not been executed before the date from which the provisions of the Act are extended to the area in question. [25 C-E]

**E** 1.2 In the instant case, although the decree for ejectment was passed against the respondent, as he had continued to remain in possession of the property and the decree had remained unexecuted till the date on which the provisions of the said Act had been extended to the area in question, the right of the respondent under Section 9 was not lost. [25 F]

**F** 1.3 As regards the superstructure, it was put up by the predecessor in interest from whom the respondent had purchased. Thus, the High Court was entitled to take the view that it was put up by a predecessor-in-interest of the respondent. [25 G]

**G** 1.4 In these circumstances, the respondent was certainly a tenant, within the meaning of Section 2(4)(ii)(a) of the Act, which takes within its ambit a tenant whose tenancy has been determined but continues to remain in possession, entitled to compensation under Section 3 of the Act and was, therefore, entitled to make an application under Section 9 of the

**H** Act. [25 H, 25 B]

2. The plea that although the respondent might have been in possession at the relevant time, but since he lost it thereafter, he lost his right under Section 9 cannot be allowed to be raised in this Court since this has not been pleaded in or considered in any of the courts below. [26 A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1317 of 1988.

From the Judgment and Order dated 21.1.1983 of the Madras High Court in C.R.P. No. 2797 OF 1979.

T.S. Krishnamurthy Iyer, P.N. Ramalingam and A.T.M. Sampath for the Appellant.

S. Balakrishnan, S. Prasad, R. Raghavan and Vijay Kumar for the Respondent.

The Judgment of the Court was delivered by

**KANIA, J.** This is an appeal by special leave against the decision of a learned Single Judge of the Madras High Court in Civil Revision Petition No. 2792 of 1979 filed in that Court. We propose to set out only the few facts necessary for the disposal of the appeal.

The appellant is the managing trustee of a trust. The said trust owned two properties comprising 60 cents and 29 cents of land at Nagercoil in Tamil Nadu. The said lands were leased by the appellant to one Padakalingam in 1930 who in turn assigned the lease in favour of one Ramaswamy Mudaliar in 1931. Swami Mudaliar secured a further assignment of the said lease from the said Ramaswamy Mudaliar. Swami Mudaliar put up a building on the said land and the respondent herein purchased the building from him in 1943 for a sum of Rs. 4,475. In 1944 the trust had leased out the said property in favour of the respondent for six years. The terms of the lease are not relevant for the purposes of resolving the controversy raised before us. As the respondent failed to pay the rent to the Trust, the Trust filed a suit for ejection against the respondent which suit was later transferred to the District Munsif's Court, Nagercoil. The said suit was decreed by the learned District Munsif. The decree for eviction was passed by the learned District Munsif on condition that the appellant will pay to the respondent the costs of the building or the superstructure. This litigation was carried upto the High Court in Second Appeal. The decree of the trial Court for eviction was upheld by the High

**A** Court. During the Pendency of the second appeal an application was filed by the respondent under Section 9 of the Tamil Nadu Tenants Protection Act, 1921, as amended by Act XIX of 1955 and Tamil Nadu Adaptation of Laws Order, 1969 (hereinafter referred to as " the said Act"). The provisions of the said Act were extended to Nagercoil town in respect of non- residential buildings by a government order which was published in the Gazette on June 29, 1975. In the said application under Section 9 of the said Act the respondent claimed that the appellant should be directed to sell out of the said property, the land adjoining the said building and necessary for the beneficial enjoyment of the building on such terms and conditions as might be fixed by the Court. This application was resisted by the appellant. The District Munsif's Court, Nagercoil, dismissed the said application of the respondent on the ground that a previous application with the said prayer had been dismissed and hence, a fresh application for the same relief was barred. The respondent preferred an appeal to the Sub-Court at Nagercoil which was allowed by the learned Subordinate Judge. The High Court took the view that the decree in favour of the appellant was simple decree of ejection and did not take away the right of the respondent to the building or superstructure. It further took the view that the deposit of the amount of costs of the superstructure by the appellant did not affect the right of the respondent. The respondent had not surrendered the possession of the property despite the deposit of amount of compensation by the appellant and the appellant had been compelled to resort to the court. The execution proceedings were stopped. The High Court held that in these circumstances, the respondent was entitled to make an application under Section 9 of the said Act during the pendency of the execution proceedings. The High Court also dismissed the review petition preferred by the appellant.

**F** Only two submissions were made before us by Mr. Krishnamurthy Iyer, learned Counsel for the appellant. The first was that the respondent was not entitled to exercise his right to purchase the land immediately adjoining the superstructure as might be required for the beneficial enjoyment of the said structure as the said structure had not been put up by him.

**G** As we have already pointed out earlier, the said superstructure was purchased by the respondent from Swami Mudaliar who had put up the said structure and was an assignee of the lease. The respondent himself obtained a lease of the land subsequently. We now come to the relevant provisions of the said Act. We propose to set out the effect of the relevant sections so far as it is necessary for the purposes of this case. Under clause

**H**

(ii) (a) of sub-section (4) of section 2, a person referred to in sub-clause (i) who continues in possession after the determination of his tenancy agreement is included in the term 'tenant'. The inclusive definition of the term 'tenant' under Section 2(4)(ii)(a) takes within its ambit a tenant whose tenancy has been determined but continues to remain in possession. Section 3 of the said Act provides that every tenant as defined under the said Act shall, on ejection, 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, or by any person not in occupation at the time of the ejection who derived title from either of them, and for which compensation has not already been paid. Again, very briefly stated, Section 9 prescribes that any tenant who is entitled to compensation under Section 3 and against whom a suit in ejection has been instituted or proceedings under Section 41 of the Presidency Small Causes Court Act, 1882, taken by the landlord may, within one month from the date of the Madras City Tenants' Protection (Amendment) Act, 1955, coming into force, or the date with effect from which this Act is extended to the municipal town or village in which the land is situated, or within 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, as set out in the said section. It may be mentioned that the land which the tenant is entitled to require to be sold to him is the minimum land required for the beneficial enjoyment of the building. Section 10 of the said Act makes the provisions under Section 9 applicable to cases where decree for ejection has not been executed before the date from which the provisions of the Act are extended to the area in question. Thus, although the decree for ejection was passed against the respondent, as he had continued to remain in possession of the property and the decree had remained unexecuted till the date on which the provisions of the said Act had been extended to the area in question, the right of the respondent under Section 9 was not lost.

As far as the superstructure is concerned, the said superstructure was put up by Swamy Mudaliar from whom the respondent had purchased it as pointed out earlier. Thus, as far as the building or superstructure is concerned, the High Court was entitled to take the view that it was put up by a predecessor in interest of the respondent. In these circumstances, the respondent was certainly a tenant entitled to compensation under Section 3 of the said Act and was entitled to make an application under Section 9 of the said Act. The submissions of Mr. Krishnamurthy Iyer to the contrary cannot be accepted.

**A** It was next submitted by Mr. Krishnamurthy Iyer that, as averred in the special leave petition, although the respondent might have been in possession at the relevant time yet he has lost possession thereafter and hence, he had lost his right under Section 9. This fact has not been pleaded in or considered in any of the courts below and hence, we decline to permit Mr. Krishnamurthy Iyer to raise this contention before us.

**B** In the result, the appeal fails and is dismissed. There will be no order as to costs. The application of the respondent under Section 9 will be disposed of on merits and according to law. The amount of compensation which will have to be paid by the respondent to the appellant will be determined as provided under the said Act.

N.P.V.

Appeal dismissed.