

THE NEW THEATRES (CARNATIC TALKIES)

LTD., COIMBATORE.

N. VAJRAPANI NAIDU.

[Y. V. CHANDRACHUD C J., R. S. PATHAK AND

SABYASACHI MUKHARJI, JJ.]

October 7, 1983

*Madras City Tenants, Protection Act, 1921 & Madras City Tenants, Protection (Amendment) Act, 1960 Section 9—Effect of the amending act—Applicability to pending proceedings.*

The respondent and his mother granted a lease in respect of an open site of land for a period of 20 years in favour of a person, who constructed a theatre thereon and who later assigned his rights to the appellant and the appellant was accepted as a tenant by the respondent. The respondent subsequently served notice upon the appellant calling upon it to vacate the property and to surrender vacant possession of the site. The appellant refused, and set up an oral agreement entitling it to an extension of the lease for a further period of 20 years. The respondent filed a suit for ejectment against the appellant and the appellant filed a suit for specific performance of an agreement to extend the lease. The subordinate-Court decreed the respondent's suit for possession with mesne profits and dismissed the appellant's suit.

The appellant appealed to the High Court against the two decrees, and during their pendency the Madras City Tenants' Protection Act, 1921 was extended to the town where the suit property was situated. The appellant thereupon filed a Civil Miscellaneous Petition in the appeal arising out of the suit for ejectment, for directions under section 9 of the Act for sale of the site. This application was resisted by the respondent on the ground that section 9 was void. The High Court upheld the validity of the section, declared the appellant entitled to purchase the site under section 9 and remitted the matter to the subordinate-Court for appointment of a Commissioner to fix the market value of the site. Against that order the respondent preferred a Letters Patent Appeal which was dismissed and this order was confirmed by the Supreme Court.

During the pendency of the appeal in this Court, section 9 of the Madras City Tenants' Protection Act was amended by Madras Act No. XIII of 1960. The respondent filed two Civil Miscellaneous Petitions in the High Court praying for review and modification of the earlier order in view of the amended section 9, and for stay of the valuation proceedings.

A After the dismissal of the respondent's appeal in the Supreme Court, the High Court dismissed the pending appeals as withdrawn transferred the two Civil Miscellaneous Petitions to the trial court and directed it to fix the market value of the site and pass final orders. The subordinate-Court held that the respondent was entitled to the benefit of the amended section 9, and directed the Commissioner to determine the minimum extent of land necessary for convenient enjoyment and fix the price on the basis of the average market value of the land during the three years immediately preceding the date of its order. The appeal to the District Court and the Civil Revision Petition in the High Court against this order were dismissed.

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C In the appeal to this Court it was contended on behalf of the appellant that the amended section 9 of the Madras City Tenants' Protection Act, could not be invoked, and that section 9, as it stood before the amendment, governed the rights of the parties, and that in any event the amended section 9 should have been invoked in the appeal pending in the Supreme Court, and that relief not having been sought there, it was not open to the respondent to seek relief after the appeal had been disposed of by the Supreme Court.

Dismissing the appeal, the Court.

D HELD : 1 (i) If the suit was pending on the date when the amendments in the principal Act (Madras City Tenants' Protection Act, 1921) were brought into force, the amended provisions of the Act will govern the disposal of the suit. [337 D]

E (ii) The suit continued pending on the date when the principal Act was amended by Act XIII of 1960. Consequently, it was governed by the provisions of the amended section 9. As the scheme under the original section stood superseded by the scheme enacted under the amended section, the order of July 28, 1958 stood aborted and pursuant to the amended section fresh proceedings had to be taken by the Court to dispose of the suit. [338 A-B]

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H (iii) When the Amendment Act XIII of 1960 amended the principal Act, it amended not only section 9 thereof but section 10 also. Section 10 was amended in order that the amended provisions should apply to pending ejectment suits and proceedings. The provisions of the amended section 9 (1) reveal that the scheme respecting the tenant's right to purchase, and the landlord's obligation to sell, the land stood modified. Whereas the original section 9 (1) provided for the making of an application by the tenant within a specified period to the court for an order directing the landlord to sell the land for a price to be fixed by the court, and court was required to fix the price according to the lowest market value prevalent within seven years preceding the date of the order, and to order, within a period to be determined by the court, the tenant to pay into court or otherwise as directed the price so fixed, the amended section 9 (1) is divided into two clauses. Clause (a) entitles the tenant within an identical period, to apply to the court for an order requiring the landlord to sell, for a price to be fixed by the court, the whole, or part of, the extent of the land specified in the application. Clause (b) provides that the court will first decide the minimum extent of the land necessary for convenient enjoyment by the tenant, and thereafter the

court will fix the price of such minimum extent of land or of the extent of the land specified in the application, whichever is less. [336 F-H; 336 H-337 C]

In the instant case, the appellant had already filed Civil Miscellaneous Petition No. 1835 of 1958 praying for directions under section 9 for the sale of the site. On that application the High Court passed an order dated July 28, 1958 holding the appellant entitled to purchase the site on paying the full market value current on that date, and had directed the trial court to appoint a Commissioner to fix the value of the site. That order did not dispose of the application and the suit, for under the original section 9(3) the statute contemplated an order by the Court, after it was satisfied that the tenant had paid the price determined by it, directing the conveyance of the land by the landlord to the tenant. It was only after such an order was made that the application and the suit would stand concluded. [337 E-G]

2. The scope of the earlier appeal filed in the Supreme Court was restricted to the validity of section 9 and 12 of the unamended Madras City Tenants' Protection Act, and the Court declined to consider the operation of the amendments brought about in 1960. It was, therefore, open to respondent after the disposal of the appeal to apply to the court below for an order in terms of the amended section 9. [338 F-H; 339 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1601 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 30th March, 1971 of the Madras High Court in C.R.P. No. 19883 of 1968.

*T.S. Krishnamurthy Iyer, Gopal Subramaniam and Mrs. Saroja Gopalakrishnan* for the Appellant.

*P. Govindan Nair, Miss Seita Vaidyalingam and Mrs. Baby Krishnan* for the Respondent.

The Judgment of the Court was delivered by

**PATHAK, J.** This appeal by special leave is directed against an order dated March 30, 1971 of the Madras High Court dismissing a revision petition arising out of proceedings under the Madras City Tenants Protection Act, 1921.

Almost fifty years ago, on September 19, 1934, the respondent and his mother granted a lease in favour of one Abhirama Chettiar in respect of 50 cents of open land in Coimbatore for a period of twenty years on an annual rent of Rs. 1080 for the construction of a building suitable for use as a theatre. Abhirama Chettiar constructed a theatre on the site. Subsequently, on July 14, 1937 Abhirama

A Chettiar assigned his rights to the appellant. The appellant attorned to the respondent and was accepted as a tenant. In March, 1964, the respondent served notice upon the appellant calling upon it to vacate the property and surrender vacant possession of the site. The appellant refused to do so, and set up an oral agreement entitling it to an extension of the lease for a further period of twenty years.

B The respondent filed a suit against the appellant for its ejection. Shortly thereafter, the appellant filed a suit against the respondent for specific performance of an agreement to extend the lease. On January 16, 1957 the learned Subordinate Judge, Coimbatore, decreed the respondent's suit for possession with mesne profits and dismissed the appellant's suit. The appellant appealed to the High

C Court against the two decrees. During the pendency of the appeals the Madras City Tenants' Protection Act, 1921 was extended to the town of Coimbatore with effect from February 19, 1958. The appellant filed Civil Miscellaneous Petition No. 1835 of 1958 in the appeal arising out of the suit for ejection and prayed for directions under s. 9 of the Act for the sale of the site to it. The application

D was resisted by the respondent on the ground that s. 9 was void. On July 28, 1958 Panchapkesa Iyer J. passed the following order :

E "I declare that the petitioner is entitled to purchase the site concerned in the petition under Section 9 of the Act, but on paying the full market value current today as freely undertaken by himself. The lower Court will appoint a suitable experienced commissioner to fix the value of the site based on the market value prevalent this day (28th July 1958). The Commissioner's fees will be

F paid by the commissioner who will bear it himself. In this petition all the parties will bear their own costs. As soon as this order becomes final the petitioner will withdraw A.S. No. 100 of 1957 and 255 of 1957 on the file of this Court, as infructuous as undertaken by him, and they

G will then be dismissed without costs."

H The petition was remitted by the learned Judge to the Subordinate Court, Coimbatore for appointing a Commissioner to fix the market value of the site. Against that order the respondent preferred a Letters Patent Appeal, which was dismissed. The respondent then appealed to the Supreme Court. By its judgment dated March 4, 1964, reported as *N. Vajrapani Naidu and Another v. The New Theatre*

*Carnatic Talkies Ltd., Coimbatore*<sup>(1)</sup> the Supreme Court upheld the judgment of Panchapakesa Iyer J. and dismissed the appeal. A

Now during the pendency of the appeal in the Supreme Court, s. 9 of the Madras City Tenant's Protection published in the Fort St. George Gazette dated July 27, 1960 Act was amended by Madras Act No. XIII of 1960. Upon that, the respondent filed two petitions in the High Court, C.M.P. No. 7241 of 1960 praying for the review and modification of the order dated July 28, 1958 in the light of the amended s. 9, and C.M.P. No. 7242 of 1960 praying for stay of the enquiry directed by that order. On April 1, 1964, upon the dismissal of the respondent's appeal in this Court, the High Court dismissed the appeals against the decrees passed by Panchapakesa Iyer J. as withdrawn. The High Court also transferred the C.M.P. Nos. 7241 and 7242 of 1960 to the trial court for consideration, and directed the trial court to fix the market value and pass final orders in C.M.P. No. 1835 of 1958. The learned Subordinate Judge held that the respondent was entitled to the benefit of the amended s. 9 of the Act, and directed the Commissioner to determine the minimum extent of land necessary for convenient enjoyment by the appellant to take steps for fixing the price thereof on the basis of the average market value of the three years immediately preceding the date of its order. C.M.P. No. 7242 of 1960 was dismissed as superfluous. Against the order of the trial court the appellant filed an appeal in the court of the learned First Additional Judge, Coimbatore. The appeal was dismissed. Thereafter, the appellant filed Civil Revision Petition No. 1883 of 1968 in the High Court, and on March 30, 1971 the High Court dismissed the Revision Petition. The High Court affirmed that the case was governed by the amended s. 9 of the Act, and rejected the contention of the appellant that C.M.P. No. 7241 of 1960 was not competent in the High Court as the order dated July 28, 1958 by Panchapakesa Iyer J. had been confirmed by the Supreme Court, in appeal. B  
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Two contentions have been raised by the appellant in this appeal. The first is that the amended s. 9 of the Madras City Tenants' Protection Act cannot be invoked in the present case, and that s. 9, as it stood before the amendment, is the provision which governs the rights of the parties. The other contention is that, in any event, the amended s. 9 should have been invoked in the appeal. G  
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(1) [1964] 6 S.C.R. 1015.

A pending in this Court and the relief not having been sought there it was not open to the respondent to seek relief after the appeal has been disposed by this Court and the order of Panchapakesa Iyer J. had acquired finality.

B Before its amendment by Madras Act XIII of 1960, s. 9 provided as follows :—

C “9. (1) 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 within one month of the date of the Madras City Tenants Protection (Amendment) Act, 1955, coming into force or of 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 the land for a price to be fixed by the court. The court shall fix the price according to the lowest market value prevalent within seven years preceding the date of the order and 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.

(2) XX XX XX

F (3) On payment of the price the court shall pass a final order directing the conveyance of the land by the landlord to the tenant. On such order 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.”

G Upon its amendment, s. 9 now reads :—

H “9 (1) (a) 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 within one month of the date of Madras

City Tenants, Protection (Amendment) Act, 1955 coming into force or of 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 applicatton.

(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) whichever 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.

(2)           XX           XX           XX           XX

(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."

The question whether the case is governed by the unamended s. 9 or the amended s. 9 turns on the consideration whether the amendment of s. 9 was intended to operate retrospectively or must

A be construed as prospective only. Let us begin from the beginning. When the Madras City Tenants' Protection Act was extended to the town of Coimbatore in 1958, the respondent's suit for ejection had already been filed and in fact was pending in appeal. It was never disputed between the parties that s. 9 would operate retrospectively and affect the rights of the parties in the pending appeal. It was on that basis that the appellant applied to the court for the benefit of the provisions of s. 9. The Act itself clearly laid down that s. 9 could be invoked in a pending suit or proceeding, for s. 10 declared that s. 9, among other provisions, would "apply to suits in ejection .....

B ..... which are pending ..... in the city of Madras before the commencement of the Madras City Tenants' Protection (Amendment) Act, 1958, and in any municipal town or village before the date with effect from which this Act is extended to such town or village." It is to enable a tenant to secure the benefit of s. 9 in a pending suit or proceeding that s. 9 (1) provides that such tenants may apply under that provision "within one month of the date of the Madras City Tenants' Protection (Amendment) Act, 1955 coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the land is situated ... .."

C This provision was necessary to enable s. 9 to govern pending suits and proceedings. The other provision in s. 9 (1) providing that the period of one month would commence from "the service on him of summons" applied to future suits and proceedings.

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F When the Madras Act XIII of 1960 amended the principal Act, it amended not only s. 9 thereof but s. 10 also. Section 10 was amended in order that the amended provisions should apply to pending ejection suits and proceedings. The Legislature employed the same device in respect of pending suits and proceedings as it had when respect of pending suits and proceedings as it had when the Act was originally applied to such suits and proceedings, the only difference being that while the original s. 10 referred to the then existing provisions of the Act, the amended s. 10 referred to the amended provisions, including the amended s. 9, of the Act. It is apparent from the provisions of the amended s. 9 (1) extracted earlier that the scheme respecting the tenant's right to purchase and the landlord's obligation to sell, the land now stood modified. Whereas the original s. 9 (1) provided for the making of an application by the tenant within a specified period to the court for an order directing the landlord to sell the land for a price to be fixed

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by the court, and the court was required to fix the price according to the lowest market value prevalent within seven years preceding the date of the order, and to order, within a period to be determined by the court, the tenant to pay into court or otherwise as directed the price so fixed, the amended s. 9 (1) is divided into two clauses. Clause (a) entitles the tenant, within an identical period, to apply to the court for an order requiring the landlord to sell, for a price to be fixed by the court, the whole, or part of, the extent of the land specified in the application. The court can now direct the sale of a part only of the land mentioned in the application and is not compelled to pass an order in respect of the entire land. Clause (b) provides that the court will first decide the minimum extent of the land necessary for convenient enjoyment by the tenant, and thereafter the court will fix the price of such minimum extent of land or of the extent of the land specified in the application, whichever is less. Furthermore, the price is to be the average market value of the three years immediately preceding the date of the order. We are clear in our mind that if the suit was pending on the date when the amendments in the principal Act were brought into force, the amended provisions of the Act will govern the disposal of the suit.

Now, the appellant had already filed C.M.P. No. 1835 of 1958 praying for directions under s. 9 for the sale of the site. On that application Panchapakesa Iyer J. had passed an order dated July 28, 1958 holding the appellant entitled to purchase the site on paying the full market value current on that date, and had directed the trial court to appoint a Commissioner to fix the value of the site. The order did not dispose of the application and the suit, for under the original s. 9 (3) the statute contemplated an order by the court, after it was satisfied that the tenant had paid the price determined by it, directing the conveyance of the land by the landlord to the tenant. It was only after such order was made that the application and the suit would stand concluded. In *Gnanaprakasam and Another v. Mahboob Bi and others*,<sup>(1)</sup> a learned Single Judge of the Madras High Court held that even where the original court had made an order fixing the price of the land and directing its payment by the tenant, the application filed by the tenant could not be regarded as at an end so long as final orders directing execution of conveyance and delivery of possession were not passed. The stage for passing such order had not been reached yet when the principal Act was amended by

(1) [1962] 1 M.L.J. 254.

**A** Act XIII of 1960. The suit continued pending on the date when the amendments took effect. And consequently, it was now governed by the provisions of the amended s.9. We may reiterate that the order dated July 28, 1958 did not complete the proceeding in the suit. It constituted one stage only in the suit, and inasmuch as the suit was now to be disposed of in accordance with the amended statute the incomplete proceeding had to give way to the operation of the amended statute. As the scheme under the original section stood superseded by the scheme enacted under the amended sections the order of July 28, 1958 stood aborted and pursuant to the amended section fresh proceedings had to be taken by the court in order to dispose of the suit.

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The respondent, therefore, filed C.M.P.No.7241 of 1960 praying for a review of the order dated July 28, 1958 in the light of the amended s.9. In other words, the court was now called upon to dispose of the application of the appellant, not in the light of the provisions of the original s.9 but on the basis of the provisions of the amended s.9. We are of opinion that the trial court is right in taking the view, and the High Court in affirming it, that C.M.P. No. 1883 of 1968 and the suit had to be disposed of on the basis of the provisions of the amended s.9. The contention to the contrary raised by the appellant must fail.

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We are also unable to accept the other contention of the appellant that the respondent should have invoked the benefit of the amended s. 9 in the appeal pending in this Court, and that not having done so it was not open to the respondent to apply for relief in the court below after the appeal had been disposed of by this Court. It is apparent that the scope of the appeal filed in this Court was restricted to the validity of s.9 and s. 12 of the un-amended Madras City Tenants' Protection Act. It must be remembered that the order of Panchapakesa Iyer J., when gave rise to that appeal, was made before the Act was amended in 1960, and this Court concerned itself solely with the validity of the unamended statutory provisions. In fact, perusal of its judgment will show that this Court declined to consider the operation of the amendments brought about in 1960. In the circumstances, it is not possible to urge that the respondent might, or ought to, have insisted on relief under the amended s.9. in the appeal pending in this Court. It was,

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therefore, open to the respondent after the disposal of the appeal by this Court to apply to the court below for an order in terms of the amended s.9. **A**

In the result, the appeal is dismissed with costs.

N.V.U.

*Appeal dismissed.* **B**