

A

ABDUL KADER

v.

G.D. GOVINDARAJ (D) BY LRS.

APRIL 24, 2002

B

[R.C. LAHOTI AND B.N. AGRAWAL, JJ.]

*Tamil Nadu Buildings (Lease and Rent Control) Act, 1960:*

C

*S.10(2)(1), Explanation—Tenant in arrears of rent—Eviction of tenant—Tenant to pay, in addition of monthly rent, half of annual property tax—Tenant failed to pay rent for three months as also amount of property tax for three years—On receipt of notice tenant tendered only monthly rent and not property tax—Landlord refused to accept it being insufficient and filed suit after statutory period of two months—Held, the amount of taxes agreed to by the tenant to be paid to landlord was a part of rent and the word 'rent' in s.10(2)(i) has to be construed accordingly—According to the Explanation appended to sub-section (2) of s.10, the default to pay or tender rent shall be construed wilful if default in payment or tender continues after issue of two months' notice by landlord for clearing the arrears—No fault can be found with the view of High Court holding the tenant guilty of wilful default in payment of rent and hence liable to be evicted u/s. 10(2)(i).*

E

*S. Sundaram v. V.R. Pattabhiraman, AIR (1985) SC 582, relied on.*

F

*S. 10(2)(i)—'Rent'—Held, the amount of taxes agreed to by the tenant to be paid to landlord was a part of rent and the word 'rent' in s. 10(2)(i) has to be construed accordingly.*

*Karani Properties Ltd. v. Miss Augustine and Ors., AIR (1957) SC 309, relied on.*

G

*Messrs. Raval and Company v. K.G. Ramachandran (Minor) and Ors., (1968) 2 MLJ 50, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 644-645 of 2001.

H

From the Judgment and Order dated 31.1.2000 of the Chennai High

Court in C.R.P. Nos. 970 and 971 of 1995.

V. Ramasubramanian for the Appellant.

The following Order of the Court was delivered :

These are tenant's appeals by Special Leave against whom a decree for eviction from the suit premises has been passed on the ground available under clause (i) of sub-Section (2) of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter the 'Act', for short).

The relevant facts are not in controversy. The premises are held by the tenant under a written contract of lease dated 1.1.1988 whereby the rent for the premises has been agreed to at Rs. 100 per month. Over and above, the amount of rent, the tenant has agreed to pay to the landlord a sum of Rs. 111 equivalent to one half of the annual property tax payable in the respect of the property. The tenant did not pay the rent due and payable for the months of January, February and March, 1990. The tenant had also not paid the amount due and payable on account of property tax @ Rs. 111 for the years 1987-1988, 1988-1989 and 1989-1990. Here, it may be stated that even prior to 1.1.1989, the tenant was holding the premises under a previous deed of leases, the only difference being that earlier the rate of rent was Rs. 60 per month, though, so far as the stipulation to pay the amount of property tax is concerned, it was the same and had remained unaltered. On renewal of lease, under the deed dated 1.1.1989 in substance the change was brought about only in the rate of monthly rent.

On 26.3.1990, The landlord served a notice on the tenant demanding rent for the months of January to March, 1990 and also the amount of taxes due and payable by the tenant, as stated hereinabove. On 2.4.1990, the tenant tendered an amount of Rs. 300 to the landlord but not the amount of taxes. The tender was refused by the landlord on the ground that it was deficient, and hence, not a valid tender. Having awaited for a period of two months, i.e., the period of notice, the landlord initiated proceedings for eviction.

The short question which arises for consideration is: whether the tenant can be said to have committed a wilful default so as to attract the applicability of Section 10(2)(i) of the Act?

The term 'rent' has not been defined in the Act and therefore, we shall have to go by the ordinary dictionary meaning of the term, 'rent'. As held

A in *Karani Properties Ltd. v. Miss Augustine and Ors.*, AIR (1957) SC 309, the term 'rent' is comprehensive enough to include, *all payments* agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. It was very fairly conceded by learned counsel for the appellant that ever since the decision of this Court in the case of *Karani properties Ltd.*, the view being taken consistently by the High Court of Madras is that in the event of taxes having been agreed to be paid by the tenant, the same forms part of the rent. (To wit, see *Messrs. Raval and Company v. K.G. Ramachandran (minor) and Ors.*, (1968) 2 MLJ 50. Thus, there is no doubt that the amount of taxes which was agreed to be paid by the tenant to be paid to the landlord was a part of the rent and the word 'rent' in Section 10(2)(i) of the Act has to be construed accordingly.

The suit filed by the landlord is preceded by a two months notice by the landlord served on the tenant demanding the payment of rent including the amount of tax in arrears. The suit was filed after awaiting the fulfilment of the demand for the requisite period of two months. According to the Explanation, appended to sub-section (2) of Section 10, the default to pay or tender rent shall be construed wilful if default in payment or tender continues after issue of two months' notice by the landlord for clearing the arrears. This Explanation came up for consideration of this Court in *S. Sundaram v. V.R. Pattabhiraman*, AIR (1985) SC 582 and held it was held that if despite notice, the arrears are not paid, the tenant is said to have committed a wilful default and he will be liable to be evicted forthwith. It has been further held that where the landlord chooses to issue two months notice and the rent is not paid that would be conclusive proof of the default being wilful unless the tenant proves his incapability of paying rent due to unavoidable circumstances. Needless to say, it is not the case of the tenant that there were any such unavoidable circumstances which had rendered him incapable of paying the rent.

For the foregoing reasons, no fault can be found with the view taken by the High Court holding the tenant guilty of wilful default in payment of rent and hence, liable to be evicted under Section 10(2)(i) of the Act.

The appeal is held to be devoid of any merit and liable to be dismissed. It is dismissed accordingly. As there has been no appearance on behalf of the landlord-respondent, there shall be no order as to costs.

H R.P.

Appeal dismissed.